RECLAIMING THE FUNDAMENTALS

UNLEASHING REFORM POTENTIAL OF THE EU ENLARGEMENT PROCESS

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Content

Executive summary

The study analyses weaknesses of the current EU accession process when it comes to the impact on fundamental reforms in the Western Balkans and offers alternative solutions aiming to maximize the reform potential of the enlargement process. The accession process so far has been both technically and politically flawed in attempting to be the driver of the transformation in the Western Balkans that would generate changes tangible for the citizens and contribute to the development of functional democracies in the region. The lack of will and convincing strategies for accelerating enlargement has been paired with the support for stabilocracy, the dominant EU approach in the last decade, which prioritized stability over reforms. The consequence of this strategy has been the region steadily becoming both less secure and less democratic, with once unquestionable European credibility and influence progressively eroding.

Sensing that the momentum was slipping away, the EU has launched several initiatives attempting to modify or complement the enlargement policy, the most prominent of which are the new accession methodology and the European Political Community. Additionally, the tectonic shift on the continent initiated by the Russian aggression in Ukraine has put a geopolitically vulnerable region back on the list of European major security priorities. This new momentum is widely seen as an opportunity to bring back the EU focus to the region that has been neglected for years. However, there is a real threat that putting geopolitical interest at the centre of the accession process could further solidify stabilocracy and result in the perpetual neglect of democratic reforms.

Believing that only a democratic region could guarantee stability and prosperity for its citizens, we have set up to suggest an approach that would bring the EU back to the role of a major agent for the democratic transformation of the region, in a credible and effective manner. With this goal in mind, we have aimed at identifying main mechanisms which need to be alternated. Firstly, we have addressed inherent weaknesses of the accession process such as the limited scope of *acquis communautaire*, emphasis solely on minimum standards through the tick-the-box approach, and exclusive domination over national reform agendas. Secondly, we have outlined how the accession process has been subverted and turned into a mechanism for state capture through legalisation and legitimisation of harmful practices using the back door, enabling bypassing the essential changes by focusing on formal ones and enforcing top-down conditionality even at the expense of domestic democratic practice and processes. Finally, we have examined the role of high politics in the accession process, focusing on the credibility of the enlargement perspective, the language of EU reporting, political messaging that legitimises autocratic practices, and the potential utility of the extraordinary measures.

Recommendations:

1. Include the areas of great importance to the rule of law that are outside the *acquis communautaire* in the regular reporting of progress through extraordinary instruments. This particularly refers to the operationalisation and more detailed monitoring of the standards for democratic and civilian control of the security sector by the European Commission in all the countries of the Western Balkans, with a special focus on the security services.

2. In the areas where European standards have been established but fall outside of the EU *acquis*, such as judicial independence, elections, public administration reform etc., non-state actors (local experts, independent institutions and civil society organisations) who know the local context should be included in the operationalisation in order to optimise the reform potential and prevent lowering the already achieved standards.

3. Encourage better coordination between institutions to cover topics that appear horizontally in multiple chapters. The grouping of chapters into clusters provides an opportunity to find direct links between different areas that are horizontally connected.

4. Focus on the result-oriented monitoring of the fulfilment of benchmarks for key rule of law reform areas, instead of the hitherto check-the-box approach that focused on the implementation of individual activities.

5. In the accession process, geopolitical alignment should not be prioritised above the rule of law reforms. It must not become the rationale for the EU to turn a blind eye to the lack of progress in achieving the necessary standards, or even tolerate democratic backsliding for the sake of perceived stability. The European Political Community might provide the opportunity for discussing these topics without them overshadowing the reforms-first approach in the accession process.

6. Staged accession could advance the enlargement process dynamics, but only if the focus for each next step is still conditioned by tangible progress in the fundamentals. Although this initiative could mitigate progress in terms of a credible membership perspective, the risk is that conditionality might become decoupled from democratisation and the rule of law, allowing corrupt elites to opt in and out of policy areas based on the perceived benefits, which could further solidify stabilocracy.

7. Introduce qualified majority voting for intermediate steps of the accession process, and keep unanimity voting only for the admission itself to avoid further problems with bilateral conditioning.

8. Avoid greater involvement of high politics in the accession process becoming a mechanism of legitimising stabilocrats, through more careful political messaging on the progress achieved. This is particularly important in the light of new methodology, which seeks to make the enlargement process subject to "stronger political steering."

9. Overcome the leader-oriented approach by finding and including genuinely pro-democratic pockets of influence in candidate countries into the accession process. This includes putting more focus on state actors outside of the executive branch, but also the pro-democratic opposition political parties, professional and citizen associations, non-governmental organisations and the like.

10. The language and wording of progress reports must be more precise and direct, in order to narrow the space for misinterpretation of findings.

Preface

This study, entitled "Reclaiming the Fundamentals - Unleashing reform potential of the EU enlargement process", has set an ambitious goal for itself: its aim is to identify shortcomings and lessons that have been learned in the accession process and to look for the need to re-target the integration process in the cases of Serbia and Montenegro. The European Union (EU) has started accession negotiations with both countries, but - as we all know - progress is slow, too slow.

Nearly 20 years ago, the EU reassured the Western Balkan countries of their "European perspective". Although this constituted neither an absolute guarantee that those countries would join the EU nor a clear indication of when that might happen, there is no doubt about the EU's continuing determination to make the Western Balkans part of the European project and to work intensively with the countries to meet the conditions for membership.

Over the past two decades, the region has gone a long way toward European integration. It has stabilised after the wars and conflicts of the 1990s, and Slovenia and Croatia have become members of the EU. Stabilisation and Association Agreements are in force with six other countries of the region, including Kosovo. However, being at different stages of the accession process, the countries still have a long way to go to comply with all accession conditions. Progress is slow, and indeed, in the early 2000s we would have expected it to be much quicker. And even worse, today we note some backsliding here and there, and we increasingly hear about "state capture".

In this situation, a thorough study which will analyse the state of affairs, highlight shortcomings and assess what went wrong in the past will help find out where changes are needed, which improvements ought to be made, and how obstacles can be overcome. The study will come forward with suggestions that will hopefully be as detailed, as concrete and as open as possible. There should be no taboos when discussing any of the proposals coming out of the study, even if, at first sight, they appear difficult to implement, politically unrealistic or just unpopular. "Reclaiming the fundamentals" of the enlargement process for the Western Balkans is in fact what we need.

Obviously, in assessing the current situation, we must resist simply "blaming the other side". In the region, people are tempted to make the EU responsible for the lack of progress in getting the Western Balkans countries closer to membership: too slow, too technical, too bureaucratic, always coming with new objections, and thus having lost credibility that the EU is really serious when it comes to the membership of the Western Balkans. In Brussels and in the EU capitals, on the other hand, people are tempted to blame the countries of the region: lagging behind with reforms, not focused enough on aligning their own systems with the *acquis communautaire*, and falling short of political determination to speedily move forward in the accession process.

There might be some truth to all of this, but let's be clear: the lack of progress of the Western Balkans on their way to Europe is the fault of neither the EU alone, nor just of the countries in the region. I very much hope that the study will illustrate that changes and improvements are needed on both sides.

Not surprisingly, the study will look to quite some extent into the current enlargement process of the EU. A lot can be said about this. From the outset, it might be useful to bear in mind that the EU has over the past decades expanded from the six founding members to 28 Member States (27 after Brexit). So, enlargement and enlargement procedures seem to have worked in the past. Obviously, many things have changed since the first enlargement process in 1973, not the least the range of EU competencies and, consequently, the broadness of the *acquis communautaire*. Reforms of the enlargement process were necessary, and we should welcome the fact that the EU has recently made some important improvements there. For example, putting the rule of law at the forefront of accession preparation was inevitable, considering the serious shortcomings in this area in practically all the countries aspiring for membership. And, by the way, having identified so many shortcomings in this area even in some of its current Member States, the EU understandably is anxious to seriously address such shortcomings in candidate countries before they join the Union. Obviously, focusing so much on the rule of law should not lead to neglecting other areas, for example the functioning of democracy, which is more than just having proper elections. Also, trying to work on "clusters" in the accession negotiations rather than separating them too formally according to too many chapters, seems to me an improvement. Moreover, making the regular Commission reports on progress in the countries less technical and more focused on important shortcomings is another useful step forward.

Before we look for further improvements in the enlargement process, we should assess how the current framework could be better used. Making too many and too frequent changes to the framework itself might result in "improving proceedings", rather than focusing on substance. Also, in my view, the Stabilisation and Association Agreements should be better exploited. They constitute a broad framework for intensive cooperation between the EU and each of the Western Balkans countries, and within the region, and are therefore the central tool to prepare the countries for EU membership.

In any case, we should be realistic, as preparing for membership is a long and burdensome process. Political criteria, economic criteria, and the capability of a candidate to "digest" the *acquis communautaire* need to be assessed, and serious reforms are required in many policy areas to meet membership conditions. Such reforms should not be considered as necessary "just to please the EU" – they are in the very interest of the countries themselves and their populations. And, as we all know, in the case of the Western Balkans, remaining conflicts and uncertainties must be sorted out. Even more importantly, a lowering of accession conditions should not be expected.

We should not confound accession preparation with a comprehensive political agenda in each country. There are important policy areas, such as education or security, where the EU has little or no competencies. Therefore, the accession agenda does not cover such areas at all, or it does so only partly. In many EU policy areas, the EU Treaties leave broad space for political choices to be made at the level of Member States. In such areas, the EU will not tell governments in candidate countries what political choices they should make; they will have to do it themselves. Moreover, awareness of the relevance of specific issues for the accession process might become more evident over time. For example, the EU has increasingly become aware of the importance of security matters regarding the functioning of democracy or the rule of law. The reports of the Senior Rule of Law Expert group on the rule of law situation in North Macedonia has revealed what an unfortunate impact (uncontrolled) work of a secret service can have on the rule of law. I am certain that similar findings could be made in other countries in the region.

Treating all countries equally in the accession process is a principle that is sacred to the EU. It means that differentiations should only be made where situations are different. Therefore, the EU should not for purely political reasons turn a blind eye to shortcomings, just because other problems to be sorted out appear to be more important. For example, the fact that the Kosovo status remains at this moment controversial between Serbia and Kosovo, or the fact that the burdensome constitutional set-up in Bosnia and Herzegovina needs reforms, should by no means be a justification for the EU to be less strict on rule of law shortcomings in those countries as compared to others.

In the end, to accept a new member is a political decision, regarding which all EU--Member States have to agree. Such a decision might not be so popular these days because of so many other problems that need to be sorted out “at home”. Therefore, it needs political courage and it needs a “convincing case”.

On the other hand, political determination is needed on the side of the Western Balkans countries. Many institutional (and sometimes constitutional), administrative and economic reforms are required for a country to align with European requirements. This entails political will, the capacity to implement decisions, and sometimes also a change of the “culture”. Governments and politicians must seriously work on the recommendations provided by the EU. However, working through EU to-do lists and action plans does not substitute for making political choices on the ground with the aim to push forward the necessary transformations of the economy, the societies, and the governing structures. Regarding foreign policies in particular, the EU has made it clear, again and again, that it expects tangible and sustainable progress towards full alignment with EU foreign policy positions. Sidelining from foreign policy decisions of the EU, as has recently happened in the aftermath of Russia’s aggression in Ukraine, is not a promising signal to convince the EU that a country means it seriously when it pushes for quick progress in the accession process.

The study will also look into making the accession process more democratic by increasing the role of civil society. Enhanced democratic and civilian controls will indeed contribute to improving the process and making it more acceptable to people.

Finally, we have to note three new applications for membership to the EU: Ukraine applied for EU membership and was shortly followed by Georgia and Moldova. This was another stress test for the EU-enlargement process. Understandably, under the current dramatic circumstances, the Commission needed to rapidly issue its opinion on the Ukrainian application. However, there would be no reason to follow a different approach in the accession process of those three countries from the one followed for the Western Balkans.

To sum up, I very much hope that the results of this study will help further improve and re-target the EU accession process not only for Serbia and Montenegro but also for the other Western Balkans countries, and indeed also for the three new applicants. Let us hope that the study's suggestions for "a more credible, dynamic, predictable and political EU accession process" will contribute to speeding up the Western Balkan's integration into the EU.

Reinhard Priebe, Brussels

New Impetus for Rule of Law Reforms in the Western Balkans

The vision of the European future

The promise of the Thessaloniki Summit of 2003 was a vision of the future that was so strong it became an official credo of all Western Balkan countries in the two decades that followed. It was a vision of a stable and democratic region that is fully integrated into the European Union. The recipe for this bright future seemed simple: the countries of the region would reform and democratise with the support from Brussels in order to become worthy members of the European family. The declaration after the summit stated that "the Stabilisation and Association process will remain the framework for the European course of the Western Balkan countries, all the way to their future accession. The process and the prospects it offers serve as the anchor for reform in the Western Balkans, the same as the accession process has done in Central and Eastern Europe."[1]

With time, what once seemed like a clear vision started to fade. The message that full membership is within reach if only candidate countries would reform became no more than a bureaucratic mantra without substance that was gradually replaced by the one about enlargement fatigue. Equally unrealistic became the promise that the accession process will serve as a driving force for reforms in the region. The support for stabilocracy, which became the dominant political agenda among the European stakeholders, heavily depleted the legitimacy of the accession process among the citizens of the Western Balkans.

For many of those citizens, the true allure of the process was not just to live in a more prosperous environment, but also in a more democratic system modelled on EU standards and based on the principles of the rule of law. Unfortunately, the EU accession process has been both technically and politically flawed in its attempt to make the transformation effective, i.e. one that would generate changes tangible for the citizens and contribute to the development of functional democratic states in the region.

Years wasted, credibility lost – Failures of stabilocracy support

Ever since the economic and Eurozone crisis of the late 2000s, the voices within the Union claiming that the accession process needs to be halted due to the enlargement fatigue and that new admissions need to wait for the internal transformation of the EU were becoming increasingly prominent. This evolved into an official position after 2013, when Croatia became the last country to join the EU to date. At the beginning of his 2014 term, the then-President of the Commission Jean-Claude Juncker explicitly stated that

there would be no further enlargement until 2020.[2] This decision severely damaged the credibility of the Union and the accession process, effectively putting an end to a model of democratic reforms based on the incentive of imminent membership. The progress in the accession process of all candidate countries has been limited ever since. Complementary initiatives such as the Berlin Process, established in 2014, were introduced to keep the enthusiasm alive, but could not replace the appeal of the accession process for countries in the region. Additional series of blows to the credibility of the European future for the Western Balkans came with a series of blockages from various Member States regarding the countries' advance to the next accession phase,[3] culminating with Bulgaria repeatedly vetoing North Macedonia (and simultaneously Albania) from initiating negotiations over historically and identity-driven bilateral disputes.[4] Moreover, the European attempt to assume the role of the leading mediator to solve the most pressing internal and regional political issues, such as the Belgrade-Pristina dialogue, proved to be mostly unfruitful.

The lack of convincing strategies for accelerating enlargement has been paired with the last decade's dominant EU approach, which prioritised stability over reforms. The aim of this new strategy was to stop the enlargement process for the foreseeable future, substituting it with an economic and political presence that would ensure the stability of the region within the European sphere of influence. As long as key security issues in the region were under control, be they bilateral disputes or migrant flows, the lack of progress or even the reversal of democratic reforms in candidate countries would not be met with harsh criticism or endanger their accession processes in any way. Some candidate countries, especially those led by authoritarian regimes, were perfectly happy with this development. The prolonged accession process allowed them to keep the veneer of the European perspective, which is essential for their legitimisation, both with the domestic public and abroad. The support for stabilocracy provided them not only with passive protection, but also incentives for democratic backsliding, enabling them to strategically simulate reforms while taking benefits for themselves through pre-accession funds as well as other economic advantages deriving from the candidate status. As Vesela Tscherneva, Deputy Director of ECFR aptly put it, "the European Union's current enlargement policy is defective and largely based on the mutual exchange of hypocrisy - the bloc pretends to enlarge and Western Balkans countries pretend to reform."

Viewed in the short term, this seems to be a perfect marriage of interests. However, in the long run, this strategy spells disaster for both sides. In recent years, it became obvious that the EU policy of supporting stabilocracy in the Western Balkans has failed. The stabilocracy support has contributed to the region steadily becoming both less secure and less democratic, simultaneously eroding once unquestionable European credibility and influence. The accession process has been in a stalemate for years, the regional security environment is deteriorating, and no major progress has been achieved in the rule of law reforms. Although most of the blame surely lies with

the local political establishments, the European approach has provided perfect conditions for such developments. All of this has resulted in a serious crisis of credibility and deteriorating European influence in the region.

One look at the security situation in the Western Balkans shows that we are currently facing the most complex and pressing set of issues since the late 1990s. The ever--deepening institutional crisis in Bosnia and Herzegovina has led to a situation where those who openly fear new conflicts are increasingly heard, both in the country and the international community.[5] Over the last years especially, negotiations between Belgrade and Pristina have created more uncertainties than clarity and solutions, bringing the process to an apparent standstill, while occasional incidents between Kosovo's special police forces and the Serbian population in northern Kosovo led the situation on the ground to the brink of conflict.[6] The democratic backsliding in Serbia has gradually reached the level of a captured state, with crumbling institutions and democratic processes.[7] The political situation in Montenegro has been unstable ever since the long-awaited regime-change in 2020, often spilling over into interethnic tensions.[8] Repeated failures of European decision-makers to deliver on their promise to open the negotiation talks, coupled with internal political disputes triggered by Bulgarian bilateral pressures, are endangering the political stability in North Macedonia.[9] The war in Ukraine only deepened tensions in the region, leaving the region, somewhat still divided over the geopolitical aisle, particularly vulnerable.

In addition, most countries of the region have made little to no progress when it comes to crucially important issues such as the rule of law, the fight against organised crime, and solidifying democratic institutions. Reforms that are made are often cosmetic, designed merely to tick boxes in the technocratic accession process. With the accession prospects progressively declining, there are no real incentives for regimes to pursue necessary reforms, and the pressure from citizens on their governments is fading. The most extreme scenario is the Serbian one, where the current regime was tacitly given free hand for the autocratic shift.

With the accession turning into a seemingly never-ending process, the impaired credibility has led to the EU's influence over the region being increasingly challenged. Nothing rings hollow more than the unfulfilled promise that hard concessions eventually pay off. The support for stabilocrats has depleted much of the support for the EU even in the most pro-European parts of societies. Many of those citizens feel disillusioned with the idea of the EU as a value-driven actor and believe that they are left to the mercy of autocratic regimes for higher interests. Moreover, the vacuum of influence left by the fading trust in the enlargement process has led to the increasing economic and political presence of rival foreign actors in the region such as China and Russia.

In search of a renewed EU commitment

After a prolonged stalemate in the accession process with no end in sight, the crisis of EU credibility in the region became apparent to stakeholders in Brussels. Sensing that the momentum was slipping away from the Union, and feeling increasingly endangered by the expanding influence of third powers, which was often exaggerated, EU launched several initiatives attempting to modify or complement the European enlargement policy, the most prominent of which are the new accession methodology and the European Political Community.

In February 2020, the European Commission officially initiated the new methodology for accession, which was then accepted by other EU institutions. Novelties introduced by the new methodology were as follows: grouping certain negotiating chapters into clusters; awards for champions of reforms, contrasted with penalties for lagers and backsliders; and the reversibility of the process in the event of any backward trends in reforms.[10] This change was promoted as breathing new life into the exhausted enlargement process that would once again offer a credible EU perspective to the region. However, this new strategy did not resolve the main weaknesses of the accession process, as "the solutions it offers are not very innovative, they require concretisation, it is questionable whether they facilitate or complicate the process, and - most importantly - they are no less immune to the (arbitrary) will of each Member State."[11]

Another recent concept was the creation of the European Political Community (EPC), with the aim to tie non-EU partners, including Western Balkans countries, into a closer political and security collaboration with the EU. The author of the idea, French President Emmanuel Macron, insisted that the European Political Community should not be viewed as an alternative, but rather as an initiative that is complementary to the EU accession process, claiming that this new political organisation would help create "a new space for political cooperation, security, cooperation in terms of energy transport, and for investing in infrastructure for people to circulate."[12] The first official EPC summit was held in Prague on October 6th, gathering leaders of 44 European countries, including regional leaders.[13]

There are still many unknowns as to how this organisation would function in practice. It could be a short-term arrangement to send a symbolic message of the European unity and demonstrate the isolation of Russia in the European affairs in the light of the aggression on Ukraine. Also, it could become a permanent forum for discussing major political and security issues on the European continent, which could find its place in the future post-war security architecture of Europe. Ultimately, it could develop into a tool for achieving EU's geopolitical influence on the rest of the continent by giving non-members incentives to align outside of the enlargement process. Depending on the goal, EPC could partially relieve the accession process of some major geopolitical

concerns, which might otherwise overshadow the fundamentals on the accession agenda. Alternatively, it could become an instrument of institutionalised stabilocracy, which would offer countries that align with the geopolitical goals of Brussels direct benefits without conditioning them to reach necessary fundamental and rule of law standards.

On top of the initiatives coming from the EU institutions and Member States, some new proposals for the revival of the enlargement project were launched by both regional and European experts and think tankers. One of the alternative accession models, which gained a lot of attention both in the region and among the European stakeholders, is the model of the so-called staged accession. As the authors of this proposal notice, this strategy could substitute the current binary "in or out of membership" model by allowing candidate countries to progress towards full membership in stages, based on the reforms achieved, with each stage unlocking access to increased funds.[14] On the one hand, this model could provide a necessary boost of credibility to the enlargement process by giving new incentives to the candidates to harmonise with standards in different areas in order to advance more rapidly into new stages. However, in the long run, this can only be effective if achieving the necessary progress in rule of law standards remains the core condition for each next phase. Otherwise, it would enable autocratic regimes to gain greater access to pre-accession funds by choosing areas to harmonise, while avoiding compliance in key areas encompassing fundamentals. If the strict conditionality is not enforced, we will be facing a serious risk of this approach effectively institutionalising stabilocracy into the accession process.

Geopolitical alignment - A new form of stabilocracy?

Once the Russian aggression in Ukraine started, many rushed to proclaim the new geopolitical environment as an opportunity the countries of the Western Balkans should seize in order to finally make long-awaited progress toward EU membership. With geopolitical concerns becoming the number one priority, the strategic importance of the region within the EU's backyard, characterised by competing foreign influences, brought the focus of European decision-makers back to the part of the continent that had been neglected for years. The tectonic shift we are facing has further deepened the existing uncertainties in the region, urging EU leaders to demonstrate readiness to pull the Balkans closer into the European sphere of influence. Furthermore, the fact that Brussels granted a candidacy status to Ukraine and Moldova increased the expectations in the region that the enlargement process will be boosted for the Western Balkans as well.

However, there is a real threat that putting geopolitical interest at the centre of the accession process could further solidify the negative trends in the European approach to the Western Balkans which we have seen in previous years. As a new form of stabilocracy, neglecting democratic reforms, which happen to be the key for a stable region, could backfire very quickly. If the EU decision-makers decide to give concessions on the rule of law and speed up the process regardless of the lack of progress in this field in return for geopolitical alignment, political leaders in the region will be given the green light to continue with democratic backsliding.

This approach could serve as a geopolitical instrument for autocrats, especially if it is stimulated by easier access to funds for governments that are conditioned by necessary reforms. This would effectively mean the end of enlargement as a reform-driven process which was the strongest mechanism of EU's dominant influence in the region in the last two decades. Since it is highly unlikely that Member States would risk accepting new autocratic forces into the Union, this would further aggravate the stalemate in the accession process, inevitably paving the way for further crumbling of the EU's already shaken legitimacy among the citizens of the Western Balkans.

Harmonisation with the Common Foreign and Security Policy is a necessary step that candidate countries must take before joining the Union, and as such, it is an integral part of the negotiation process. However, while respecting the fact that in the current geopolitical moment it is a strategic priority for many stakeholders in Brussels, it is of crucial importance that the reform processes do not become secondary in the EU's approach to the region. If geopolitical concerns overshadow the rule of law conditionality in the European regional approach, in the long run we could absurdly get a less stable region, with Brussels further losing its impact and alternative foreign influences rising.

New push for functioning democracies

This study aims to re-think the accession process in order to re-establish it as a driving force for fundamental reforms in the Western Balkans. Believing that only a democratic region could guarantee stability and prosperity for its citizens, we have set up to suggest an approach that would bring the EU back to the role of a major agent for democratic transformation of the region, in a credible and effective manner.

With this goal in mind, the authors have divided the study into three main chapters analysing mechanisms of the current accession process when it comes to the impact it has on fundamental reforms. The first chapter addresses the inherent weaknesses of the accession process as the driver of rule of law reforms. The authors argue that the EU accession has captured national reform agendas and therefore anything that is not EU-related has little to no chance of being addressed. Furthermore, some topics

that are detrimental to democracies in the region such as security agencies fall outside the *acquis communautaire* and therefore remain under the radar of the European Commission. Finally, the EU's position on the minimum standards that need to be met is regarded as sufficient and governments have no incentive to put in extra effort or even discuss policy processes important for the rule of law that are beyond the minimum standard set by Brussels.

The second chapter depicts how the EU accession process has been subverted and turned into a mechanism for state capture. Governments are abusing demands set under the accession process to introduce and legitimize controversial legal solutions or to legalise bad practices using the back door, therefore undermining the standards that have been achieved in the areas of human rights and the rule of law. Also, the overly bureaucratised accession process allows governments to disregard links and exploit grey zones between sub-areas which are divided in the accession methodology yet interconnected in practice. The bureaucratisation of the process further allows the governments of candidate countries to follow the tick-the-box approach and show some form of progress by completing the formal steps in the reform process, bypassing the essential changes. The top-down conditionality that is characterizing the process has set the focus on reaching set deadlines and copying European solutions often at the expense of democratic practice and processes, weakening political competition and mechanisms of internal accountability and deliberation within accession countries.

Finally, the third chapter critically examines the role of high politics in the accession process. The credible enlargement perspective is underlined as crucial for incentivizing candidate countries to undertake necessary reforms since benefits from full membership need to be clearly higher than the net costs of the process. Also, the unclear diplomatic language of the EU reporting is highlighted as an important issue since it gives the floor to misinterpretations and political abuse of the process. Furthermore, we warn of the political messaging from the EU officials and leaders which are directly legitimising the authoritarian practices in candidate countries. Finally, we are discussing the potential of using extraordinary instruments to promote more efficient fundamental reforms.

For an in-debt demonstration of how the examined mechanisms function in practice, we have analysed processes of amending the Constitution and the Law on referendum and people's initiative in Serbia. These processes, supported wholeheartedly by the EU institutions and decision-makers, have been so deeply troubling in the execution that they portray a case study of the devastation of the rule of law and democratic principles. The implementation of these changes is a perfect illustration of both technical and political flaws of the accession mechanism, demonstrating how a bureaucratised process out of touch with the local context combined with poor political messaging contributes to state capturing instead of promoting fundamental reforms.

In this study, we will focus on the experiences gained from the accession processes of Serbia and Montenegro, the only two countries that have been negotiating accession for years. Nevertheless, the goal of the study is to offer lessons that have been learned from the negotiation processes of other Western Balkans countries as well, in order to avoid some of the missteps that were previously taken by Brussels. With the accession talks officially launched with North Macedonia and Albania in July this year,[15] and the European Commission finally recommending the Council to grant Bosnia and Herzegovina the candidate status in October,[16] this is the right moment not only to identify weaknesses of the accession process so far, but more importantly to propose alternative solutions.

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Reform Is not Something that Goes Without Saying

Blind Spots of the Enlargement Portfolio

Some of the key topics that affect the functioning of democracy and the quality of the rule of law in the countries of the region remain under the radar of the European Commission because they are not part of the European *acquis communautaire*. That is how security agencies of the countries aspiring for membership were left outside the accession process.

With their powers and the absence of transparency, largely insufficiently reformed and susceptible to politicisation, these agencies significantly and covertly affect social trends. This is especially the case in Serbia, where the civilian Security and Intelligence Agency (BIA) and the Military Security Agency (VBA) participate in criminal investigations and have police powers. Moreover, the police must rely on BIA's capacities to implement technically demanding measures that involve covert data collection, which gives this agency insight into the most sensitive cases of corruption and organised crime. These are areas that are chronically critical for Serbia, where progress from one year to the next has been limited. For this reason, the position and work of Serbia's security agencies – unlike those of other countries in the region – did attract some attention of the European Commission.

First of all, one of the benchmarks of Chapter 24 (Justice, Freedom, Security) requires a review of the role of security services in criminal investigations. However, not a single activity related to said benchmark was ever implemented,[17] and the Action Plan for Chapter 24 was revised in 2020 not only to extend the long-passed deadlines, but also to water-down the results that had to be achieved to meet the benchmark. Namely, instead of ensuring the independence of the police from the security agencies when it comes to special investigative actions, the only thing that is now required is the separation of mandates and regulations for the interception of communications depending on the purpose, i.e. the protection of national security or the collection of evidence in criminal investigations. This is insufficient and does not solve the above key problem. Namely, it is necessary to completely exclude Serbian security agencies from criminal investigations, especially their *de facto* intermediary role in the implementation of technically demanding special investigative actions, in accordance with European standards.

Second, in its annual reports on Serbia, in a separate section dealing with political criteria for membership, the European Commission regularly monitored the state of democratic civilian control over the security forces. However, this section, which normally contains just general non-critical statements that the competent parliamentary committees are functioning, was completely absent in the report for 2020.[18] Civil society monitoring showed that in the previous three parliamentary convocations (2014-2016,

2016-2020, 2020-2022) parliamentary supervision of the work of the security sector was in fact simulated, much like the other functions of the legislative body.[19] Especially in the last convocation, in which there were almost no representatives of the opposition, deputies did not question the decisions of the executive power, but only confirmed them, praising the Government and the President of the Republic regardless of the occasion. Security topics, the work and the budget of the security sector were not fundamentally discussed at the plenary sessions. Ministers responsible for defence and internal affairs rarely appeared to answer parliamentary questions. Also, the competent parliamentary committees are increasingly closing their sessions to the public, while those that *are* public are short and full of unjustified praise of the executive. Participation of the opposition in the new convocation of the National Assembly provides an opportunity to improve these practices.

Until now, the EU has only marginally dealt with the work of the security agencies in Serbia within the framework of the accession negotiations, which is still more than it did in other countries of the Western Balkans. It had been forced to address these issues in North Macedonia, when massive illegal wiretapping by the civil security agency on behalf of the ruling party came to light in 2015. Until then, the deep crisis of the rule of law in that country could not be gleaned from the European Commission's regular annual reports. An independent expert analysis showed that the broad powers and politicisation of the former Macedonian Directorate for Security and Counterintelligence Affairs and the lack of supervision and control of its work had led to a captured state. A series of disclosed incriminating telephone conversations, in which leaders and officials of all three branches of power took part, revealed electoral manipulation, interference of politics in the work of the judiciary, control of the media, and the absence of control over the security agencies.[20] Reversing the process of state capture thus implied a systemic reform of the security agencies and the empowerment of parliament and independent institutions to perform their oversight role. The European Commission provided a significant incentive for this (see the section on extraordinary instruments).

The accession process must not bypass the security agencies because of their high potential to be misused for state capture, which diminishes the rule of law as the key segment of reforms within the framework of European integration. Since democratic civilian control over the security sector (security-intelligence agencies, police and armed forces) is considered one of the key standards in democracies,[21] the operationalisation and more detailed monitoring of these standards by the European Commission in all Western Balkan countries is crucial. In this, the Commission could rely on the work of domestic civil society organisations, as well as on specific recommendations from the independent report on the systemic problems of the rule of law in North Macedonia (the so-called Priebe Report).[22]

Never Mind the Rest

In the candidate countries, it seems that EU-related reforms have monopolised the public debate and policy development to a great extent, not always with positive effects. Although understandable, due to the scope of reforms that need to be implemented, this has in some instances caused stagnation or pushing back the deadlines from the existing strategies and policy processes, whereas areas that are not directly linked to the EU accession process, but are equally important for the rule of law, were effectively suspended.

This happened in Serbia, where Action Plans for Chapters 23 and 24 were declared top-level strategic documents at the very beginning - in 2016, when Serbia opened these two chapters - while all other strategies were rendered secondary to them. The policymakers stated the importance of these two chapters dealing with the rule of law within the so-called new approach to enlargement - launched back in 2011 - as the reason for doing so, and this has been repeatedly communicated throughout the years, including after the change of the methodology in 2021.[23] The effect of this approach was that it pushed back deadlines and further complicated the implementation of already existing and important policy interventions.

One of the examples of this problem was the implementation of the already existing Judicial Reform Strategy and its accompanying Action Plan for the period 2013-2018. Once the Action Plan for Chapter 23 (AP23) was adopted in 2016, it not only delayed the activities, but also changed the monitoring system that was put in place and the authorities that were responsible for its implementation. This move was harshly criticised by the Judges' Association of Serbia, which claimed that imposing a new system where the Commission for Judicial Reform was replaced by the EU negotiation structure as the party responsible for the implementation hampered the effectiveness of reforms. Whereas the Commission was previously comprised of judges, prosecutors, judicial bodies, the Bar Association and the National Assembly, the newly imposed system effectively excluded most of these institutions from the process, transforming the judiciary into a passive object of reforms imposed by the Government.

A similar issue arose concerning the implementation of the National Anti-Corruption Strategy of the Republic of Serbia 2013-2018, which had been treated as a "second class" strategic document even before the negotiations for Chapter 23 started. Although it was an ambitious and comprehensive document, its implementation only focused on the measures that were included in the AP23 in 2016, while the rest of the proposed measures were disregarded. To illustrate how this affected anti-corruption efforts, it is worth taking a look at the Anti-Corruption Agency's reports from that period, which stated that as many as 51% of the activities from the Strategy could not even be evaluated due to lack of information on their implementation, while further 31% remained unfulfilled. Moreover, the scope of the measures that were originally planned in the Strategy was reduced once these were transplanted into the AP23. For instance,

the AP23 targeted only civil servants within the state administration with its anti-corruption efforts, whereas the Strategy included a wider group of state employees (e.g. public enterprises, cultural institutions, healthcare and education). This was corrected to some extent in 2021, when the Government adopted the Operational Plan for the prevention of corruption in areas of high risk. However, this document could also be considered a "second class" policy tier owing to the fact that it is only meant to address one of the measures from AP23, and is defined as an interim policy intervention in lieu of the new National Anti-Corruption Strategy that is scheduled for adoption in 2023.

Keep It to a Minimum

The negotiation process is, by design, highly focused on the executive as the key driver of reforms that are being implemented. On one hand, the European Commission and Member States engage with national governments as key interlocutors regarding the accession process, while on the other, governments serve as gate-keepers in terms of domestic policy dialogue with various interest groups, civil society organizations (CSOs) and the citizens while these policies are formulated and developed. This puts governments in a unique position to bargain for lower standards of meeting certain criteria if they lack true incentive to reform. With the EC in charge of driving the transposition of EU *acquis* into candidate countries during the accession process, and with a somewhat limited role of member states in it, benchmarks and positions set by the EC are regarded as the minimum standard that needs to be met, so the Governments have no incentive to put in the extra effort.

An example of this is the currently ongoing debate on the Law on Internal Affairs in Serbia. After the initial Draft Law was published in August 2021, it received fierce criticism[24] from CSOs and was consequently withdrawn from the procedure. The main points of criticism included the introduction of new and invasive police powers (biometric surveillance and automated facial recognition), concerns about citizens' rights in relation to the police, and the still-present politicisation of the police and subjugation of the Police Directorate to the Ministry of Interior. After the withdrawal, the MoI initiated a separate consultation process on biometric surveillance, while refusing to discuss the Draft Law within the ongoing consultations on Chapter 24 under the auspices of the National Convention of European Union (NCEU). The argument put forward by the Ministry was that, since there is no benchmark or measures in the AP24 that contain amendments to the Law on Internal Affairs, there is no need to discuss this Draft Law under the EU accession framework, despite the fact that it is the key precondition for almost all law enforcement reforms contained within Cluster I.

This was the MoI's position despite the need for greater operational autonomy of the police in relation to political decision-makers in the Ministry, which is also one of the interim benchmarks from Chapter 24, whose fulfilment the Government of Serbia committed itself to in the AP24. This document contains a recommendation the

European Commission provided back in 2014: "The Republic of Serbia [should] conduct a comprehensive analysis and, based thereon, change its Action Plan, providing: [...] detailed steps to establish strong protective measures that ensure the strengthening of the integrity and operational independence of the police services from political interests and their protection from the influence of crime [...]." The MoI claimed that the operational independence of the police has nothing to do with the new Draft Law on Internal Affairs, but is instead guaranteed by the prosecutorial investigation defined in the Criminal Procedure Code.[25]

The Constitutional reform, which in Serbia took place between the years 2017 and 2022, suffered from similar problems (for additional information, see the case study on the Constitutional reform). The interim benchmark proposed by the EU in 2016 stated that there was a need to amend the Serbian Constitution with the aim to ensure the independence and accountability of the judiciary. The interim benchmark read as follows:

> "The High Judicial Council and the Prosecutorial Council should be empowered with leadership and the power to manage the judicial system […] with at least 50% of members stemming from the judiciary, representing different levels of jurisdiction. Their elected members should be selected by their peers;"[26]

Based on this formulation, the Government of Serbia proposed amendments that would establish judicial bodies composed of exactly 50% of members coming from the judiciary. In doing so, the Government kept refusing to accept a proposal coming from experts and professional associations that judicial independence could only benefit from having an even larger ratio of professionals, claiming that their proposal was in line with minimum standards. The EC had no grounds to contest the Government's claims since they did correspond to the wording of the interim benchmark and, with little incentive to go beyond the bare minimum that was required, the Government kept its position which eventually became part of the solutions that were adopted in January 2022. Having learned the lesson - that the Government interprets its obligations in a minimalist fashion - local CSOs insisted during the revision of Action Plan for Chapter 23 in 2020 that all steps towards adopting constitutional amendments be listed in detail in the AP. Prior to this, the Ministry of Justice unlawfully usurped the role of the Parliament in the process of drafting constitutional amendments. Afterwards, however, all the steps were vigilantly monitored by the EC and the process was truly improved.

Lastly, similar challenges were noted during the consultations on the drafting (2015-2016) and revision (2018-2019) of the Action Plan for Chapter 24, where the MoI refused to adopt proposed comments and changes as requested by the CSOs, claiming that the EU was already satisfied with the proposed measures and that there was therefore no need to improve them any further.[27]

Turning Accession Negotiations into a Mechanism of State Capture

An Excuse to Lower Standards Using the Back Door

Some of the activities carried out under the auspices of the Action Plans for Chapters 23 and 24 are misused, contrary to their purpose, to undermine the standards that have been achieved in the areas of human rights and the rule of law. Amendments to regulations that are envisaged within the framework of European integration are often used as an opportunity to introduce controversial legal solutions or to legalise bad practices using the back door, and even good laws are sometimes applied incorrectly or maliciously. In such situations, it is mostly civil society organisations (CSOs) that alert the domestic and international public, managing – with their support – to effect the withdrawal or change of controversial solutions and practices.

Professional associations, the academic community and CSOs in Serbia thus united in criticising several bad working versions of constitutional amendments in the area of judiciary, as well as the consultation process that started in 2017 on that topic. Instead of strengthening the independence of the judiciary in relation to politics, the first versions of the text and the narrative of Serbian officials that accompanied them went in the opposite direction – towards fighting the so-called courtocracy. Amendments to the Constitution of Serbia also entailed the adoption of the Law on Referendum and People's Initiative, which snuck in certain provisions that made it difficult to exercise the rights of citizens and which were amended only after mass civil protests at the end of 2021 (for additional information, see the separate case study).

In Montenegro, the amendments to the Constitution adopted in 2013 were the first key step in the reform of the judiciary, but they led to the blockade of the work and illegitimacy of the highest body of judicial power. They established the qualified majority for the election of the holders of highest judicial offices. However, the lack of an anti-deadlock mechanism in case a majority could not be reached, led to the fact that a good part of the judicial system was operating either in the 'acting' state or had no constitutional legitimacy. Also, *ad hoc* statutory interventions, which bypass the Constitution, have become the norm in finding solutions in the absence of political consensus. For example, the current composition of the Judicial Council, whose mandate expired in 2018, is still in force. That year, with the positive opinion of the Venice Commission,[28] the Government adopted amendments to the Law on the Judicial Council and Judges, according to which members of the Judicial Council from the ranks of distinguished lawyers are to continue to perform their duties until the election of the new composition of the Council.[29] This allowed the then parliamentary majority to extend – despite the boycott of the Parliament by most opposition deputies – the term of office of the then members of the Judicial Council from the

ranks of distinguished lawyers by a simple majority of votes. For this reason, the constitutional legitimacy of the composition of the Judicial Council, which is still in force, is highly questionable.

Similarly, in 2015, based on the recommendations of the European Commission, Montenegro formed the Special State Prosecutor's Office for the fight against high-level corruption and organised crime (*SDT*). However, the initial bad staffing solutions rendered the work of this institution meaningless, while subsequent statutory interventions aimed at repairing the damage opened up space for the politicisation of the prosecutor's office contrary to the European standards. Namely, former judge Milivoje Katnic was twice elected as Chief Special Prosecutor, i.e. the head of the Special State Prosecutor's Office, for the second time right before the parliamentary elections in 2020. During Katnic's mandate there were many accusations of abuse of office, political instrumentalisation of this judicial body and general lack of results in the fight against corruption and organised crime.[30] Of particular note is the case when transcripts of conversations of the then-opposition Democrats were published in 2017, which triggered allegations of politically motivated prosecution and illegal wiretapping.[31]

Considering the crucial role of the Special State Prosecutor's Office in the overall work of the judicial system, which was hindering the progress of Montenegro in the EU accession process, in 2021 the new Government began the search for ways to remove Katnic from his position. During that year, the parliamentary majority tried to adopt two laws that would have abolished his mandate, which meant that the composition of the Prosecutorial Council had to be changed prior to said adoption.[32] The measures were adopted despite the official opposition of the EU. The Venice Commission, whose expertise the EU relies on in this area, advised against terminating the mandate of the Prosecutorial Council despite the close connections of some of its members with the former regime led by the Democratic Socialist Party (DPS), but the recommendation was not heeded.[33] Solving the problem in this way did unblock the reform process, but there is a chance that it will prove dangerous in the long-term perspective. On the other hand, the political instrumentalisation of the Special Prosecutor's Office wes not addressed. The new Chief Special Prosecutor, Vladimir Novovic, was elected in April 2022. Since his election, many people have been arrested in cases of high-level corruption and organised crime.

In Serbia, changes to the (praised) Law on Free Access to Information of Public Importance, made in line with Serbia's obligations from the Action Plan for Chapter 23 (AP 23),[34] proved to be controversial. Several versions of draft statutory amendments were prepared during the period 2018-2021. All of them caused fierce reactions of the CSOs, who stood up together in defence of the public's right to know as the last stronghold of supervision of the work of public institutions.[35] The procedure was oddly non-transparent, especially considering the subject matter of the Law and its importance for the work of journalists and civil society. Not even the Commissioner

for Information of Public Importance and Protection of Personal Data (Commissioner) was invited to participate in the drafting of the amendments or the analysis that preceded them. He was included in the Working Group only in the last round, in 2021, while CSOs were subsequently granted two informal observers. The 2018 draft versions of the Law sought to legalise bad practices of partially state-owned companies that had previously refused to respond to requests for access to information of public importance. The somewhat improved draft from June 2021 still represented a step backwards in relation to the achieved level of rights, which the Constitution of Serbia does not allow (Article 20, paragraph 2). Not only did it envisage additional grounds for the limitation of rights, but it also narrowed the circle of entities to which the Law would apply, increased the number of authorities against whose decisions appeals to the Commissioner are not allowed, and removed the so-called public interest test, which serves to examine the justification of data secrecy in specific cases.[36] The final version was slightly improved, and was adopted unanimously in early December in the National Assembly without any proposed amendments.

Another prominent example of turning good laws into bad is the abuse of the national mechanism for the prevention of money laundering and terrorism financing to intimidate critics of the Serbian government and limit their work. Namely, in July 2020, the Administration for the Prevention of Money Laundering, i.e. the financial intelligence unit of Serbia, examined the bank accounts of 20 individuals and 37 organisations without any legal grounds for doing so, all the while referring to the regulations that were adopted under Chapter 24 of European integration (the so-called "List" case). Ironically, some of the actors that made up the list had previously participated in the drafting of those regulations. The Administration never provided a proper justification for its action, insisting that listed persons constituted a sample that was to be used for strategic risk assessment in the non-profit sector. However, even international expert bodies from this area have confirmed that states are not allowed to conduct investigations without grounds for suspicion that the person/entity that is being investigated is involved in money laundering or terrorism financing, – as was the case here – and that indiscriminate requests to commercial banks to submit information for the purpose of making strategic analyses are not permitted.[37]

No one has been held accountable for this unlawful action, and no steps have been taken to repair the damage that was caused to the targeted persons. A year later, in August 2021, the pro-government tabloid "Srpski telegraf" [Serbian Telegraph] published a special supplement containing data on bank transactions of several civil society organisations, in order to publicly smear them[38] as part of the persistent narrative that people from the non-governmental sector are foreign mercenaries who work against the national interests.[39] The published data are otherwise not publicly available, so the fact that they date from July 2020 strengthens the suspicion that the Administration had in fact obtained them as part of the "List" case. For this reason, a group of CSOs filed criminal charges against an unknown person from the Administration and the editor-in-chief of "Srpski Telegraf".[40]

Cannot See the Forest for the Trees

The overly bureaucratised accession process contributes to the abuse by the executive branch of power. Namely, the technical division of the negotiating chapters – which were later grouped in clusters – coupled with benchmarks and further broken down into measures contained in Action Plans, leads to disregarding the links between sub-areas and between Chapters 23 and 24. This has been addressed to a certain extent via the new cluster approach, which grouped together these two chapters and political criteria such as the functioning of democratic institutions and public administration reform, among others.

For instance, although minimum established standards for the protection of victims of crime (EU Directive 2012/29) generally fall within the *acquis* contained in Chapter 23, Serbian CSOs argued that these issues should also be covered under Chapter 24.[41] While Chapter 23 covers this policy focusing on the rights of victims, and Chapter 24 deals with the aspects of criminal justice, the connection between these two seems to be lost as a result of the compartmentalisation of various measures. As victims can be found in various categories, including asylum seekers, migrants, organised crime and the like (Chapter 24 *acquis*), there is a need to coordinate activities across chapters. To address the issue of protection of victims more clearly and systematically, it is important to envisage stronger cooperation between state authorities and NGOs that have experience in providing services to victims.

A similar situation developed in regards to the change of the Serbian Criminal Code and the Criminal Procedure Code, with Action Plans for Chapters 23 and 24 both envisaging harmonisation with the EU standards. These two sets of activities were contained in two different action plans and even had different timelines. CSOs have argued for years in favour of a common approach, one that would include a comprehensive assessment from the point of view of all the necessary changes that need to be made to bring it in line with the relevant EU directives. Still, the Government insisted on keeping the piecemeal approach by maintaining two parallel processes of producing amendments and by having two teams working separately on the necessary changes, regarding their respective chapters. Serbian CSOs identified these gaps and argued - as early as 2015 - that these cross-chapter linkages should be better addressed[42] but it was not until 2021 that the Government took this into account and established a joint working group.[43]

The new enlargement methodology, introduced in February 2020[44], has a potential to incite a more comprehensive overview of the situation on the ground by connecting the dots between different sectors, grouped in clusters. This is all the more important for political criteria such as functioning of democratic institutions and public administration reform, which are essentially making the difference between simulating and stimulating reforms across all sectors. These are areas of established European standards but fall outside of the EU *acquis*, making them more difficult to monitor and evaluate.

The European Commission mostly relies on the expertise of other international and regional bodies[45]. However, it should be complemented by involving local experts who can contribute to understanding the context in which reform activities take place and their impact on the ground.

The European Commission has used the adhesive potential of the new methodology in the Report for Serbia in 2022 by highlighting importance of the freedom of media for free and fair elections and building resilience of society against disinformation and fake news, which was amplified in the context of Russian aggression on Ukraine.[46] It states: "Media did cover all electoral candidates, but most public and private broadcasters with national coverage favoured the incumbent President and the ruling coalition, *limiting the opportunity for voters to make fully informed choices*." (emphasis of the authors) Politicisation of the public administration also affected unequal conditions for election candidates, with "undue pressure on public sector employees to support the incumbents" and "misuse of administrative resources"[47]. This was largely made possible by the excessive number of 'acting' positions in public administration and public enterprises[48], most of which were illegally appointed by the Government[49]. The uncertainty of their position assures obedience to the Government, while lack of qualifications for said positions is another issue, diminishing state administrative capacity to conduct reforms. Montenegro is no stranger to abuse of public administration for party political interests either. The trend of excessive employment in public bodies has continued, mostly on party lines,[50] although a need for cutting the number of staff has been noted. It is estimated that over 10% of the voter population in Montenegro works in different levels of public administration.[51]

Accumulation of Simulated Activities Instead of Results

The bureaucratisation of the enlargement process allows the governments of candidate countries to show some form of progress by completing the formal steps in the reform process, bypassing the essential changes. In this multi-decade accession process, they have mastered the terminology and instruments of the EU very well. Thus, both in practice and in reporting, they often focus on activities and individual measures while avoiding dealing with concrete results, as well as on the adoption of strategies and laws instead of their implementation. Even when significant advances *are* made, they are often undone by subsequent amendments or rendered meaningless by exceptions in practice. We will provide a few examples from Serbia below.

The fight against corruption is part of Chapter 23. While the application of the law and the sanctioning of corrupt criminal acts are absent, especially at the high level, bad practices are legalised. The Government of Serbia regularly bypasses the new Law on Public Procurement of 2019 when it comes to the most expensive infrastructure

projects, by passing special laws (*lex specialis*) and directly contracting jobs based on interstate agreements, thus cheating the principles of transparency and competition.[52] This practice is persistently criticised by the civil society and the European Commission, but nothing changes. The Law on the Prevention of Corruption of 2019 has already been amended four times, once using the authentic interpretation adopted in the National Assembly which retroactively narrowed the circle of persons who are considered public officials to whom the Law applies.[53]

Reforming the police and guaranteeing its operational independence from politics and crime is part of Chapter 24 and a prerequisite for other reforms in the areas covered by that chapter. The new Law on Police of 2016 introduced some positive novelties, such as public calls for high-ranking positions in the Ministry of Internal Affairs (MoI). However, only two years later, this Law was amended twice in order to, *inter alia*, expand the exceptions to employment through competitions and increase the discretionary powers of the minister when it comes to the police.[54] Bad tendencies continued with the draft Law on Internal Affairs, which was published and withdrawn in 2021, and which was to deepen the politicisation of the police, reduce the transparency of its actions and further threaten the rights of citizens.[55] To show their efforts in the fight against organised crime, the police keeps bragging about large-scale arrests, but the ultimate success in that fight should be reflected in the outcomes of court proceedings, which are rare because of the unsatisfactory cooperation between the police and the prosecutor's office.

In all areas, the application of the law depends on the powers of institutions and how proactively and consistently they use them. Although statutory changes strengthen the powers of independent supervisory and regulatory bodies, the appointment of loyal people to key positions in these bodies leads to their politicisation, and their powers are thus used rarely and selectively. For example, in 2018, a donor of the ruling party and its candidate in the previous local elections was appointed Director of the Agency for the Prevention of Corruption. The Protector of Citizens (Ombudsman) elected in 2017 reduced the integrity and efficiency of that institution, failed to (adequately) respond to severe violations of human rights, and dismissed experienced professional staff.[56] In such conditions, his advocacy for expanding the powers of the Ombudsman does not seem desirable. The statutory changes made at the end of 2021 missed the opportunity to significantly depoliticise the election of the Ombudsman and the Commissioner for Information of Public Importance and Protection of Personal Data. On the other hand, the changes made it possible for the current Ombudsman to be re-elected and hold office for another 8 years, even after he fulfils the requirement for old-age retirement.[57] Similarly, constitutional changes improving the position of the judiciary enable the current Republic Public Prosecutor Zagorka Dolovac to be appointed to that position for the fourth time,[58] despite the fact that her results in the fight against corruption and organised crime have been modest, to say the least, and that she has been criticised for inactivity and selective behaviour on numerous occasions. Such a solution fundamentally postpones the reform of the judiciary as the objective of the constitutional changes.

There are also other bodies that exist just for show. For example, the Government of Serbia has a Council for the Fight against Corruption, but it has been ignoring it for years.[59] There is also the Permanent Working Group for the Safety of Journalists, which never has anything to say when public office holders seriously attack the media.[60] The Code of Conduct for Members of the National Assembly was adopted at the end of 2020, but MPs still continue to target journalists and representatives of critically oriented non-governmental organisations and institutions in their parliamentary debates, with impunity. The Government from 2020 established the Ministry for Human and Minority Rights and Social Dialogue, but the Minister declared herself incompetent to comment on such statements by public officials, although in parallel she is developing a strategy to create an environment that would be encouraging for civil society.

When non-productive activities fail to make an impression on Brussels, the government resorts to selective interpretation of the assessments provided by the European Commission and avoidance of responsibility before the domestic public. When new clusters were once again not opened in the accession negotiations with Serbia in June 2021, after a year and a half of standstill in the negotiations, the Minister for European Integration Jadranka Joksimovic shifted the blame to the EU, claiming that "there was no readiness or political will in the European Union to apply the new enlargement methodology". In order to show at least some sort of success to the general public, the media reported her assessment that "the intergovernmental conference is in fact a partial recognition of the results" and that "the first cluster was opened".[61] No one mentioned the fact that the chapters from the first cluster had *already* been opened, and that this was not exactly an achievement. From the point of view of the new methodology, it was rather just the current situation. The stagnation of the reform process in Serbia was not mentioned either; instead, they talked about how much effort the Government put in to adapt to said methodology.[62]

Top-Down Conditionality at the Expense of Democratic Processes

The top-down conditionality, as a characteristic of the accession negotiations, also had negative consequences for the already fragile democratic practices in the countries aspiring for membership in the EU. By insisting on deadlines and copying European solutions, often at the last minute, the government marginalised political competition, discredited reasoned debate and weakened domestic accountability mechanisms. Thus, the approach of strict conditionality inadvertently contributed to state capture.[63] It further strengthens the executive in relation to the legislative power, which consequently becomes marginalised. This is particularly obvious in the process of drafting new regulations, where the role of the parliament has been reduced to rubber-stamping the decisions of the executive without any substantive discussion.

The process of drafting constitutional amendments in the field of justice in Serbia is a good example of this approach. First, all other shortcomings of the Serbian Constitution – outside of the judicial system – were ignored, since Chapter 23 considered only that part as a reform priority. Second, at the beginning the Ministry of Justice unconstitutionally usurped the process that should have been carried out by the National Assembly. Third, despite a series of round tables and discussions that have been organised on the text of constitutional amendments, criticisms and suggestions were not taken into account. On the contrary, those who criticised it were subjected to a smear campaign. The process was returned to the constitutional framework only three years later, as a result of the appeals from civil society and pressure from the EU. Fourth, the process was then accelerated so it could be completed within the set (and previously already postponed) deadline. The competent parliamentary committee a proved the proposal for constitutional amendments and the constitutional law at a session that lasted only a few minutes, and the plenum adopted them by urgent procedure just a day later, almost unanimously and without any amendments. A referendum on the confirmation of the constitutional amendments was announced immediately thereafter, based on the law that was also adopted under emergency procedure a few days earlier, and which was changed soon after under the pressure of citizens who came out *en masse* to protest because their objections were ignored all the way. It is not in line with democratic practice to adopt rules on the referendum immediately prior to holding it. Finally, representatives of the government blackmailed the citizens, saying that if they did not respond positively to the referendum question, they would in fact block Serbia's European integration (for additional information, see the case study).

Since the very beginning of its accession negotiations with the EU, Serbia had a practice of excessively adopting laws by urgent procedure, which was often justified by the necessity to meet the deadlines set in the process of European integration. In 2015 and 2016, more than half of the laws, including those that were particularly important, were adopted in this way. By 2019, that number had dropped to just under 50%, and was significantly reduced only after the opposition left the parliamentary benches, boycotting the work of the parliament since March 2019, as well as the 2020 elections.[64] The urgent legislative procedure omits public debate on draft laws and limits the time for parliamentary discussion, thus reducing the transparency and inclusiveness of the process and affecting the quality of adopted regulations.

Critics of such practices and bad bills, among which civil society organisations stand out, are labelled as malicious actors who are hindering Serbia's European integration and working against the national interest. That is how the EU's conditionality approach is misused to reject the constructive suggestions of civil society.[65] Even when public debates *are* organised, other people's arguments are not taken into account, reports on the finished debate are often not published, and no explanations are provided as to why certain proposals were rejected. Moreover, it seems that the Government is more keen on reporting to the EU than to share information with local expert CSOs and the pub-

lic in general. Many data otherwise not published or denied to the public[66] continue to appear only in reports of the European Commission. Sometimes even the requirements of accession negotiations are quoted as an excuse not to share systematic data with the public.[67] This problem has been criticised on various occasions.[68] It disables inclusive discussion and makes data provided to the EU unverifiable by domestic actors.

The Law on Protection of Personal Data of 2018 and the Law on Public Procurement of 2019 are good examples of poorly copied European regulations that were not aligned with the rest of the Serbian legal system and have caused serious implementationproblems. However, while they were being adopted, the comments of domestic experts were ignored with the explanation that these were the normative solutions of the EU.[69] At the same time, the model Law on Personal Data Protection, which was previously drafted by the Commissioner for Information of Public Importance and Personal Data Protection after multiple consultations with the professional community, was completely ignored. Similarly, when the process of changing the Law on Free Access to Information of Public Importance started in 2018 (see above) as a result of Serbia's obligations from the Action Plan for Chapter 23, the proposals that were submitted by more than 30,000 citizens through a popular initiative back in 2007 were not taken into account even once. The same happened with the Government's earlier proposal, from 2012, which the Assembly never considered.[70]

The Double-Edged Sword of Politicising Enlargement

A Credible Enlargement Perspective

The credibility of EU enlargement, as proposed by the external incentives model,[71] remains the crucial requirement for the success of EU conditionality and, consequently, enlargement policy. As evidenced by the experience of Central and Eastern European countries that joined the EU in 2004, credible enlargement perspective was central to their successful Europeanisation. In simple terms, national decision-makers in candidate countries are rational actors who respond to incentives offered by the EU; they compare the costs and benefits of EU membership, rejecting the conditions that produce net costs and seeking to maximise their utility. Thus, if the credibility of enlargement is low, it disincentivises countries because the reforms that need to be undertaken produce net costs, while benefits from full membership remain uncertain.

This is exactly what happened in the case of the Western Balkans. The so-called enlargement fatigue that plagued the EU accession process thus far became enlargement exhaustion once the President of the European Commission infamously stated in 2014 that there would be no further enlargement in the following five

years.[72] This statement was a cold shower for many pro-European forces in the region. It was clearly aimed at the European audiences at a time of upheaval, but it further disincentivised local actors with pro-reform agendas, who were already few and far between.

The uncertain enlargement perspective leads to accession negotiations being used as part of a political campaign, where actors often behave insincerely towards the commitments that were undertaken in the accession process. Particular party interests are prioritised and never sidelined, to the detriment of the public interests that would be achieved if the institutions were really reformed and if they had sufficient integrity to be resistant to direct political influences. In campaigns, accession negotiations are present only declaratively, but - when it comes to specific public policies or institutions - things are different in practice.

Another problem with credibility is that it should work both ways; namely, if candidate countries deliver on tough reforms, they should be rewarded. Frequent changes of enlargement methodology made this process more difficult to steer, and less predictable for domestic actors: the so-called *new approach to enlargement* was launched in 2011 and the reporting methodology was changed in 2015. Then came the Credible Enlargement Strategy in 2018. Finally, the new French proposal, which called for revamping the enlargement policy, appeared in 2019. These ideas were later shaped into what is now known as the *New Methodology,* whose key characteristic is the so-called cluster approach.

More recently, the EU failed to prove its credibility when it did not deliver on opening the accession talks with North Macedonia and Albania. Despite the fact that the North Macedonian Government invested enormous political capital in resolving the long-standing dispute with Greece over its name in 2018, the accession talks only started in 2022 as they were blocked by some of the Member States.[73] Similar thing happened with the visa liberalisation for Kosovo, which, in 2022, is still waiting to be included in the White Schengen list despite fulfilling all the technical criteria.

Meanwhile, most of the WB countries that are standing in the waiting room knowing that the EU door will be closed for the foreseeable future, are suffering a democratic decline. Political elites in power, now disincentivised to implement reforms, have gradually eroded the institutions and cemented their hold on power. This process has led to what is now known as state capture, as noted in the EC's Credible Enlargement Strategy from 2018: "[…] the countries show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration."[74]

It is not the intention of the authors to blame the EU for these developments in the Western Balkans, but it is important to consider the negative, albeit unintended, consequences of the EU actions on fragile democracies in its backyard. State capture is a problem that is difficult to resolve once it takes root, because there is little the EU can do or offer to incentivise democratisation. This was eloquently stated in an independent

report produced by Democratisation Policy Council on Bosnia and Herzegovina, but it applies to most countries in the region: "[…] political elite constitutes a political--business-organised crime-media nexus which can currently a) keep what they stole, b) remain positioned to keep stealing, and c) remain unaccountable politically and legally. Nothing that the European Union can offer the country is better – for them and their business model – than that."[75]

Simply put, the price the political elites would have to pay for harmonisation far outweighs the potential benefits, since they would have to let go of their unlimited control over the state apparatus, to gain only a feign promise of "European future" at some uncertain date. The absence of the end date opens up space for ambitious promises that are not supported by anything realistic. Building high expectations in the public discourse leads to public disappointment in the accession process and could eventually lead to a drop in support for European integration in the absence of clear messages from the EU as to when the process might end. Considering the current geopolitical situation in the EU and the Western Balkans, it is crucial for the public in the Western Balkan countries not to receive mixed signals.

Unclear Diplomatic Language of the EU Reporting

Findings and evaluations contained in the reports of the European Commission and the wording of EU officials, especially on issues regarding which no single voice is coming from the EU, are based on the approach of "constructive ambiguity", which leaves room for different interpretations and thus opens up additional space for abusing the process. The difference in the resolutions of the European Parliament on the reports of the Commission, in which the key problems are directly highlighted with concrete examples, is quite obvious.

The regular progress reports published by the Commission often contain phrases of diplomatic language and can be interpreted in a variety of ways. Before publication, their content is reviewed on several levels; in the process, they lose their sharpness when it comes to defining the problem. Furthermore, the semi-annual non-papers provide an overview of the factual situation in connection to Chapters 23 and 24, without any assessments and without putting the numbers and activities into context. As the prEUgovor coalition has noted, "[…] although a well-informed reader can notice criticism in certain areas, the phrases that are used often lead to the impression that the situation is better than it actually is. The implemented activities are mostly just listed, without assessing their quality or going into the depth of the problems they are intended to solve".[76]

Annual progress reports generally use moderate and established phrases and diplomatic vocabulary, with much beating around the bush and political consideration, especially when it is necessary to describe and assess negative trends. This is understandable since the content of the reports passes through several levels of control before publication, including fact-checking and political alignment of Member States regarding the main messages. In the end, the consolidated text represents a softened and compromised version, in which different national and party-political interests have been taken into account. In addition, by using encouragement instead of harsh criticism, the European Commission has tried to respond to the indignation that was caused in the aspiring countries by the delay of the pre-accession process, and to avoid worsening the already unfavourable public opinion of these countries in Member States. That is why greater emphasis is placed on positive than on negative evaluations, and why the latter are formulated in a highly convoluted manner.[77]

The European media reported the accusations made by several officials of the EU institutions, that the Commissioner for Neighbourhood Policy and Enlargement Olivér Várhelyi influenced the marginalisation and dilution of criticism about the state of the rule of law and human rights in the 2021 reports on the candidate countries, especially Serbia.[78] The summary of the report on Serbia from October 2021 and the way in which Commissioner Várhelyi presented it created an impression of positive developments, considering that a recommendation was made to open additional clusters with Serbia. The Prime Minister of Serbia assessed this report as the best in the last few years, although a detailed review of its content showed that the number of chapters with limited progress was higher than it ever was.[79] Uncritically, the text of the report from October 19 included the statement that the Venice Commission gave a positive opinion on the draft constitutional amendments, on which a referendum was to be organised by the end of the year.[80] The European Commission did not have time to analyse the opinion of the Venice Commission, as it was published only two working days earlier (on 15 October) and still contained serious substantive objections to the submitted draft. In addition, these were events that occurred outside of the time-frame of the report, from June 2020 to June 2021. On the other hand, the concerns of the Venice Commission regarding the adoption of the Law on Referendum and People's Initiative - that the practice of changing regulations immediately prior to holding a referendum was not good - were omitted (for additional information about this, see the separate case study).

The annual report of the European Commission on Montenegro from 2021[81] gave the highest rating to the level of preparedness of this country for membership, and the lowest rating since 2015 to its achieved progress. Since the reporting period was divided between the mandates of the 41st and 42nd Governments, the room for political manipulations left by the wording in the report proved to be politically counterproductive for the already deeply polarised Montenegrin political scene. Namely, the previous DPS-led Government used the lowest rating of progress to show that the new Government stopped Montenegro on its path to Europe. On the other hand, the representatives of the 42nd Government used the report for a different political posi-

tioning, emphasising the highest preparedness rating so far. Certain NGOs noticed backsliding.[82] Given the persistent insistence by the EU and the EC on finding broader political consensus and political will to implement reforms, the result of the report's constructive ambiguity was the unintentional flaming of further political divisions.

The fact that none of the European Commission's reports on Serbia mentioned the Savamala case from 2016 as the most prominent example of the collapse of the rule of law in this country serves as evidence that controversial topics are being avoided. The event concerned the illegal demolition of buildings in private property in Belgrade in cooperation with public institutions during the election night, and its organisers were never sanctioned, either legally or politically. The deep crisis of the rule of law in North Macedonia of 2015 revealed how inappropriate, and even counterproductive, this approach of constructive ambiguity and dilution of criticism can be. Namely, for years, the Macedonian Government used the mild and positive evaluations of the European Commission to silence domestic critics of bad practices. That is when the Commission concluded that it was necessary to use direct and sharper words; however, it assigned the task to an independent expert group.[83]

Legitimisation of Stabilocrats

Along with the vague and technocratic language contained in the reports of the EU institutions, primarily the Commission, political messages from the Union are often formulated in a way that directly makes it possible for stabilocratic regimes in the region to legitimise their authoritarian practices. To corrupt political elites, legitimacy is brought about by formal progress towards membership, intergovernmental conferences or the opening of new chapters and clusters despite modest results, and high-level interactions with officials of the EU and its Member States.

Inert technocratic processes, divorced from the situation on the ground, often send political messages that do not promote reform efforts in candidate states. In the hope of pushing the stalled accession process forward with positive impulses, competent EU institutions decide to open new chapters and clusters even when the reforms are not adequate or implemented completely. However, formal progress would in fact give the governments a strong argument before the domestic public that reforms are on the right track, and that they have the firm support of Brussels for their policies. The opening of Cluster 4 (Green Deal and Sustainable Connectivity) in December 2021,[84] right in the midst of the largest environmental protests in the history of Serbia[85] and right before the election campaign for the general elections in March 2022, is an illustrative example. Citizens and organisations that participated in protests against

Rio Tinto's lithium mining project in western Serbia, and against changes to the Law on Expropriation, among other things, saw this message from Brussels as direct and open support to the authoritarian regime in its efforts to suppress the protests, despite the resolution of the European Parliament which condemned the violence that was used against the protesters.[86] What added salt to the wound was the statement of Enlargement Commissioner Várhelyi, who explained this decision as a reward to Serbia for progress it had promised to make in the field of the rule of law: "The opening of the cluster also confirms that accession negotiations are advancing and that the EU is responding to the progress in the implementation of reforms. It is an acknowledgement of Serbia's renewed commitment to the rule of law reforms, including the steps taken to implement the Constitutional reform in the area of judiciary."[87] At the same time, the cluster was opened a month before the change of the Constitution was confirmed in the referendum.[88]

The issues that were problematic in the drafting and adoption of the constitutional amendments will be discussed in detail in the case study in the next chapter.

The political actions of certain representatives of European institutions, who are expected to be strong advocates of reform processes, directly influenced the collapse of democratic processes in some of the candidate countries. The delegation of the European Parliament was invited to mediate in the negotiations on election conditions between the government and part of the opposition in order to create conditions in which the opposition would agree to participate in the general elections and thus end its two-year boycott of the National Assembly. After several rounds of inter-party dialogue in January 2021, a number of recommendations were adopted to improve the electoral process. However, according to the conclusions of the civil society organisations gathered in the prEUgovor coalition - which monitors the reforms within the negotiating Cluster 1 - the adopted proposals did "not offer clear solutions to some of the most important problems of financing the election campaign and using public office for the promotion of political entities".[89] Even more importantly, representatives of the opposition were dissatisfied as well; some left the dialogue[90] even before the recommendations were defined, assessing that members of the European Parliament, through their actions in the dialogue and the proposals they made, in fact "supported the defence of Aleksandar Vučić's undemocratic and autocratic regime".[91]

A group of members of the European Parliament and other EU officials accused the Commissioner for the Enlargement and Neighbourhood Policy Oliver Várhelyi of politically intervening to soften the European Commission's 2021 report on Serbia, particularly in the parts related to Chapters 23 and 24.[92] His benevolent attitude towards the regime in Belgrade came under the scrutiny of the public especially in light of Aleksandar Vučić's close ties with the illiberal regime of Hungarian Prime Minister Viktor Orbán and his Fidesz party, of which Várhelyi is a representative.

European leaders, who could significantly contribute to the prevention of harmful practices, tacitly accepted the authoritarian changes in Serbia in the name of stabilocracy; in fact, some of them even actively contributed to the capture of the state by openly supporting the regime. With their statements about the successful and bold reforms the current government is implementing on its way to the EU, former German Chancellor Angela Merkel, French President Emmanuel Macron as well as numerous other officials of the European Union provided the authoritarian regime in Serbia with a democratic glaze. Support for the current government that comes from the European Union is not harmful just because it strengthens the undemocratic regime in Belgrade, but also because it directly delegitimises any critical voices that point to authoritarian practices, be they from the opposition or the civil sector. In addition, messages of support for the authoritarian regime tend to turn a large part of the opposition public, which has traditionally been pro-European, against the EU, in which they no longer see an ally when it comes to democratic reforms.

The statement of the outgoing German Chancellor Angela Merkel during her farewell visit to Belgrade in September 2021 was a cold shower for all critical voices in the country, who kept pointing to the current regime's autocratic model of rule and the regression in all areas related to the rule of law: "Over the years of our joint cooperation, we have reached open relations, full of trust, and we have achieved results along the way. (…) It is my pleasure to observe the results step by step. I encourage you to go further towards the rule of law and pluralistic society".[93] The visit of the President of the European Commission Ursula von der Leyen two weeks later - she, like Merkel, also highlighted progress in the rule of law – had a similar tone: "Let me stress that I am a strong advocate for bringing Serbia into the European Union. And in that context, I welcome the fact that Serbia places a strong focus on fundamental reforms. I commend you for the steps you have taken. This is enormous. You have done a lot of hard work. This hard work pays off. It is amazing to see the progress."[94] During his frequent meetings with President Vučić, French President Emmanuel Macron regularly praised the pace and ambitiousness of reforms in Serbia, stating that Serbia was a leader among the countries of the Western Balkans when it came to reforms and that it would be the next country to join the European Union.[95] The visits and commendatory statements of the European leaders of the greatest authority served as a sort of umbrella that softened, or even made politically senseless, harsh criticisms that occasionally came from the institutions of the EU or other Member States in previous years regarding the state of democracy or the rule of law in the country.

The situation in Montenegro was quite similar. During her last visit to this country in September 2021, former German Chancellor Angela Merkel sent the message that "Montenegro is the most advanced candidate for membership in the European Union."[96] The message of senior EU officials, which echoed in the Montenegrin public and media space for years, was the same. Formal progress towards membership through the temporary closure of chapters was used by political elites to legitimise them as carriers of European integration", and to delegitimise political opposition. For years, the "most advanced" result in the process - in relation to the other candi-

dates - of which two others had the status of open negotiations for quite a long time (including the specific position of Turkey) – was used to politically legitimise the ruling Democratic Socialist Party. In practice, there were no real developments, as only Chapter 30, on external relations, was closed after the initial temporary closure of Chapters 25 and 26.

A special channel for the harmful influence of political processes on reform efforts within the framework of European integration are political groups in the European Parliament, which, for political interests, protect and promote the parties that are their members, regardless of their reputation in internal politics. In the case of Serbia, the role of protector of the ruling Serbian Progressive Party's policy was played by the strongest group in the European Parliament, the European People's Party (EPP), of which SNS has been an associate member since 2016.[97] Despite the authoritarian nature of the regime in Belgrade, leaders of EPP were actively involved in the election campaign of SNS and Aleksandar Vučić on several occasions. Thus, the then president of the European People's Party, Joseph Dole, publicly expressed his strong support for Vučić in the presidential elections of 2017.[98] An even more direct message that preceded the parliamentary elections in 2020 came from the then new president of the EPP and former president of the European Council, Donald Tusk: "Dear President, you have every right to be proud of and satisfied with the things you have done for Serbia during your term of office. Economic success and strong leadership are the hallmarks of your rule. Good luck on Sunday!"[99] In addition, MPs from the EPP repeatedly insisted on softening the European Parliament's reporting on the state of democracy and the rule of law in Serbia. Different standards were noticeable, for example, in the harsh criticism of the Government of Albania, led by the party affiliated to the Socialists and Democrats (S&D), regarding the controversial media law, while at the same time they remained silent concerning the dramatic violation of media freedom in Serbia.[100]

The Need for Extraordinary Instruments

Although the enlargement methodology has been improved several times, including monitoring and reporting on reforms, dealing with the process of state capture, which the European Commission recognised in all the countries of the region as early as 2018, requires also the use of extraordinary instruments.[101] In the cases of North Macedonia and Bosnia and Herzegovina (BiH), the European Commission ordered the preparation of extraordinary expert reports on the systemic problems of the rule of law, while in North Macedonia and Serbia, the delegations of the European Parliament mediated the dialogue on election conditions after the opposition parties boycotted the elections and the work of the parliaments. Differences in political will and social support caused these examples to be unevenly successful.

The Macedonian example successfully spurred the reform, although it was not adequately rewarded in the end (see the section on the credible enlargement perspective). When the opposition – having discovered mass wiretapping and widespread corruption in the highest institutions – announced the so-called "political bombs" at the beginning of 2015, Macedonian citizens took to the streets and the efforts of the international community to calm things down intensified. The European Commission assembled a group of independent experts to investigate the mechanisms of state capture that allowed wiretapping to take place unpunished. The outcome of this endeavour was an expert report (the so-called Priebe Report).[102] Based on the recommendations contained therein, the European Commission created a document entitled *Urgent Reform Priorities*.[103] The *Priebe Report* served as an expert basis for a diplomatic offensive. In parallel with the preparation of the report, a mediation team consisting of the the Commissioner in charge of enlargement and three members of the European Parliament was sent to Skopje. The outcome was the Pržino Agreement, under which leaders of the largest political parties, among other things, undertook to form a technical government that would prepare new elections, and to implement the *Urgent Reform Priorities* (which at the time were still in the drafting phase). Fulfilment of priorities was monitored also as part of regular annual reports. As the reforms were delayed because the election date was moved several times, when the new Macedonian Government was formed in 2017 the Commission asked the same expert group to evaluate the situation and provide specific recommendations to the new Government to encourage the initiation of reforms.

It can be concluded from the above that the success of the *Priebe Report* was the result of a unique combination of factors. First, when it comes to the Report itself, its added value compared to regular reports was that it dealt with the problem comprehensively (instead of being broken up according to technical criteria) and directly (instead of using diplomatic language), and that it offered specific recommendations. The European Commission gave the report authority and published it, making the recommendations mandatory by way of diplomatic efforts, while the implementation was monitored in a regular and comprehensive fashion.[104] Finally, the context was specific. The opposition in North Macedonia was strong, the reputation of the ruling party was ruined by the wiretapping scandal, and the majority of the population supported joining the European Union.[105] As North Macedonia already had the status of a candidate country, the impetus for reforms came in the form of a promised opening of accession negotiations. The ruling party was ready for negotiations and concessions to the opposition due to the enormous pressure of public opinion and the international community, but also because it received a guarantee, via the Pržino agreement, that the publication of the wiretapped conversations would be stopped, although the recorded material would be handed over to the Special Prosecutor's Office for the purpose of initiating a criminal investigation.

These factors did not overlap in other countries of the Western Balkans in which similar emergency instruments were applied. The report on the problems related to the rule of law in Bosnia and Herzegovina[106] was, once again, prepared by the expert group led by Reinhard Priebe at the end of 2019. The report was narrower in scope, focused on the judiciary, and did not receive the same visibility as the Macedonian one. In subsequent annual reports, the European Commission noted that there was no progress (2020), i.e. that progress was limited (2021) in terms of implementing the recommendations contained in the expert report.[107] Consequently, BiH did not receive the status of a candidate state for membership.

In Serbia, the process of state capture became evident after the parliamentary elections in 2016, when privately owned buildings in the Belgrade neighbourhood of Savamala were illegally demolished overnight, in cooperation with state institutions. In the meantime, the separation of powers almost disappeared, control over the executive branch of power is not being exercised, political control over the media is growing, polarisation in politics and society is becoming stronger, and the number of attacks and pressures on regime critics is increasing. The fact that the work of the National Assembly was rendered senseless led some opposition parties to boycott it at the beginning of 2019. Then, due to poor election conditions, they also boycotted the next parliamentary elections in the summer of 2020, which left the previous parliamentary convocation without opposition representatives.[108] Although several civil society organisations reported on the mechanisms of state capture that were presented in the original Priebe Report,[109] a series of unsolved scandals did not manage to mobilise the citizens of Serbia sufficiently to force the government to make essential reforms, nor did it encourage the EU to consider applying a similar instrument to Serbia.

Before and after the 2020 elections, representatives of the European Parliament mediated the inter-party dialogue on the electoral conditions in Serbia, with unconvincing results. The agreed measures had no effect in practice, and were sometimes also implemented unlawfully. Changing the electoral rules immediately prior to the elections does not constitute good practice, but some changes, such as lowering the census in the spring of 2020, were made by the government to the surprise of the participants in the dialogue.[110] Eurosceptic parties refused to participate in the EU-mediated election dialogue, and spoke with the ruling coalition on their own. In today's Serbia, the opposition parties are still weak, the Eurosceptic right is growing stronger, and the citizens' support for European integration – which for years was slightly above 50% – has fallen below that percentage point.[111]

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Law on Referendum and People's Initiative - A Case Study of Reforms Gone Rogue

The National Assembly of the Republic of Serbia adopted the new Law on Referendum and People's Initiative on 25 November, and its amendments on 10 December 2021. The very fact that the adopted Law was amended within the first 16 days of its existence indicates serious problems with the functioning of the legislative branch of power. Also, the entire process of amending this Law - from the moment when work on it began, and including drafting, faking a public debate, numerous attempts to cheat international standards and disregard for the views of citizens - is a paradigm of the collapse of democracy, the rule of law and belonging to European principles and values, i.e. the basic principles on which, at least declaratively, our legal order rests. Ultimately, the entire process of changing the Law and the goal of the proposed solutions was to remove any sense from the principle of civil sovereignty and the way in which citizens exercise sovereign power through referendums and people's initiatives.

Even before the adoption of the Constitution of 2006, we were able to conclude, by taking into account international standards,[112] that the Law on Referendum and People's Initiative of 1994[113] inadequately regulated the processes of citizens' direct decision--making and that its solutions were restrictive and outdated. However, the Constitution of 2006[114] changed the provisions related to the procedure for changing the Constitution, which, *inter alia*, envisaged a different referendum census, also making it necessary to amend the Law, i.e. harmonise it with the new Constitution.

In its opinion on the Constitution of the Republic of Serbia, the Venice Commission pointed out as follows: "In order to apply Article 203, the [National Assembly] will have to adopt legislation on the organisation of the constitutional referendum which should be in compliance with the principles set out in the (…) "Code of good practice on Referendums".[115]

The first attempt to pass a new law on referendum and people's initiative dates back to 2009, when the Ministry of State Administration and Local Self-Government prepared its draft version and submitted it to the Venice Commission. This Draft represented a significant improvement compared to the then-current Law, but the Venice Commission still made numerous suggestions to improve the text.[116] A public debate was held in mid-July of 2011, and civil society organisations submitted their comments. However, the bill did not enter the parliamentary procedure.

The question was brought up again only at the moment when it became clear that Serbia was approaching constitutional changes.

The solutions contained the Constitution of 2006, referring to the judiciary, encountered serious criticism from the expert public and international bodies[117] since day one. The new constitutional provisions allowed for excessive influence of the legislative power on the judiciary. The role of the National Assembly in the election of judges opened the possibility of direct political influence on judges and prosecutors. Although the permanency of the judges' office was guaranteed, there was now the so-called "trial" mandate, where at the first election judges were elected for a period of three years, only to be elected once again at the end of that period, this time for life. To make the pressure on the holders of judicial office even greater, the Constitutional Law on the Implementation of the Constitution of 2006 envisaged the re-election of judges and prosecutors, which - as it later turned out - dealt a significant blow to the independence of the judiciary.

The necessity of changing the Constitution in the part related to the judiciary was obvious. In addition to the criticism of the Venice Commission expressed in the Opinion from 2007, the need to amend the Constitution was also recognised in the National Strategy for Judicial Reform 2013-2018[118] and this became one of the key issues in Serbia's process of European integration. Threat to the independence of the judicial power and political influence on the holders of judicial functions were recognised as some of the main causes of the collapse of the rule of law. The action plan for Chapter 23 from 2016 also listed the necessity of eliminating political influence on the judiciary; it envisaged a set of preparatory activities and the amendment of the Constitution itself, and set the last quarter of 2017 as the deadline by which this process should be completed. Not only was this deadline not respected, but the entire process was poorly organised from the very beginning. Representatives of the judiciary, professors of constitutional law and representatives of the civil society made a number of objections to the amendment proposal that was prepared by the Ministry of Justice. The text of the Draft Amendments to the Constitution was changed four times, and a large number of meetings devoted to reforms were held despite warnings that had been issued from the very beginning: that the procedure provided for in the Action Plan for Chapter 23 – which did not envisage the activity of the Ministry of Justice in proposing changes to the constitutional provisions related to the judiciary – or the procedure provided for by the Constitution[119] were not followed.

Since the deadlines were already broken at the very start, the revised Action Plan for Chapter 23[120] set new ones: the adoption of the amendments to the Constitution was now to take place in the last quarter of 2021. Changes to the Constitution returned to the constitutional framework on 30 November 2018, when the Government, referring to Article 203 of the Constitution and Article 142 of the Rules of Procedure of the National Assembly, submitted to the Assembly a bill to change the Constitution. The bill was adopted at the session of the Committee for Constitutional Affairs and Legislation of the National Assembly of Serbia on 14 June 2019; however, a special Assembly session to discuss it was never scheduled. The bill to change the Constitution was withdrawn from the parliamentary procedure in 2020, ahead of the republic elections that were held on 21 June, only to be adopted once again, containing the same text, at the Government

session held on 3 December 2020, following which it was submitted to the National Assembly. Unlike the first attempt of 2017/2018, in 2021 the work on constitutional amendments and the procedure for amending the Constitution was in line with the procedure that was provided for by the Constitution and the Action Plan.

Still, it is necessary to note the speed with which the text of the constitutional amendments was drafted, and with which the amendments were adopted, as well as the fact that certain disputed solutions that were included in the Constitution still left room for the influence of politics on the holders of judicial functions, and that the process of changing the judicial laws, to bring their concretisation, will be of crucial significance. The process that started in the middle of 2017 was prolonged for almost 5 years, to then be completed in no more than 6 months. This speed can be attributed to increasingly clear signals from the European Union that there were some serious problems in the area of the rule of law, i.e. the lack of consistent application of the existing legal framework, which was most impressively expressed in the chronic inability to solve the issue of widespread corruption and the absence of the full enjoyment of human rights and their effective protection, which resulted in the stagnation of Serbia in the process of European integration. It is enough to look at the progress reports of the European Commission, in which it had been stated, year after year, that Serbia had not made any concrete progress and that all essential activities were delayed. In the report for 2021, the European Commission stated that pressure on holders of judicial office was still great, and that representatives of the executive power and people's deputies were still publicly commenting on ongoing court proceedings and attacking individual judges and prosecutors. The report of the European Parliament from March 2021 was also extremely critical. It called on the Government to work on efficient and fundamental reforms, and to deal with structural reforms and shortcomings in the areas of the rule of law, fundamental rights, freedom of the media, the fight against corruption, and the functioning of democratic institutions and public administration.[121]

In the shadow of the haste to prepare the constitutional amendments, the process of amending the Law on Referendum and People's Initiative was taking place in parallel. Unfortunately, the authorities viewed this process as secondary, that is, as something that was to serve the process of constitutional reforms, and it was openly presented as one of the steps that needed to be taken to enable the amendment of the Constitution. In addition to the direct confirmation of this position, which was expressed in the letter the Minister of State Administration and Local Self-Government Marija Obradović addressed to the Venice Commission,[122] said position was also indicated by the fact that no strategic document of the Republic of Serbia provided for the amendment of this Law, although the real need for it existed since way back in 2006.

At this point, attention should be drawn to the importance of the institutes of referendum and people's initiative. According to the Constitution of the Republic of Serbia, citizens are the bearers of sovereign power in the state. They exercise this power through referendums, people's initiatives, and through freely elected representatives.

Although - according to the letter of the Constitution - no state body, political organisation, group or individual can take sovereignty from the citizens, or establish power beyond the freely expressed will of the citizens, Serbia currently represents the negation of this provision. Having in mind the crisis of representative democracy, where the National Assembly serves the executive power, the continuous collapse of institutions, the abuse of the position of power and its concentration in the hands of one person and one political party, the exercise of sovereignty by citizens through the mechanisms of direct democracy becomes even more important and is practically the last refuge and the only means of defence of the true will of the citizens.

In light of the start of the process of consultation on amendments to the Constitution in the part related to the judiciary, the issue of amending the Law on Referendum was actualised in 2018 and 2019, when another Draft Law was presented to the public and a public debate was opened.[123] However, this process was never completed either, which is why the third draft was discussed for an extremely short period of time in order to complete the process of changing the Constitution within the time frame set forth in the revised Action Plan for Chapter 23.

Finally, following the constitutional changes in 2021, Serbia got a new Law on Referendum and People's Initiative; however, the preparation of its text and its adoption became an example of the collapse of democracy and the rule of law in Serbia.

The text of the Draft Law on Referendum and People's Initiative was published on the website of the Ministry of State Administration and Local Self-Government on 9 July, at the time when the National Assembly had already adopted the Bill to Amend the Constitution, when the work of the Working Group formed by the Committee for Constitutional Affairs had already begun, and when representatives of the executive and legislative powers announced that the referendum on changing the Constitution could be held by the end of 2021. Bearing in mind the above, we should recall the recommendation from the Guidelines of the Venice Commission (II 3. a and b.) according to which, within a period of one year from the adoption of the essential amendments to the Law on Referendum and People's Initiative, and therefore also the adoption of the new Law, new provisions should not be applied, nor should they be adopted in order to hold a specific referendum.[124] This shows the position that, in addition to the general obligation to hold a broad public debate when adopting statutory solutions on the referendum, it is also necessary to refrain from instrumentalising new solutions for the purpose of conducting a specific referendum. However, not only can one state that there was no *broad* public debate; in fact, the question of whether there was *any* public debate is quite legitimate in this case.

The public debate was organised in the second half of July.[125] Stakeholders were given 20 days to submit their comments in writing, and unlike the public debate of 2019, there was to be no discussing the presented text in any format. Contrary to Article 41 paragraph 4 of the Rules of Procedure of the Government of the Republic

of Serbia, the public invitation did not contain information on the formation and composition of the Working Group that prepared the draft. On top of that, the Ministry of State Administration and Local Self-Government published a non-existent e-mail address to be used to submit comments on the Draft Law. For these reasons, several civil society organisations thought it necessary to repeat the public debate.[126]

In addition to the public appeal, the organisations also submitted the same request directly to Minister Marija Obradović. However, the public debate was not repeated, nor did the Minister respond to the letter.[127] Moreover, on the same day when the public debate ended, the Ministry submitted the Draft to the Venice Commission for an urgent opinion.[128] The fact that the Draft was submitted to the Venice Commission without the Ministry even looking at the received comments is just one more argument in favour of the thesis that the public debate was completely faked. At the same time - as it will turn out later - in certain articles, the translation of the Draft that was submitted to the Venice Commission differed from the original to such an extent that it completely changed the meaning of the norms.

Another thing that should be mentioned is the complete absence of interest of the media, especially those with a national frequency, as well as the absence of interest of government representatives in informing the public about this topic and open a public debate about it. The topic received media attention only when the work on the constitutional amendments was coming to an end, in November 2021.

At the beginning of September, the Venice Commission sent to civil society organisations an invitation to a meeting, during which numerous objections to the Draft Law were noted. In order to have a better insight into the proposed solutions, members of the Venice Commission asked the organisations to provide them with comments on the Draft and help them identify inconsistencies in the translation.[129]

As regards the content of the provisions of the Draft, civil society organisations were of the opinion that they threatened the direct participation of citizens in decision-making and reduced the achieved level of human rights and freedoms. Provisions related to the duration of the referendum, its validity, conditions for voting and determination of results during a epidemic, the binding nature of the referendum decision only for a certain period of time, the implementation and financing of referendum activities, as well as the protection of citizens' rights before the election authorities and courts, were singled out as problematic.

Thus, due to the unclear definition of the organisers of the referendum campaign, the Draft provided that anyone who appeared in public on the occasion of the referendum could be fined very heavily if s/he failed to previously fulfil a number of formal requirements. The Draft did not provide a clear distinction between someone who, for example, published a post on a social network inviting fellow citizens to go to the referendum, and someone who intended to lead a referendum campaign.

The fee charged for the verification of signatures necessary for calling a referendum at the request of citizens, or for a people's initiative, was set so that, in practice, the exercise of these rights would be limited only to those who can afford the very high price of these mechanisms of achieving people's sovereignty.

The Venice Commission submitted its urgent Opinion on September 24, pointing to numerous shortcomings and inconsistencies of the Draft Law – those that were initially pointed out by civil society organisations in their comments.[130] Among other things, the Opinion stated that significant amendments to the referendum law should not be implemented at least one year after their adoption, that the recommendation of the Commission was to hold the first subsequent referendum once a sufficient period elapses since the time of the adoption of the amendments, and that the amendments should be adopted by broad consensus and with public consultations with all relevant actors. The Commission called for an extension of the time period from the day of adoption of the decision on the referendum and the time of its holding, and stated that the provision of the Draft which allows election commissions to adopt special rules in certain situations, including a pandemic, could excessively restrict basic political rights. Provisions that allowed the authorities to bypass the will of the citizens, and still adopt something that was rejected in the referendum once a year has passed since the referendum itself, were marked as extremely problematic. Also, it was recommended to Serbia that the bodies that conduct the referendum (election commissions at all levels) must be independent; that an impartial body, and not the Government, should be in charge of timely and truthfully informing the citizens about different positions regarding the referendum issue; and that it was necessary to change and specify the solutions related to the referendum campaign. Finally, with regard to the provisions of the Draft referring to the collection of signatures to initiate a referendum or a people's initiative, the Commission was of the opinion that no fee should be required for signature verification, or that said fee should be very small.

In mid-October, the Ministry of State Administration and Local Self-Government published the revised Draft Law, which it previously also submitted to the Venice Commission.[131] Although this Draft did accept a number of the Commission's recommendations, it should be noted that many problematic solutions were still kept in the text. Since the Ministry failed to organise a public debate also during the preparation of the revised Draft, the Venice Commission decided to do it on its own by organising, on 21 October, a series of meetings with representatives of the Government, people's deputies from the ruling majority, opposition deputies, members of the Republic Electoral Commission and representatives of civil society organisations.

On 9 November, the Venice Commission published a New Opinion on the revised Draft.[132] The opinion stated that most of the recommendations from the previous Opinion have been adopted, and that most of the new solutions were in line with international standards. Still, the Commission once again warned of certain shortcomings such as, among others: abolishing or significantly reducing of the fee to be paid for the verification of citizens' signatures required for a referendum or a people's initiative;

extending the deadlines as to when a new referendum can be organised concerning an issue regarding which the citizens have already spoken, whether positively or negatively; specifying the provisions on a binding referendum; and extending the right to file a complaint to include citizens who have voted. Finally, the Commission regretted the fact that the review of the referendum law began only once the constitutional referendum was imminent, and stated that - for the sake of the stability of the election law - amendments and supplements to the basic provisions on the referendum should be implemented less than a year after their adoption only if compliance with international standards has been ensured. Moreover, the changes must be actually implemented before the actual referendum can be held. The Venice Commission reiterated that the next referendum should be held only once the revised law becomes "actually applicable", and that the changes should be adopted by a broad consensus, taking into account the views expressed during public consultations held with all relevant stakeholders.

Since the Law on Referendum and People's Initiative was amended exclusively for the purpose of holding a referendum to change the Constitution, the authorities in Serbia decided to urgently introduce the bill into the parliamentary procedure, without respecting these recommendations.[133] As early as on 12 November, together with organisations that have been pointing out problems in the process of drafting the law from the very beginning, the Move-Change [*Kreni-Promeni*] Initiative launched a petition to withdraw the bill. The petition, which was signed by more than 68,000 citizens, was submitted to the National Assembly on 24 November.[134] Its main demands included the abolition of the fee for signature verification, the extension of the time limit within which a referendum could once again be called regarding an issue on which the citizens had aldready expressed their opinion, and the abolition of the possibility for a decision made at the referendum to be be circumvented by a decision of the National Assembly on the same issue. Regardless of the above, the bill was presented to the people's deputies on 25 November, and was adopted with 178 votes in favour and 2 against.[135]

Coupled with the adoption of the Law on Expropriation and the general dissatisfaction that manifested itself through environmental protests, the fact that the authorities did not listen to any of the initiatives or appeals that were made by citizens from the moment of publication of the first Draft Law on the Referendum and that they persistently ignored the invitation to talk, caused large-scale citizen protests that erupted across Serbia and blocked the most important roads in the country at the end of November and the beginning of December.[136]

As a result of these protests, the President, who had already promulgated the adopted Law, appealed to the Government to change the controversial provisions.[137] The new bill soon reached the National Assembly, where, without any discussion, all 193 present members of the National Assembly voted for the proposed changes.[138]

Although the demands of the citizens were adopted in the end, and the Law was significantly improved compared to the initial Draft, the entire process serves as confirmation of the defeat of Serbia as a state based on the rule of law and democratic principles. The very fact that the Ministry came out with a Draft that was so bad that it questioned the very essence of civil sovereignty, is worrying. However, an even bigger reason for concern is that, despite numerous appeals, initiatives and petitions, the authorities did not want to talk to the citizens, that the Constitution and basic international and European standards were ignored during the drafting of the Law, that people's deputies voted on the order of the executive branch without having a concrete discussion on the bill, and that the President, probably heeding the advice of his team, approved this Law despite the request of the citizens.

However, at the moment when it became evident that citizens were determined to express their protest, there was a complete turnaround, which also carried a worrying message: that the institutions in Serbia have completely collapsed and that the principle of separation of powers practically no longer existed. One "plea" from the President was enough for the Government and the people's deputies to completely change the stubborn opinion, which in the course of the previous six months they expressed mostly by ignoring those on whose behalf they exercise power. With the encouragement of the President, the demands of the protestors - translated into the government's bill - were supported by an even greater number of deputies than two weeks earlier, when the original bill was voted on.

On 30 November, just 4 days after the adoption of the Law, the Speaker of the National Assembly signed the Decision on calling a republic-level referendum on the confirmation of the Act on Amending the Constitution. It was held on 16 January 2022 and was marked by a low turnout of citizens - only only 30.65%, with 59.71% of the voters voted for the proposed solutions, while 39.26% were against them.[139]

Endnote

Transparency Serbia, Elements of State Capture in Serbia. Case studies in two sectors (2018); Transparency Serbia, Grand Corruption and Tailor-Made Laws in Serbia (2021)

110 For additional information, see Alarm reports of the prEUgovor coalition.

111 See e.g. Demostat, "Foreign-political orientation of citizens of Serbia", (June 29th, 2022), https://demostat.rs/upload/Prezentacija%2029062022%20Demostat.pdf.

112 First and foremost, the Venice Commission's 2006 Referendum Guidelines from 2006 (CDL-AD(2006)027rev), which were later supplemented on several occasions.

113 *Official Gazette of the Republic of Serbia*, nos. 48/94 and 11/98

114 *Official Gazette of the Republic of Serbia*, nos. 98/2006 and 115/2021

115 See the Opinion of the Venice Commission no. 405/2006, available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e

116 Opinion of the Venice Commission no. 551/2009, available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)006-e

117 See Opinion of the Venice Commission no. 405/2006, available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e

118 *Official Gazette of the Republic of Serbia*, no. 57/2013

119 For additional information, see: Belgrade Centre for Human Rights, "Human Rights in Serbia 2018", p. 189-197, http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2018.pdf

120 Republic of Serbia Negotiation group for Chapter 23, The Revised Action Plan for Chapter 23, https://www.pars.rs/images/dokumenta/Poglavlje-23/Revised-AP23.pdf.

121 European Parliament, Resolution on the 2019-2020 Commission reports on Serbia, (March 25th 2021), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0115_EN.html.

122 The letter that accompanied the text of the Draft Law on Referendum and People's Initiative was sent on 2 August 2021, with the reference number 011-00-00209/2019-01. In the accompanying letter sent to the Venice Commission, Minister Obradović requested that the Commission provide an urgent opinion on the submitted Draft, and it was precisely the change in the Constitution that was stated as the reason for said urgency. It should be noted that such a request is contrary to international standards, which state that the provisions governing the referendum should not be changed for the purposes of conducting a specific referendum, and that a referendum should not be organised in the year in which such changes to the legal framework were made.

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124 European Commission for Democracy through Law (the Venice Commission), Revised guidelines on the holding of referendums, CDL-AD(2020)031, https://www.cepc.gob.es/sites/default/files/2021-10/Revised-guidelines-on-the-holding-of-referendums_1.pdf.

125 Ministry of public administration and local self-government, The invitation to participate in the public debate on the Draft law on Referendum and People's initiative, (July 8th 2021), http://mduls.gov.rs/javne-rasprave-i-konsultacije/javna-rasprava-o-nacrtu-zakona-o-referendumu-i-narodnoj-inicijativi-2/?script=lat.

126 Belgrade Centre for Human Rights, "Repeat the public debate on the Draft Law on Referendum and People's Initiative", (30 July 2021), https://www.yucom.org.rs/wp-content/uploads/2021/07/Saop%C5%A1tenje-Nacrt-Zakona-o-referendumu-i-narodnoj-inicijativi-30-4.jul_.pdf.

127 Letter to the Minister, dated 2 August, is available in the archives of the Belgrade Centre for Human Rights.

128 In the accompanying letter addressed to the Venice Commission, Minister Obradović cited the change of the Constitution as the reason for urgency, which is in direct contradiction to international standards and the views of the Venice Commission.

129 An online meeting of representatives of CSOs and members of the Venice Commission was held on 3 September 2021.

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134 Danas, "The civil sector submits to the Parliament of Serbia a petition with 68,000 signatures against the Law on Referendum", 24 November 2021.

135 Government of the Republic of Serbia, "The Law on Referendum and People's Initiative was adopted", 25 November 2021.

136 Danas, "Road blocks in Serbia because of the Law on Referendum, problems with the police", 27 November 2021.

137 Radio Free Europe, "Vučić confirms the shortcomings of the Law that are being protested against", 8 December 2021.

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ABOUT THE PROJECT

This publication is written within the project “Fundamentals in focus: European integration beyond action plans”.

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