

Evolving or revolving: Institutional reforms and democratic legitimacy in Kosovo, Albania, and Montenegro

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European Fund for the **Balkans**

Evolving or revolving:

Institutional reforms and democratic legitimacy in **Kosovo, Albania,** and **Montenegro**

Pristina, Kosovo

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This paper was prepared by:

Valëza Zogjani, Ana Nenezić, and Nirvana Deliu

Edited by:

Shpend Emini

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Introduction

The European Union accession is generally believed to be closely related to democratization, especially in the Western Balkans, where the EU has been one of the main driving forces of democratization in the region. For the last 15 years, the prospect of membership for Western Balkans countries has been held by the European Union. In February 2018, the European Commission (EC) reaffirmed the solid, merit-based prospect of EU membership for the Western Balkans in its communication "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans". This has been received as a strong message of encouragement for the whole Western Balkans and a sign of the EU's commitment to their European future.

Since the Thessaloniki Summit of 2003 – which marks a social contract between the EU and the Western Balkan states in their integration endeavor – the EU has approached the region through the lens of EU enlargement. The outcomes of the Summit stimulated the six countries of the region to strengthen their efforts in the adoption and implementation of the required reforms, bringing them closer to joining the EU. In the process of preparing to join the EU, the Western Balkan countries committed to creating space for domestically driven reforms to transform the way that politics, economies and societies work. Part of the enlargement policy entails that countries embrace the necessary EU reforms and make them part of their political agenda. Although the Western Balkan countries are moving towards membership in the European Union – and along the process they have undergone major reforms – the democratic standards in these countries are proving to have declined in the past few years. With the growing reform criteria packages that are part of the EU integration process – which aims to accelerate the development of the region as well as deepen the formal relations with the EU, the desired democratization and political transformation of the region's societies still has a long way to go.

When assessing the progress that the Western Balkans has achieved in respect to its adoption and implementation of the far-reaching EU reforms, they proved to be stalling in the process with important gaps remaining. For the prospect of enlargement to become a reality, a firm commitment to the principle of "fundamentals first," tackling economic fundamentals first, remains essential for aspiring members. Structural shortcomings persist in the Western Balkans, notably in the key areas of the rule of law and the economy. Accession candidates must deliver on the rule of law, justice reform, fight against corruption and organized crime, security, fundamental rights, democratic institutions and public administration reform, as well as on economic development and competitiveness.

There is an imminent threat that the EU's discourse on "Europeanization" will not be able to build sustainable democratic values in the Western Balkan countries, and as such with no other alternative left, democracy would perish. Rule of law, parliamentary functioning,

and media freedom have been affected the most, as the reforms have only been pushed as pro-forma rather than providing any substantial changes.

In such circumstances, this research paper aims to offer a comprehensive policy review of the already established reforms and examine the extent of the intended democratic transformation of the said reforms in Kosovo, Montenegro and Albania. The main goal of this research paper is to provide solutions for two key issues: (a) how to combat the shortcoming of reforms and identify potential threats to democracy, and (b) recommend policy solutions at the sectoral level that help boost the reform implementation process. When looking at the first aspect, the three countries we are analyzing in this paper, Montenegro, Albania and Kosovo, all tackle the discourse established by the EU in relation to the reforms proposed for each country. The discourse established, mostly known as the “carrots and sticks approach,” will be analysed in this paper to see the effect it has had on the democratization process of the countries under scrutiny, and how it compares to the other countries in the region. As such, the aim of analysing the reforms in this way is to also provide recommendations on how they ought to be presented throughout the EU integration cycle; specifically, the ground rules that the EU establishes for cooperation, presentation of reforms, how the reforms are then presented from the government to the people, and particularly how consensus is built for catalysing the process. Intertwining with all these is the relationship between the discourse of reforms and the democratization of the country. On the second aspect, policy solutions at the sectoral level, the main focus is providing recommendations that take into account the political context of Montenegro. Albania and Kosovo, as well as provide recommendations that consider best practices from the partner countries.

Introducing Europeanization

The notion *Europeanization* has multiple meanings. It represents both the process of changes within the European Union, policies and international relations, as well as the process of accession to and implementation of European standards in the woven tissue of one country through the diffusion of social models and ideas.¹ Radaelli defines Europeanisation as the incorporation of ‘norms which are first defined and consolidated in the EU policy process’ into ‘the logic of domestic discourse, identities, political structures and public policies’.² The principal method by which the EU pursues this course is, according to Anastasakis, the accession process: the European Union has established criteria that countries must meet, and thus Europeanise, in order to gain membership³. Therefore, a state’s proximity to fulfilling these criteria must be the measure used to

¹ Damir Banović, *Evropeizacija kao demokratizacija*, available at: <http://tiny.cc/3nn8cz>

² Othon Anastasakis, ‘The Europeanization of the Balkans’, *The Brown Journal of World Affairs*, 12 (2005), p. 78.

³ *Ibid.*, p. 79.

determine its level of Europeanisation. Having in mind its nature, Europeanization is therefore crucial to bring Kosovan, Albanian and Montenegrin legislation, especially in the area of the democratization, fundamental rights and freedoms, economic and social prosperity, and the rule of law, into a complementary position with European standards.

The conditions for the EU membership are defined in Article 49 of the Treaty on European Union, which provides that "any European country which respects the principles set out in Article 2 may apply to become a member of the Union". Common principles, listed in Article 2 that reflect the values of the European Union are the following: freedom, democracy, respect for human rights and fundamental freedoms as well as the rule of law. In addition to the conditions prescribed by contract of the European Union, the most important document for the accession process are the criteria that have been defined at the European Council in Copenhagen in 1993. There are three groups of criteria:⁴

- › *Political criteria* relating to the rule of law, respect for human rights and freedoms, protection of minorities and stability of democratic institutions;
- › *Economic criteria* within which the candidate country is required to ensure the functioning of market economy and the ability to cope with competitive pressure and the EU market;
- › *Legal criteria* are reflected in the candidate country's ability to assume the obligations implied by membership in the European Union, which, in addition to harmonization of legal regulations, implies the objectives of economic and monetary union;

At the session of the European Council held in Madrid in 1995, a set of criteria has been extended, relating to consolidation of the administrative, managing and judicial structures according to the EU norms.⁵

For many years now, since the Thessaloniki Summit in 2003, the European Union has been actively supporting the efforts of the countries of the Western Balkans to become its integral part in the future. *The Western Balkans* is a term used by the European Union for a region that includes Montenegro, Serbia, Northern Macedonia, Bosnia and Herzegovina, Albania, Kosovo, as well as Croatia, which became an EU member in 2013. The European Union is currently considering five candidate and two prospective candidate countries for Union membership: Turkey, North Macedonia, Montenegro, Albania, Serbia (candidate countries), Bosnia and Herzegovina, and Kosovo (potential candidate countries). These countries are within the remit of the European Enlargement Policy. In 2015, the European Commission's published an Enlargement Strategy that outlined two key measures ('harmonized assessment scales') that would be applied to all reports of the countries included within the remit of the European Enlargement Policy: state of play and progress.⁶ The former can be used to determine how close a country is to fulfilling its requirements

⁴ EUR-Lex, *Accession Criteria (Copenhagen Criteria)*, available at: <http://tiny.cc/qv2tcz>

⁵ EUR-Lex, *Joining the EU - the accession process*, available at: <http://tiny.cc/h12tcz>

⁶ European Commission, 'EU Enlargement Strategy' (2015), p. 32.

for EU accession, as it measures a country's readiness to participate in the EU as a member state.⁷ Therefore, given that Europeanisation is defined by how close a country is to full participation in EU institutions, a country's state of play is useful as an indicator its level of Europeanisation. Within this strategy was a set of universal criteria for EU accession that would be applied to all candidate and prospective candidate countries and measured according to the 'harmonised assessment scales'. The purpose of these criteria, along with the 'harmonised assessment scales', was to provide greater transparency of the enlargement process for all stakeholders, enabling them to analyse and compare the proximities of different countries to achieving EU membership.⁸

These universal criteria were listed under nine pilot areas in the 2015 Enlargement Strategy:

- > functioning of the judiciary;
- > fight against corruption;
- > fight against organised crime;
- > freedom of expression;
- > public administration reform;
- > economic criteria (having a functioning market economy and being competitive within the EU);
- > public procurement;
- > statistics;
- > financial control.⁹

The first five areas are concerned with the functioning of democracy: as non-member states seek access to the economic benefits of EU integration (in the form of treaties, trade agreements etc.), they are coerced into fulfilling democratising criteria.¹⁰ As the European Commission acknowledges, 'The prospect of EU membership [the final step in Europeanisation] has a powerful transformative effect on the countries concerned, embedding positive democratic... change.'¹¹ Indeed, the promotion of democracy, the rule of law and the respect of fundamental rights is 'in the Union's very own political, security and economic interest. It is an investment in a stable, strong and united Europe.'¹² Thus, Europeanisation becomes a vehicle for democratising non-member states.

⁷ Ibid., p. 4.

⁸ Ibid., p. 31.

⁹ Ibid., pp. 33-41.

¹⁰ rank Schimmelfennig, 'Europeanisation beyond the member states', *Journal for Comparative Government and European Policy*, 8 (2010), p. 326.

¹¹ Commission, 'Enlargement 2015', p. 2.

¹² European Commission, 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans' (2018), p. 1.

In the 2016 Enlargement Strategy, the original nine pilot areas were expanded to include:

- > free movement of goods;
- > competition;
- > transport;
- > energy;
- > migration;
- > border control;
- > asylum;
- > the fight against terrorism;
- > and environment and climate change.¹³

As of 2019, the areas established in the 2015 and 2016 Enlargement Strategies are the only areas in its annual country reports that the Commission has specified can be used for inter-state comparison.

In the 2015 Enlargement Strategy, the Commission identified sub-issues related to each of the nine pilot areas. Each sub-issue clearly outlined criteria against which each country would be assessed.¹⁴ This allows civil society organisations to understand the requirements of the Commission for Union membership and to interpret and compare the Commission's assessments between countries across an extended period. However, in the 2016 Enlargement Strategy, no sub-issues and no criteria were established for the assessment for the new areas.

As a result, the Commission's assessment of the areas added in the 2016 Strategy are difficult to interpret and to compare between countries. The Commission did not outline criteria for their assessment or describe a state of readiness in those areas at which a country would meet the required standards for EU admission. A solution to this problem may be to work backwards from the Commission's conclusions to establish their criteria: compare the assessments of individual countries in the areas added in 2016 and identify references to required standards. This, however, would be time-consuming and not necessarily accurate. As of 2019, the areas established in the 2015 and 2016 Enlargement Strategies are the only areas in its annual country reports that the Commission has specified can be used for inter-state comparison.

In 2018, along with an Enlargement Strategy, the European Commission published a communication renewing its commitment to expansion into and development of the Western Balkans.¹⁵ The communication expanded the criteria for almost all of the original nine pilot areas.¹⁶ These expanded criteria do not include any completely new

¹³ European Commission, 'EU Enlargement Strategy' (2016), p. 8.

¹⁴ Commission, 'Enlargement 2015', pp. 33-41.

¹⁵ Commission, 'Credible enlargement perspective', p. 9.

¹⁶ Ibid., pp. 10-14.

requirements, but the communication is more precise about what the criteria mean. Given the communication's emphasis on a renewed commitment to the region, we might assume that the expanded elements of these criteria were not in use prior to 2018, although the document does not make this clear. As such, comparisons between the raw data from 2015-16 and 2018 onwards must be analysed and explained in the context of the expansions in the 2018 communication.

EU is assessed as a transformative power regarding democracy, fundamental rights, rule of law for the countries of the Balkan region. The process of preparation for the integration of country to European Union, meaning the country has already fulfilled all the conditions (Copenhagen Criteria) is called by many scholars as the 'Europeanization' process. This process has some dimensions including: political; economical; technical and the dimension of values and identity. According to Johan Olsen, we may witness four features of Europeanization: 1) the export of the European model beyond its borders; 2) the strength of governmental institutions at the supranational level; 3) the supranational element giving influence to national and sub-national levels; and 4) intensification of the process of EU unification.

As mentioned EU offers the opportunity of membership to all the countries that fulfil the criteria in: 1. economic capacity – having a functioning market economy; 2. political criteria – rule of law, democracy, sustainability and protection of human rights and 3. to have harmonised and aligned the national legislation with the EU *acquis* while, 4. having the administrative and institutional capacity to achieve all the obligations deriving from membership. In this regard, the process of accession after fulfilling the criteria, is often called as Europeanization with conditionality¹⁷ (Hasa, 2019) or 'stick and carrot' policy (Grabbe, 2002, Zoukui, 2010). But these technical aspects of economic and political capacity, administrative and legislative procedures should be combined with the normative element, meaning that the country should embrace and promote all European values during this process. Thus, the EU actually 'imposes' its policy and its own model to the acceding country.

Nowadays Europeanization in the Western Balkans region is equalled with democratization and stabilisation of the region and countries within. In these countries is substantial that a reformation process of many sectors to start and to continue in order to reach the EU standards. This process has given to the EU the role of a 'reforming power' – the driving force behind country's motivation to undertake deep reforms. If not for the conditionality of the EU, these reforms would not be undertaken.¹⁸ (Beshku & Mullisi 2018). In this regard the democratization process of the Western Balkan countries is interlinked with the Europeanization one. To support the countries in this process with the main

¹⁷ Hasa T., From normative to tangible governance: Time to change strategy of the EU enlargement process towards Western Balkans, Bruges Political Research Papers 74/2019, pg. 10

¹⁸ Beshku & Mullisi 2018

goals, on increasing of institutional capability, strengthening of democracy and rule of law, improving economic and social indicators, the EU since 2001 has allocated approximately 20 billion Euros for the region under various financial instrument like: CARDS (Community Assistance for Reconstruction Development and Stabilization), PHARE and IPA (Instrument of Pre-Accession) I & II.¹⁹

Most of the time, the reforms are justified in order to make progress towards EU integration, and to achieve the stability within the countries and the regional stability as well. As all the countries are actually working towards the same aim, it is imperative to be assessed that they will start cooperating and create partnerships with each-other in order to accelerate the progress on EU integration.

Kosovo

Introduction

Kosovo is considered a potential candidate country to join the European Union. Since its independence in 2008, the EU integration path, enshrined also in the declaration of independence, has been both a standalone and intersectional foreign policy priority for Kosovo. Since its independence, the discussion and rhetoric of political parties has heavily focused on EU integration, however, Kosovo celebrated its 11th year of statehood with little tangible successes towards the EU integration goal. Issues such as the politicization of public administration, corruption and organized crime, and an inefficient judicial system remain the main culprits of Kosovo's stagnation.

The EU remains the key economic actor in Kosovo and one of the most important actors, including the US, in Kosovo's state-building efforts. Since the Thessaloniki Summit held in 2003, Kosovo's path has been interlinked with EU integration and an EU Perspective. Even Kosovo's declaration of independence reaffirms its direction, stipulating "...our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration"²⁰. The key achievement in Kosovo-EU relations was the signing of the Stabilization Association Agreement (SAA) in 2015, not only due to the economic benefits, but because on a symbolic level, it involved the first agreement between Kosovo and the EU that contained contractual obligations. In addition to the SAA, the Kosovo government

¹⁹ Hasa, 2019

²⁰ Assembly of Kosovo. Declaration of Independence. Retrieved from: <http://www.assembly-kosova.org/common/docs/Kosovo%20Declaration%20of%20Independence%20-%20English%20Version.pdf>

agreed to also develop a European Reform Agenda whose purpose is to propel Kosovo's reforms pertaining to EU integration²¹.

Most of Kosovo's citizens, around 60%, covering the period of 2010-2015, have perceived the EU as positive and/or very positive²². The political and institutional efforts, in combination with these perceptions, ought to have brought an impetus towards Kosovo's path to EU integration, however this was not the case in practice. Even though Kosovo signed the SAA and also developed a European Reform Agenda for setting short-term priorities, the EC country report for Kosovo in 2019 showed that both of these were lagging in producing substantial results²³. In 2017, Jean-Claude Juncker, the President of the European Commission, pointed out in his speech that the stability of the Western Balkans is linked with a credible enlargement perspective²⁴. Soon after, in 2018, the EU produced the publication "A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans". Besides pointing out that the normalization of Kosovo-Serbia relations is a crucial factor in advancing their respective European paths, the document links Kosovo's EU integration heavily with the implementation of the SAA. Specifically, the document states that "Kosovo has an opportunity for sustainable progress through implementation of the Stabilisation and Association Agreement and to advance on its European path once objective circumstances allow"²⁵.

The SAA, as the first formal contractual agreement between Kosovo and the EU, and also as the key tangible way for Kosovo to move towards EU-integration, is therefore of crucial importance. In a survey conducted in 2016, less than 50% of Kosovars perceived that the SAA would benefit Kosovo economically and politically²⁶. Less than half of the population still does not see the benefits of such agreements, indicating that Kosovo's institutions fail to produce tangible results and involve its citizens in said processes.

²¹ Ministry of European Integration. (2016). Kosovo-EU High Level Dialogue on Key Priorities – European Reform Agenda (ERA). Retrieved from: https://www.mei-ks.net/repository/docs/era_final.pdf

²² Group for Legal and Political Studies. (2017). Kosovo-European Integration and the SAA. Retrieved from: <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/11/GLPS-Kosovo-European-Integration-and-the-SAA-An-analysis-on-citizens'-perceptions.pdf>

²³ EC Kosovo Country Report. (2019)

²⁴ EC. (2017). PRESIDENT JEAN-CLAUDE JUNCKER'S State of the Union Address 2017. Retrieved from: https://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm

²⁵ EC. (2018). A credible enlargement perspective for and enhanced EU engagement with the Western Balkans. Retrieved from: https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

²⁶ Group for Legal and Political Studies. (2017). Kosovo European Integration and SAA. (p. 14). Retrieved from: <http://www.legalpoliticalstudies.org/wp-content/uploads/2017/11/GLPS-Kosovo-European-Integration-and-the-SAA-An-analysis-on-citizens'-perceptions.pdf>

Retrospective approach

Citizens' views on the EU

The Balkan Barometer, published by the Regional Cooperation Council (RCC), offers an encompassing overview of Western Balkan countries and their perceptions on a wide array of social, political, and economical issues²⁷. On the economic aspect, when asked, a majority (69%) of Kosovo citizens stated that EU membership would be a good thing for the economy of the country. However, an important thing to note about this question is also that 21% of respondents stated that they perceive EU membership as having neither a good nor bad impact on the economy. Hence, one in five people either lacks information, is not convinced, or does not grasp how EU membership favors or disfavors a country's economy. To support this fact, there has been a decline in Kosovars that believe that the EU would benefit the economy; as in 2017 a staggering 84% perceived EU membership as good. The 15% decline, as per the report, can be attributed to the stalled visa liberalization process in Kosovo.

When asked what EU membership entails for the citizens personally, Kosovars were the only people from the Western Balkans to rank *freedom of travel* as the main benefit of EU membership. This goes to show the importance of visa liberalization for Kosovars. The decline in their perception of the economic benefits of joining the EU contributes to the idea of how detached the citizens are from the EU integration process. Nonetheless, a large number of Kosovo's citizens (43%) have stated that they expect the accession of Kosovo's economy into the EU to happen by 2020.

Narrative on reforms

The EU has been an integral part of the state-building process, hence, the relationship between Kosovo and the EU is unique to analyse, especially in terms of power relations. Specific events in the timeline show how Europeanization has affected the internal democracy of Kosovo. Kosovo's state-building was characterized by producing policies just for the sake of having policies; this occurred during the United Nation's Mission in Kosovo (UNMIK) period, under supervised and unsupervised independence.

In the aftermath of the war, specifically from 1999 to 2000, the United Nation's Mission in Kosovo was the executive power. Slowly it started transferring some of its powers to Kosovo's municipalities. The powers that they transferred were more of administrative measures whilst UNMIK was still, at least de-facto, the executive power. UNMIK had paved the way for developing the Provisional Institutions of Self-Government (PISG). PISG had both the legislative and executive powers embedded in it. The strategic focus of the PISG

²⁷ Regional Cooperation Council. (2019). Balkan Barometer 2019: Public Opinion Survey. Retrieved from: <https://www.rcc.int/pubs/89/balkan-barometer-2019-public-opinion-survey>

was to gradually transfer these powers to Kosovo institutions, especially since at that point in time, Kosovo was in the process of constructing the nature of their institutions. The issue resides in the notion of power-sharing and power-transfer. Literature points out how international interventions may be especially counterproductive in achieving a country's set objectives.

Once the power-transfer started taking effect, with Kosovo's political situation still being undefined, Kosovo was starting to build institutions based on a mixture of learning by doing and through guidelines. The former was based on observation of how the international community's institutions functioned, whilst the latter was mimicked from concrete rules, procedures, and legislation, which in majority were directly compiled by the international community. Isaiah Berlin has captured this phenomenon, as he coins it, as "negative liberty"²⁸. Gashi & Gashi point out the dualism as this consists of "freedom that results from absence of obstacles" and "freedom to act and take control of its own basic purposes"²⁹.

The main issue that derives from international interventions, or any interventions for that matter, is the ownership issue. The ownership issue occurs when there is a dissonance between the receiver and transmitter. The receiver, in this case Kosovo and its institutions, with a vague political status, did not fully comprehend the notion of ownership, and thus accountability was also vaguely understood and hence practiced. To add to all of this, the international community was employing western cultural values which were at best unfathomable.

The adoption of foreign currencies. One of the first, if not the first, decisions by the international community was to introduce the German Mark as Kosovo's currency and make Kosovo an independent customs zone. Kosovo later adopted the EURO as its official currency. Albeit that such a decision, not evaluating whether it was wrong or right, was a direct intervention in the monetary policies of a country, it did not encounter any resistance from either the society at large or by the local politicians.

Laws as tick in the box. UNMIK was the legislative power and thus enacted laws. Most of the laws enacted by UNMIK have only been slightly adjusted even after its power-transfer to the Kosovar institutions. As an example, UNMIK passed 69 regulations in the short time frame of one year – this was in 2000. In his paper *Laws without policy – Waste Dead Letter and Futility*, Ilir Dugolli explains the phenomena of the legislative agenda as it is drafted hastily³⁰. Dugolli explains how Kosovo's legislative agenda was drafted within hours by civil servants and legal experts who named laws which they deemed as necessary. Albeit

²⁸ Berlin, I. (1969) *Two Concepts of Liberty*, *Four Essays on Liberty*. Oxford: Oxford University Press

²⁹ *Democracy for Development*. Gashi, K. , Gashi, G. (2018). *Inception Plus Ten*. Retrieved from: https://d4d-ks.org/wp-content/uploads/2018/11/D4D_PI_15_ENG.pdf

³⁰ Dugolli, I. (2006). P. 4. *Laws without policies – Waste Dead Letter and Futility*. Retrieved from: http://www.kipred.org/repository/docs/Laws_Without_Policy_-_Waste_Dead_Letter_and_Futility_618084.pdf

Dugolli's paper focuses on the UNMIK times, the same observation can also be applied to this day.

Until 2008, Kosovar institutions were using lack of competences as their main argument when they were facing accountability. On February 2008, Kosovo declared its independence and what followed was a relatively speedy approach towards state-building. New institutions were being established, and the legislative agenda was compiled. We see once again, albeit now having the competences, that the hastening of state-building was carried from the past. Only in 2008, 91 laws were passed by the parliament without any prior discussions³¹. The general discourse from the political parties in power was that these laws were being imposed by the international community and therefore there was little that the locals could do. Kosovo was excusing its behavior again, this time replacing a lack of competence argument with one that blamed the vigorous international influence on agenda setting. These cases contribute towards the main argument that Kosovo's democracy was declining in the inception phase of state-building.

Evaluating the priority fields

The EU country reports have measured the progress of Kosovo in different fields through progress level and state of preparation level. The two tables below detail Kosovo's progress level and state of preparation level based on the EC country reports from 2015 – 2019, so these are the years we will focus on. The progress level is relative as it measures if there was progress in the country compared to the previous year, and the state of preparation level offers an overview of the preparedness of the country in a specific field. Kosovo's priority fields are public administration, the judicial system, fight against corruption and organized crime, fundamental rights, and freedom of expression. These fields, especially fundamental rights and freedom of expression represent the internal democratization of the country. In 2017 the EC did not provide any country report thus that year is missing in the tables. In 2018 and 2019, the progress level for fundamental rights was not reported explicitly, and also the state of preparation is missing entirely for this field in all four year, with the latest report in 2019 noting that "The legal framework broadly guarantees the protection of human and fundamental rights in line with European standards."

Public administration reform has been noted as having *some progress* from 2016 – 2019, with only the year 2015 being coined as *good progress*. The state of preparation for public administration reform has been stalled at *some level of preparation* every year. The 2019 country report noted that most of the progress is attributed to the adaption of legislation, yet the key issue of political influence on recruitment of senior civil servants remains. The **judicial system** has been impeding progress, it has been constantly ranked at an *early stage* of preparation, except in 2016 when it was ranked as having *good progress*. Similarly

³¹ Republic of Kosovo. Assembly. Retrieved from:
<http://kuvendikosoves.org/common/docs/ligjet/Evidenca%20e%20ligjeve.pdf>

to the other priority fields, the judicial system’s progress is linked heavily with legislation and faces practical issues. The EC country report notes that the politicization and slow administration of justice is hindering this field’s progress. Almost the exact same assessment is given for the **fight against corruption** and the **fight against organized crime**. These assessments demonstrate that Kosovo is progressing vastly and hastily in legislation, however, the process lacks public discussions, and is instead treated as a tick in the box; this undermines its implementation and thus weakens Kosovo’s democracy.

Table 1: Kosovo EC Country Report Progress Level

Progress Level				
<i>Fields</i>	Years			
	2015	2016	2018	2019
<i>Public Administration</i>	Good progress	Some progress	Some progress	Some progress
<i>Judicial system</i>	Some progress	Good progress	Some progress	Some progress
<i>Fight against corruption</i>	Some progress	Good progress	Some progress	Some progress
<i>Fight against organized crime</i>	Some progress	Good progress	Some progress	Some progress
<i>Fundamental rights</i>	Some progress	Some progress	N/A	N/A
<i>Freedom of expression</i>	No progress	No progress	No progress	Limited progress

Table 2: Kosovo EC Country Report State of Preparation

State of preparation				
<i>Fields</i>	Years			
	2015	2016	2018	2019
<i>Public Administration</i>	Some level of preparation	Some level of preparation	Some level of preparation	Some level of preparation
<i>Judicial system</i>	Early stage	Early stage	Early stage/Some level of preparation	Early stage
<i>Fight against corruption</i>	Early stage	Early stage/Some level of preparation	Early stage/Some level of preparation	Early stage/Some level of preparation
<i>Fight against organized crime</i>	Early stage	Early stage	Early stage	Early stage
<i>Freedom of expression</i>	Some level of preparation	Some level of preparation	Some level of preparation	Some level of preparation

What was undertaken and what it produced: EU-Kosovo timeline

Kosovo is a potential candidate to join the EU. This part of the paper offers an overview and timeline of EU-Kosovo relations, highlighting main events. A more in-depth and descriptive analysis of Kosovo's progress is described in the chapter following the country reports.

Table 3: Events over the years

Date	Event
11/1/2000	Zagreb Summit launches Stabilisation and Association Process (SAP) for 5 countries of south-eastern Europe
1/4/2005	Commission adopts a communication on "A European Future for Kosovo"
1/2/2006	UN Special Envoy launches status negotiations
4/2/2008	Council adopts Joint Action establishing EU Rule of Law mission in Kosovo EULEX
18/2/2008	Council acknowledges Kosovo's declaration of independence, underlines EU conviction that Kosovo is a sui generis case.
15/6/2008	Kosovo adopts its Constitution
9/12/2008	EULEX becomes operational
14/10/2009	Commission issues communication 'Kosovo-Fulfilling its European Perspective'
22/7/2010	The International Court of Justice issues advisory opinion on Kosovo's declaration of independence
8/3/2011	Following a UN General Assembly Resolution the Kosovo-Serbia technical dialogue begins
19/1/2012	Commission launches the visa liberalisation dialogue with Kosovo
30/5/2012	Commission launches the Structured Dialogue on the Rule of Law
14/6/2012	Commission issues Kosovo's visa liberalisation roadmap
10/9/2012	Kosovo declares the end of supervised independence

10/10/2012	Commission issues its feasibility study for a Stabilisation and Association Agreement between the EU and Kosovo
19/10/2012	High-level dialogue between Kosovo and Serbia as facilitated by HRVP Ashton begins.
25/7/2014	The EU and Kosovo chief negotiators initialled the Stabilisation and Association Agreement between the EU and Kosovo in Brussels.
1/4/2016	The Stabilisation and Association Agreement between the EU and Kosovo enters into force.
1/7/2018	Commission confirms that Kosovo has fulfilled all outstanding visa liberalisation benchmarks. Decision on Commission's proposal is pending in the EP and the Council.

In 2005 the European Commission adopted a communication named "A European Future for Kosovo"³². The document provided an analysis of what the European Commission had done from 1999 up until 2005, and its plans for the future of Kosovo. From 1999 to 2005, the EU's engagement has been quantified as a € 1.6 billion investment, and yet it qualifies the territory as fragile. The communication was of its first kind directed at Kosovo from the EC. It covered sectors from economic development, institutional capacity, financial assistance, and regional initiatives including relations with Belgrade. Given that at this moment in time Kosovo's status was yet to be officially determined, the EC pointed out that reforms were to be undertaken through an active consultation with international actors. More importantly, this implied that the EC would only provide support in the revitalization process if it could observe that Kosovo's political leaders commit to respecting "democratic principles, human rights, protection of minorities, rule of law, market economic reform and values on which the European Union is based". Contextually, as we have also noted in the previous chapters when explaining how the legislative agenda was compiled, the general population was left out of the process completely. Yet, in the communication the EC stresses that "Ultimately, Kosovo's future is in the hands of its people".

In 2006, the UN launched the status negotiations for Kosovo through its special envoy. After one year, UN Special Envoy Martti Ahtisaari compiled the report which, among other things, stated that reintegration into Serbia is not a viable option, continued international administration is not sustainable, and that independence with international supervision is the only viable option³³. This again reinforced the role of the international community.

In 2008 - Council adopts Joint Action establishing the European Union Rule of Law Mission in Kosovo (EULEX). Fourteen days later, Council acknowledges Kosovo's declaration of

³² European Union Law. (2005). Communication from the Commission – A European Future for Kosovo. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0156>

³³ OSCE. Assembly Support Initiative. (2007). Report of U.N. Special Envoy on Kosovo status Kosovo deserves clarity about its future. Retrieved from: <https://www.osce.org/kosovo/24787?download=true>

independence and underlines EU conviction that Kosovo is a sui generis case. Kosovo adopts its Constitution on July 2008, and EULEX becomes operational at the end of 2008. In the same year, namely 2008, Kosovo declared its independence and sovereignty through the declaration of independence. Fast forwarding to 2010, there is a landmark event in Kosovo's timeline as the International Court of Justice (ICJ) issues its advisory opinion on Kosovo's declaration of independence. In summary the ICJ concluded that the declaration of independence did not violate international law, and/or the UNSCR 1244. In 2018, Kosovo's independence was recognized by 116 countries, the latest being Barbados³⁴.

The year 2012 was accompanied with five important events that affected Kosovo and Kosovo-EU relations. Within one year, the EU Commission launched the dialogue with Kosovo pertaining to Visa Liberalization and issued the visa liberalization roadmap, launched the structured dialogue on the rule of law, and issued its feasibility study for the Stabilization and Association Agreement (SAA) between the EU and Kosovo. Kosovo declared the end of its supervised independence, and the high-level dialogue between Kosovo and Serbia, facilitated by HRVP Ashton, commenced. These events were to reconfirm Kosovo's path towards EU integration, but more importantly as they all happened within one year, they were showing a rather fast-paced track of such an integration. History would dictate otherwise! Only four years after, namely in 2016, the SAA would enter into force, and as of today, visa liberalization remains a recurring issue, and a resolution that comes out of the Kosovo-Serbia dialogue is skeptical at best.

Democracy and EU integration

Political Culture and Europeanization

One cannot talk about Europeanization without tackling the political culture of a given society. The *acquis* itself is some form of political culturalization on a large scale. For some cultures, implementing EU rule of law might come naturally, for others it can come as a shock. To better understand the Kosovar society and its Europeanization process, one needs to tackle its political culture. And to tackle a country's political culture requires looking at discourse regarding its history, for a society is built up of historical events that shape its future.

The political culture in Kosovo is mixed and one of the more underdeveloped areas of Kosovar society. Considering that Kosovar history is one of conflict, it is no wonder that the political culture has such disparities. Historically, Kosovo has been primarily a province or part of some larger province. Starting from 1400 up to 1999, Kosovo's governmental status was that of a province. First in the Ottoman Empire, then continuing in the Serbian

³⁴ Baliu D. Barbados recognizes Kosovo. Prishtina Insight. 2018. Retrieved from: <https://prishtinainsight.com/barbadosrecognizes-kosovo/>

and Yugoslavian kingdoms, up to the Yugoslavian Federation. If we look at this short historical recap, it is obvious that Kosovar society has been shaped primarily by conflict and tension. This fact alone made the development of a political culture far too difficult. Knowing that education plays a huge role in political culture, it is alarming to realize that Kosovar citizens did not have easy access to higher education up until 1969, when the University of Prishtina was founded. Moreover, any politician who was lucky enough to get education was mostly indoctrinated by a communist ideology, while a pro-western approach was virtually non-existent until the 1990s.

To better understand the subjects that dominate Kosovar society and political culture, it is imperative to understand the general situation in the Ottoman Empire and further. Back then most of the government was focused on the central level, and only a few laws and minor adjustments were allowed to be discussed and enacted at the local level. This forced conflict between local and central agents, which ultimately ousted the population from the decision-making process, thus giving them precedence to engage into parochial behavior. Decision making and enforcing were done nonetheless, therefore forcing the population to nurture a subject culture.

After around 500 years of Ottoman rule, and a virtually parochial political culture within the Kosovar society, further changes would only strengthen this discrepancy between state and the people. At the conference of Ambassadors' in 1913, Kosovo would be included in the Kingdom of Serbia as a province, ultimately losing even the little provincial level of administration it had under the Ottoman rule. Kosovo, being primarily an agrarian society at the time, was forced to adopt a form of self-government generally applied in the mountainous regions, deriving from Albania, by enacting The Kanun (which translates to "The Code") of Leke Dukagjini. The Kanun was a set of laws and norms adopted by Kosovar society, showing for the first time a sense of governance logic and political culture. While it is undeniable that The Kanun has replaced the legislative components of a government, it goes without saying that when the population itself replaced the executive of said government, one should consider the efficiency of this system. Strict rules on behavior given by The Kanun only strengthened family relations and concepts of verbal contracts as opposed to written law. All these factors played a big role in generating Kosovo's political culture.

From the Ottoman rule and forward, the population of Kosovo was primarily of family-centric culture, thus leading to collectivism. Conclusively, the individual in Kosovo primarily identifies itself as part of a larger structure and will measure the size of the structure and assess its role within it. Furthermore, the individual as a political agent will statistically follow the average behavior of the family, and the larger the family size, the more virtual the agent's role within said family. This behavior, historically driven, has played a major role in the Europeanization of Kosovo and its impressionable nature.

Cause and effect: Democratization and EU Integration

History has played a role, quite subliminal albeit with high intensity, in the shaping of the political culture and general ideologies of the population of Kosovo. One of the most important questions that must be addressed in the case of Kosovo is one of quantity in terms of Europeanization. This is done by looking at Europeanization through a critical lens, focusing on how democracy in Kosovo is merely another system that is being offered as a box tick. Given the Kosovar perception of its government as a regulating body but having intrinsically a parochial culture with subject tendencies, it is no wonder that the European Union's transformative power has had an almost steady-state penetration in Kosovo. After the war of 1999, Kosovo entered a repairing state of being where large amounts of international aid was being provided to help with efforts of rebuilding both state and society. This effort to rebuild gave the citizens false hope, where they saw the European Union as a promised land, one where all aspects of life – such as good governance, proper laws and better prosperity – would be made possible. However, the portrait was not fully shown, primarily because the path to Europeanization, especially when attempted on countries with collectivist histories, demands far more than just the will of citizens. Kosovo, being a parochial and impressionable political culture, at some point during the process of Europeanization adopted some 91 laws with almost no prior policy debates or analysis. This form of unquestionable acceptance of new laws and policies shows that although the European Union might mistakenly perceive this as accelerating Europeanization progress, the foundations are not at all what the EU wants. On the other hand, Kosovo appears to just tick any box that comes its way, primarily due to political points that are gained in the hands of political parties who use these points to advance their own agendas. Kosovo and the EU held their first Stabilization and Association Council meeting in 2016, and ever since then, various laws have changed, new laws have been adopted, borders have been modified and still the primary factor that is impeding Kosovo's accession or even a simple conversation for accession is the strong underperformance of rule of law³⁵. One of the primary factors that Europe looks for in the potential for accession of a country, is the correct rule of law. This is further supported by the new European Union negotiation techniques in which they introduced concepts of 'Judiciary and Fundamental Rights' and 'Justice, Freedom and Security', concepts which were first used in negotiations with Croatia but are now much more integrated in all other discussions, and will be included in all future negotiations with candidates. Macedonia is a good example of this, where the leak of classified materials showed government control over the judiciary to an extent where even prosecution and intimidation of political opponents was being done; this has put Macedonia in a very bad position. In retrospect, Macedonia was the first Western Balkan country to sign the Stabilization and Association Agreement in 2001, and has been awaiting accession negotiation for 18 years now. This

³⁵ Marko Kmezić, EU Rule of Law Conditionality: Democracy or 'Stabilitocracy' Promotion in the Western Balkans? (2019)

shows just how adamant the European Union is in applying proper rule of law, and indeed candidates do respond to it.

While it can be said that almost every country is unique, the case of Kosovo is almost unparalleled in the subject of accession negotiation and democracy. The population of Kosovo have had their share of trouble understanding what the interests of the European Union are in terms of democracy and technical implementation – for example – in the case of Kosovo’s adherence to European standards, Kosovo has been assessed to have improved its standings from year to year. Moreover, Kosovo has made significant progress in the area of movement of goods, namely by implementing two capital investments on highways – the one with Albania and the other one with Northern Macedonia. These highways have played a major role in movement of goods, however there were debates in the civilian population as to whether these highways were of enough importance to justify investments of up to 1.2 billion euros. To summarize, the European Union must do a better job in conveying the messages it wants to transmit³⁶. Kosovo is moving too fast in implementing laws and Europeanized ideas while the economy and rule of law is lagging. The case of Croatia can be parallelized to Kosovo in the sense that about twenty years after Croatia had declared independence from Yugoslavia, it was integrated into the European Union. Although it was clearly a historic step for Croatia, many – even within Croatia – claimed that the decision was rushed, and that proper steps should have been taken prior to accession. They cited a weak economy with little export capacity, an issue that plagues Kosovo as well. Parallels can be drawn in the labor force between Croatia and Kosovo as well; Croatia, at the time of accession, had an 18% unemployment rate.³⁷ Similarly, Kosovo currently has an unemployment rate of 16.3%, according to a study conducted by Eurostat standards³⁸. Given that the European Union is viewed as more of an economic union, a country with low export value should maintain a distance from the EU until it has a better standing in this area. Kosovo’s primary export partners are Albania, India, Serbia and Northern Macedonia, with a cumulative share of approximately 40% of all exports³⁹. While strong policies are being adopted unquestionably as recommended by the European Union, these policies would be more effective if data-driven decision making would be implemented on a larger scale than it currently is. As of 2019, Kosovo’s balance of trade indicator is at approximately -250 million euros, and the trend has been negative

³⁶ George Kostakis, The "Europeanization" of the Western Balkans; Is European Conditionality Fostering Democracy?

³⁷ EuroNews. 2012. Croatia’s Euro Leap. Retrieved from: <https://www.euronews.com/2012/01/23/croatia-s-eu-leap>

³⁸ Millenium Foundation Kosovo, Kosovo Labor Force and Time Use Study Research Report (2018)

³⁹ Agency of Statistics of Kosovo. ASKDATA. Retrieved from: <http://askdata.rks-gov.net/PXWeb/pxweb/sq/askdata/>

with an accelerating rate⁴⁰. Although from an economical perspective it appears that Kosovo ought to be adopting laws that strengthen the export capacity and scrutinize the European Union's recommendations, there are many cases when the recommendations by the EU have been very fruitful. One of the primary concerns of the European Union that has had significant positive impact on Kosovo is the fight against informal economy; the EU promotes strengthening infrastructure for existing companies and paving the way for new businesses. On the European Union's guidance, Kosovo has begun some strong reforms in terms of fiscal responsibility, including plans to set up an independent fiscal oversight body that would provide further consultations with all stakeholders, including the European Union⁴¹. Policy changes, especially those pertaining to taxes and customs, are being debated and scrutinized heavily in conjunction with businesses in an attempt to take approaches that foster employment growth and economic activity. In the same spirit, reforms are being made to try and minimize contact between taxpayers and tax-officials in hope of reducing human error, potential illegal behavior and other factors. In 2018, Kosovo had a good fiscal year in terms of execution, with only a 1.02% deficit of the estimated GDP⁴².

While these numbers show a positive outlook on the work of the government, the European Union has deemed that although economic growth has been robust, there are still areas left for improvement. In terms of government spending and general fiscal responsibility, the EU stated that Kosovo has had good adherence to plans but critiqued its social benefits for special groups and public wages that hinder private employment⁴³. In terms of general democracy and EU-related legislation, Kosovo has been lauded for implementing reforms regarding rule of law and public administration but was critiqued for decisions such as the 100% tariff placed on imports from Serbia and Bosnia and Herzegovina. This tariff is deemed to be a violation of the Central European Free Trade Agreement (CEFTA) and is in direct opposition to the Stabilization Association Agreement (SAA)⁴⁴. Increasing the number of deputy ministers and the general size of the government has been seen as counter-productive and is voiced clearly in the EC Country Report. Lack quorum which leads to delays in adopting laws is also seen as a weakness in the democratic process. When considering the safety of the population, the European Union feels discomfort with the situation in the north of Kosovo, where there are still present tensions between the Kosovar and Serbian populations. In terms of elections, Kosovo has been offered many recommendations by the European Union, primarily as a result of the

⁴⁰ Trading Economics. Balance of Trade. Retrieved from: <https://tradingeconomics.com/kosovo/balance-of-trade>

⁴¹ MFK, Economic Reform Programme (ERP) 2019-2021

⁴² MFK, Economic Reform Programme (ERP) 2019-2021

⁴³ European Commission. Key findings of the 2019 Report on Kosovo. Retrieved from: https://europa.eu/rapid/press-release_COUNTRY-19-2776_en.htm

⁴⁴ EU Commission, Kosovo 2019 Report

2014 and 2017 elections, however these have not been addressed by Kosovo yet. The EU cites long standing and historical weakness in effective oversight of campaign finances, worrying underrepresentation of women in political parties, inaccuracies of voting lists and a straightforward defective voting scheme for the diaspora. In 2019, Kosovo has been lauded for its ability to coherently gain momentum in adopting laws and policies in regard to key strategic issues such as the border demarcation issue with Montenegro and various European Union related legislative reforms. The Parliament is primarily critiqued for non-effective planning of sessions and associated procedures which result in further delays in democratic activity. One of the key mechanisms of democracy, that of the parliamentary oversight to the executive, has been critiqued heavily, and deemed weak by the European Union – this is primarily because the government dragged questions on, does not provide answers in a timely manner, and the Assembly has been deemed lacking in expertise in the various committees. In terms of governance, the general issues with Kosovo were, and historically are, the issue of underrepresentation of women in local level policymaking, with the year 2019 having numbers such as 100% of mayors in Kosovo being men, and around 85% of all chairpersons in municipal assemblies being men. In the spirit of Europeanization and proper adherence to laws of gender equality, many improvements were noticed such as a majority of the municipal assembly commissions having equal distribution of men and women. Historically, Kosovo has also suffered from a weak local governance that was primarily being heavily influenced by the central government, with low efficiency oversight being one of the prime actors in this situation. Despite many EU-related laws being adopted, this issue persists and is cited by the report to be due to lack of effective enforcement and improper following of procedures which impair the quality of local governance. In terms of cooperation between civil society and the government, Kosovo has had positive feedback even in retrospect, and starting from 2019 and onwards a new strategy has been prepared that will only strengthen participation and further secure the sustainability of the organizations as a hope for better advocacy. In the same spirit, an increase in civil society monitoring is widely accepted as gravitation towards European Union reforms and strong progress towards the European path. While most of the assessments in regard to civil society have been positive both in the latest report and historically, one issue still persists and is deemed to be of rather significant importance – namely the issue of transparency of public funds disbursement. In accordance with Europeanization and proper oversight, various ministries and municipalities have indeed improved this area, however, many ministries including some key ones lack proper mechanisms for handling this issue. Despite the European Union’s consistent recommendations in this area, there are still questionable practices, especially in grant awarding decisions. The key issues are primarily those of risk of conflict of interest and hopes of increasing professionalism and transparency in evaluations. According to the laws of Kosovo, specifically pertaining to NGOs, there are specific directives that NGOs must follow in order to operate appropriately within the bounds of Kosovo. There is an annual report that needs to be submitted to the proper organs which contains various parameters including activities and achievements complemented by financial reports. To prevent any possible issues and human error, and in the spirit of Europeanization, there

is a supplemental rule that demands NGOs which have exceeded revenues of 100,000 euros (one hundred thousand) to submit a signed memorandum by an external analyst to confirm logical consistency in the financial flow.

In terms of public administration, as voiced in the earlier paragraphs, the large size of the government is an issue that has been deemed worrisome by the European Union and counterproductive to the European path. A new law adopted for wages for the public sector was lauded for being a more transparent system but its impact on the budget has been questioned. Historically, the European Union has voiced concerns in the selection process of senior positions in civil service, and while regulations were recently passed for this issue, political influence and cronyism still remains an issue and has been outlined heavily in the country report. In general, the stronger concern by the EU, both historically and recently, has been that weak inter-ministerial cooperation has been hindering advancement on various issues. Kosovo has been recommended to promote evidence-based policymaking and focus on inclusive policies, especially since there is a concern for special-interest based policymaking in the country. Support for reforms, especially in the public administration, has been deemed positive and reassuring.

In conclusion, Kosovo has had a strong path towards Europeanization, albeit the path itself is clouded. From a historical perspective, Kosovo and its population are generally parochial in political culture, therefore the risk of political parties misusing this factor for their own agendas is a real issue. However, the intensive role of civil society has improved significantly over the last few years and has been lauded by the European Union, therefore a stronger civil society monitoring program could, in principle, relieve some of the symptoms of a parochial political culture with subject tendencies. As a general recommendation for a stronger Europeanization process and better EU actorness, it would be logical for the EU to prepare clearer country-specific plans.

Albania

Introduction

Albania immediately following the fall of totalitarian regime, and establishment of the democracy initiated the relationship with the then-known European Economic Community (European Union today) on June 1991. Almost 12 year later, in 2003 Albania opened negotiations with the EU concerning Stabilization and Association Agreement. This Agreement was signed between Albania and EU in 2006 and entered into force three years later, in 2009. At that same year, in 28 April 2009 Albania applied formally for membership in the European Union. SAA represents the contract between the EU and Albania, implying that the country (Albania) is committed to align its national legal framework with the EU acquis covering all the policy areas known as Chapters of EU acquis. It is essential to mention that after the accession of Romania and Bulgaria, when the general perception was that happened to fast and these two countries and EU both faced a lot of difficulties, have led the EU to adopt stricter approach concerning the criteria for membership since 2007. Thus European commission has put in focus factors that might affect the democracy in countries of the region like corruption and/or organised crime. "They (corruption and organised crime) are key issues for the functioning of democracy and economy, they impinge on EU's own interest and security, and hugely impact the EU accession process. They also affect, sometimes in a disproportionate manner, public perceptions of enlargement in the EU"⁴⁵.

One year later, in December 2010 the opinion's Commission about the application of the country was to not grant the candidate status, and listed 12 key priorities that the country needed to fulfil. At the same year, Albania was granted Visa liberalization with EU which entered into force on December 2010, being the last country together with Bosnia & Herzegovina (except Kosovo) to be granted visa liberalisation in the region. The year 2014 was an important year for Albania, as the Council accepted the Commission recommendation on granting Albania the candidate status. This was an important memento for Albania to further continue its process of integration in the Union. When the new Commission (2014-2019) of President Jean-Claude Juncker was adopted, was seen that the enlargement was not one of Commission's priority while Juncker himself had stated that "no further enlargement will take place in the 5 next years". This shift away from EU enlargement has come because it seemed that the EU during that time was facing a lot of internal problems and issues like: financial crisis and austerity measures for some

⁴⁵ European Movement in Albania, Policy paper: Beyond the candidate status – new approach towards EU accession, 2012, pg. 7

EU countries, the 'so-called refugee crisis' or migration crisis, rise of euroscepticism and populism against EU, while BREXIT was right in the corner.

In 2017, in which no Enlargement Strategy, nor the Enlargement package with country reports was published, the European Commission started to give its first signals that its policy towards enlargement and the region was starting to change. Even though it was stipulated that no country will join EU during this Commission mandate yet EU started to show its commitment on European perspective of the Balkans. Thus, in 2018 the Commission published its Enlargement Strategy of 2018: "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans" and country reports for each Balkan state. In this same year, Commission recommended to the Council the opening of negotiations for Albania and North Macedonia, yet the Council of EU concluded on 26 June 2018, that the accession negotiations won't be opening that year, but another decision would be taken later on. The Council of EU "welcomes and is aware of the progress Albania has made which is made with respect to fulfilling the five remaining key priorities the Union has set for Albania, namely: i) fight against corruption; ii) fight against organised crime; iii) reform of the judiciary; iv) public administration reform; and v) protection of human rights, including rights of persons belonging to minorities and implementation of property rights."⁴⁶

In 29 May of 2019, the Commission in the framework of publishing the new Strategy for Enlargement and country reports for Balkan region reconfirmed its recommendation for the opening of the negotiations. The Council in its conclusions one month later stated that they will postpone the response at least until October of 2019: "the Council takes good note of the Commission's recommendation to open accession negotiations with the Republic of North Macedonia and Albania based on its positive evaluation of the progress made and of the fulfilment of the conditions identified by the Council. In light of the limited time available and the importance of the matter, the Council will revert to the issue with a view to reaching a clear and substantive decision as soon as possible and no later than October 2019."⁴⁷

⁴⁶ Council of EU conclusions 2018

⁴⁷ Council of EU conclusions 2019 <https://www.consilium.europa.eu/en/press/press-releases/2019/06/18/council-conclusions-on-enlargement-and-stabilisation-and-association-process/>

Table 4: Milestones of EU-Albania relation

17-18 October 2019	Council decision on whether opening negotiations for Albania
June 2019	Council decided to give its decision of opening negotiations no later than October 2019
May 2019	EC reconfirms its position on opening negotiations with Albania
26 June 2018	The Council agrees to respond positively to the progress made by Albania and sets out the path towards opening the accession negotiations in June 2019.
27 June 2014	The Council of EU decides to grant Albania candidate status, subject to endorsement by the European Council. The European Council meeting on 26-27 June 2014 decided that Albania was a candidate country.
16 October 2013	The Commission, based in the progress achieved recommends to the European Council the granting of candidate status to Albania and the country should continue to take action in the fight against corruption.
9 November 2010	The EC delivers its Opinion on Albania's Application for EU Membership, neither granting candidate status, nor proposing to open negotiations. The Opinion set out 12 key priorities to be addressed by Albania in order to mark progress in its European path
8 November 2010	Endorsement by the Council of the decision to grant visa liberalisation to Albanian citizens.
28 April 2009	The Albanian government submits its application for the EU Membership.
1 April 2009	Entry into force of the Stabilization and Association Agreement (SAA).
12 June 2006	Signature of the SAA between the European Communities and its Member States, of the one part, and Albania, on the other one.
21 June 2003	The Thessaloniki Summit confirms the EU perspective of the Western Balkan countries well as the SAP as the policy framework of their EU course.
June 1991	Establishment of diplomatic relations between Albania and the European Economic Community.

An essential element followed by the Council of Ministers decision in June 2018, was the start of the pre-screening process, a preparatory work for screening the national legislation with the EU acquis. Thus, even though the screening process starts normally after opening of negotiations with the country, in case of Albania and North Macedonia it is decided that a pre-screening process to initiate. This process includes some phases, starting with the explanatory meetings between representatives of Albania including Minister and representatives from Ministry of Europe and Foreign Affairs, from relevant Ministries or from other public agencies in accordance with the Chapter discussed, and EU experts and representatives of that certain field.

The first chapters discussed in framework of pre-screening process for Albania were Chapter 23: Judiciary and Human Rights, and Chapter 24: Justice, Freedom, Security. In this

regard, the first explanatory meetings were organized concerning these two chapters, explanatory meeting for Chapter 23, organized on 27-28 September 2018 as the first meeting and, the meeting regarding Chapter 24 on 12-15 November 2018. To date there are only 3 chapters among 34 whose meeting have not been organized yet, but they are planned to be organized in the last week of September 2019.⁴⁸ After the explanatory meeting a bilateral meeting for each chapter will be organized as a next phase of screening process, in which Albania has to show and introduce the level of approximation and transposition of national legislation with EU acquis and also action-plans and strategies to further develop this process for each chapter.

Narrative on reforms

EU during 2000' shifted its attention on Western Balkans countries, introducing its enlargement policy and European prospective of the region. This policy meant first of all, the increase of the EU in the region as a political and financial actor which now introduced a set of conditions and criteria that Balkan countries needed to achieve and fulfil in order to be part of the Union. This enlargement process is driven "by a set of material rewards, most notably promise membership stages and assistance, which enable the EU side to impose conditions on target countries".⁴⁹ In this regard, the conditions are combined with reward tools like: aid and assistance in technical and financial dimension, progress on stages of membership and guidelines on reforms and tackling the issues. This 'stick and carrot' policy have made possible for EU to be a relevant actor on the region and to be involved even in the most domestic issues and processes of the countries.

There are several examples when EU and other international actors have put conditions to be fulfilled by the domestic actors, as a prerequisite to be granted a reward. One of these examples is the agreement between two main political parties in Albania in June 2002, Socialist Party (SP) with its leader Fatos Nano (in that period the prime minister of Albania) and Democratic party (DP) lead by Sali Berisha. The agreement reached in June 2002, came "under international pressure"⁵⁰ to nominate a consensual president and the EU made the election of the president "one of its requirements before opening negotiations that would lead to a Stabilization and Association Agreement"⁵¹. Thus, in 24 June 2002 – Aleksandër Moisiu was elected as president, as a consensus choice by both parties. EU was in reality the main actor that brokered such agreement with the core aim to end the boycott of local government institutions by the opposition party DP that had paralysed the reformation process, and to initiate a political dialogue between these

⁴⁸ Official webpage of Ministry for Europe and Foreign Affairs, <http://punetejashtme.gov.al/pre-screening/>

⁴⁹ Elbasani A, Reforming the Public Administration in Albania: Europeanization or Business as Usual?,

⁵⁰ Albania: State of the Nation 2003, ICG Balkans Report N°140, 11 March 2003

⁵¹ Nations in Transit Report on Albania 2003

parties. Only after this agreement was reached, the EU started the preliminary negotiations on SAA with Albania, more specifically in February 2003.

This agreement, known as Nano-Berisha agreement or SP-DP agreement started with the election of a consensual president and continued with nominating and jointly selecting heads of institutions such as: Secret Service of Albania, the State Control Commission, the Central Election Commission, the Steering Council of the Radio and Television and the Radio-Television National Council, while reaching an informal agreement on electoral reform.

Yet, in the beginning of 2003 traditional divisions had begun to re-emerge in advance of the October 2003 local elections, and harsh exchanged reappeared between the party leaders towards each-other.⁵² Thus this agreement did not last long, showing that it was fragile and political parties were not actually really involved in reaching reforms and accelerating the development of the country, but were more worried about their own political interest. The conflict between leaders of the parties has always been harsh with intense rhetoric and dire accusations against each-other of involvement in organized crime, trafficking or corruption. This kind of dispute which has undergone for years it is a substantial feature of political culture. In this regard, it is created the perception that political parties and their own leaders are more interested in continuing this dispute and hinder the progress on reforms and EU integration process the country is making.

The boycotts of parliament of local institutions, not accepting the results of the elections, not voting laws that need a major consensus are actions and mechanisms used in a repetitive way by both parties, mostly when they are in opposition. This agreement even though short-lasting, should be assessed as a positive example that when the will is there and when international actors play their role, developments may occur. The agreement of 2002, was followed by other agreements like the one in 2008 or in 2012. These agreements as well did not have long-lasting impacts and were initiated by the international actors in Albania, but unfortunately the political actors were not fully engaged and involved in reaching the conditions.

Europeanization and Democracy

European Commission issued an Opinion in 2010 about Albania's membership application in the European Union. As assessing that the country is not ready yet, the Commission listed 12 key priorities that the country had to focus its work on, in order to fulfil the criteria. In order to fulfil such obligations and requirement, the EU has supported Albania through this process of Europeanization and democratization, with various financial instruments adopted over the years starting with: a) PHARE (1991-2000) while the total

⁵² Albania: State of the Nation 2003, ICG Balkans Report N°140, 11 March 2003

fund allocated for Albania reached 631.5 million Euro, focused on strengthening of capacity of public administration which is still one of the key priorities not fulfilled yet.

b) CARDS was adopted in 2000 and was implemented in Albania during the period 2001-2006, while the total allocation of funding for the country was: 282.10 million Euro. CARDS aimed to helping the Balkan region in four main areas: - democratic stabilisation and reconciliation; -institutional and legislative development, including harmonisation with EU policies and legal acts; -sustainable economic and social development, including regional cooperation. Concerning Albania, CARDS implemented projects supporting 5 sectors like: 1. Justice and Home Affairs - focused on Justice and Asylum/Border Management; 2. Administrative Capacity Building being attentive on Public Administration Reform; 3.Economic and Social Development- with main focus Vocational Education & Training and Internal market; 4.Environment and Natural Resources and; 5.Civil Society Development. Only for the first sector – Justice and Home Affairs fund granted was 121 million Euro⁵³ or 43% of all total fund. c) Instrument for Pre-Accession Assistance (IPA) was introduced in 2007, and replaced all other EU financial instruments supporting all Western Balkan countries and Turkey. Its main aim is to support the countries to fulfil the obligations and reach the standards regarding political and economic criteria, as well as process of harmonization of national law with the European one. Thus, IPA I of the period 2007-2013 had in focus five priority fields: Transition Assistance and Institutional Building; Regional and Cross-Border Co-operation; Regional Development; Human Resources Development; Rural Development. Albania has benefited from two of IPA components 1) Transition Assistance and Institution Building and 2)Cross-border cooperation receiving a total allocation of approximately 594 million €. ⁵⁴ Currently IPA II of the period 2014-2020, whose funding allocation is: €649.4 million as provided by official webpage of European Commission. The priority sectors for this period are more than in IPA I, they are 9, while two of them are similar with IPA I: Democracy & good governance; Rule of law and fundamental rights; Environment and climate action; Transport; Competitiveness and Innovation; Education, Employment and Social Policies; Agriculture and Rural development; Regional and territorial cooperation.

Among these 12 priorities, since 2014, only 5 of them are still not fully achieved by Albania including:⁵⁵ **1. Reform of Public administration** – with the need to amend the civil service law, strengthening de-politization and professionalism and to make possible a merit-based process on appointing and promoting the public administration professionals; **2.**

⁵³ European Commission, Ad Hoc Evaluation of the CARDS Programmes (Albania), 2008,

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/ad_hoc_albania_cards_final_report_171208_en.pdf, pg. 19

⁵⁴ Report of EC 2014 for Albania https://drive.google.com/file/d/1_Fht2xMlqGzqfU7E5If7Szc_JZCVqdQN/view

⁵⁵ European Commission Opinion 2010, 12 key priorities -

<https://drive.google.com/file/d/1jzkmiNLQR8K30z0dArlirvrySe-hm-L2/view>

Fight against corruption - The opinion of Commission assessed as substantial to have an anti-corruption strategy to remove all obstacles during investigation, to have a solid track-record in corruption especially in high level cases. **3. Fight against organised crime** – even in this field a solid track record should be built, while an increased cooperation between national institutions among them and with EU is important for better coordination. **4. Judiciary Reform** – this reform is essential to strengthen rule of law and to ensure: independence, accountability and efficiency of the judiciary system. **5. Fundamental Rights** – concrete steps are needed to make sure the protection of human rights especially to vulnerable groups like women, Roma community and children, while implementing anti-discrimination policies.

These five priorities are part of the National Strategy for Development and Integration 2014-2020 (NSDI II) of the country. This Strategy has stated that the main goal of Albania is EU integration, implying that all the reforms and policies taken have a common goal, to reach the final destination which is EU. This is made clear even by the name of Strategy in which Development of the country is interlinked with the Integration in EU.

As seen from two tables below Albania is *moderately prepared*⁵⁶ only regarding Priority: Reform on Public Administration while in 4 others has *some level of preparation*. During 2015 and 2016 for all priorities (except Public Administration in 2015 and Judiciary reform in 2016) the country has made *some progress* in words of European Commission. On the other hand, the Commission has assessed in its report of 2019 that Albania has made *good progress* concerning Judiciary Reform (country has made good progress also in 2018 and 2016), in fights against organised crime and fight against corruption, which is assessed with good progress even in 2018. Last year only one priority: Fundamental Rights is assessed with *limited progress*, but only regarding freedom of media, for other types of fundamental rights Commission has not specified the level of progress.

⁵⁶ European Commission in its individual country reports assesses the *level of preparation* and of the *progress* for each chapter and priority of the country. The methodology used by the Commission is: There are five *stages of preparation*: 1) Early stage; 2) Some level of preparation; 3) Moderately prepared; 4) Good level of preparation; 5) High level of preparation and there are five *levels of progress*: 1) No progress; 2) Limited progress; 3) Some progress; 4) Good progress; 5) Substantial progress.

Table 5: Level of Preparation of Albania concerning 5 key priorities

5 priorities	2019	2018	2016	2015
1.Public Administration Reform	moderately prepared	moderately prepared	moderately prepared	moderately prepared
2.Fight against corruption	Some level of preparation	Some level of preparation	Some level of preparation	some level of preparation
3.Figh against organised crime	Some level of preparation	Some level of preparation	Some level of preparation	some level of preparation
4.Judiciary reform	Some level of preparation	Some level of preparation	some level of preparation	early stage of preparation.
5.Fundamental rights	Some level of preparation	Some level of preparation	Some level of preparation	Some level of preparation

Source: EC Reports for Albania (2015;2016;2018;2019)⁵⁷

Table 6: Assessed progress of Albania concerning 5 key priorities

5 priorities	2019	2018	2016	2015
1.Public Administration Reform	Some progress	Some progress	Some progress	Good progress
2.Fight against corruption	Good progress	Good progress	Some progress	Some progress
3.Figh against organised crime	Good progress	Some progress	Some progress	Some progress
4.Judiciary reform	Good progress	Good progress	Good progress	Some progress
5.Fundamental rights	Limited progress (reported only for Freedom of expression)	Some progress	Some progress	Some progress

Source: EC Reports for Albania (2015; 2016; 2018; 2019)

⁵⁷ European Commission did not publish any country report for year 2017

How the reformation process is going concerning 5 key priorities?

The term 'reform' is mostly used in every sector in Albania. The strategies and action plans the government has adopted and are being implemented, the discussion with experts in national and international level, statements by political actors or EU representatives always ask, require and/or promote the 'reformation' of all those sectors that are not 'doing well'. Nowadays in Albania there are the: Reform of Public Administration, Judiciary Reform, Territorial-Administrative Reform, Reform of Higher Education, Energetic Reform etc. Yet, even though all the sectors are undergoing transformative changes and reformations, Albania is not ready to be part of EU. In this regard, one can question whether these reforms did not have or are not having the expected and desired results; or were they not implemented effectively; or their adoption was not in accordance with the real issues and matters that need to be solved, making their effect null and not producing any substantial positive change. As the report of 2019 shows there is only one chapter where Albania has a *good level of preparation* (Chapter 31: Foreign, Security and Defence Policy) and 20 chapters are in the middle – having *some level of preparation*, and no chapters are in *high level of preparation*. Moreover only two Chapters have seen *good progress*: Chapter 23: Judiciary and Fundamental Rights; and Chapter 11: Agriculture and Rural Development, while in the majority of chapters Albania has had *some progress*.

5 key priorities set by European Commission, as a condition for Albania to open the accession negotiations, even though it is witnessed some progress or good progress yet so far this process has not been enough for the EU to give the green light for the country on opening the negotiations.

Efforts on ***Reforming Public Administration*** continue in the country. The main aim to ensure efficiency, transparency, accountability, depoliticization and professionalism is yet to be reached. Government, to reach these objectives set by EU, has planned to take actions on Public Finance Management, Decentralization, Quality of Public Services, Anti-corruption etc., which are included in the Intersectional Strategy on Public Administration Reform (PAR 2015-2020). This Strategy is composed by four major sections: 1) policymaking and quality of legislation; 2) organization and function of PA; 3) Civil Service: Management of Human Resources; 4) Administrative procedure and monitoring. But yet there are seen some challenges, as evidenced by this Strategy: lack of capacities of public administration in number but even lack of their skills and capabilities; lack of financial resources; there is the issue of overlapping of the responsibilities among institutions and agencies or sometimes there are issues and matters when a specific and responsible agency/institution is missing; high bureaucracy, long procedures and complicated ones that increases the incentives of citizens to use corruption in order to complete these procedures.

In this regard, adoption of Law No. 152/2013 on Public Service (amended) even though in accordance with all requirements set by EU, is really hard to be implemented because of

new procedures adopted that are new and unknown by the responsible staff and somehow complex and complicated. Moreover, the Strategy reports that the implementation of this law started immediately after its adoption, leaving no room for the staff that will implement it to be trained and to be acquainted with all new procedures and new elements this legislation was providing.⁵⁸

This concrete example shows that there are cases where adoption of laws and their implementation initiates even though the human or institutional capacities are missing and the responsible institutions are not able to implement these laws causing more negative effects than positive ones. In this way, it is assessed that that adoption of laws and legislation happens only because it was set as a criteria by the EU, even though that structures and mechanisms necessary to make possible the effective implementation of these laws are lacking. Thus, as reporting the adoption of a number of laws in harmonization with EU *acquis* might look good 'on paper', the fact that some of them cannot be implemented in reality shows that adoption process does not go hand to hand with establishing of new structures or increasing the capacities of existing ones.

Fight against corruption is another key priority for Albania. Albania has suffered a lot when it comes to corruption in all sectors of society, starting from high level politics, to judiciary system, public administration, education and health sector as well, when people 'are forced' or 'are used' to bribe in order to receive the service they in most of the cases deserve. Even though, Albania is assessed as a country with *some level of preparation* regarding fight against corruption, while many reforms are under way and Albania seems to have *had good progress* in two last years, the perception of citizens is very different. Among Albanian citizens 69% of them report corruption as „widespread“ in the public sector and 49% concede that they had given a bribe or a gift „in order to solve a problem“.⁵⁹ According, to Freedom House, in its yearly report of Corruption Perception Index Albania is ranked 99th (among 180 countries) in 2018. Furthermore for four last years (2016-2018) the score of Albania has varied from 39 in 2016 to 38 in 2017 and 36 in 2018.⁶⁰ Balkan Barometer⁶¹ additionally shows that 50% of respondents has reported that had bribed in past 12 months in health and medical services, 13% report of bribing in educational system and the same percentage has reported to bribe in judiciary system. These values are the highest for each sector in all the region of Balkan. It is interesting that three sectors that the highest number of respondents think are most corrupt in country are: Political Parties (87); Health and Medical System (87%) and Justice system (85%). Thus, for the citizens Albania remains a very corrupted country, even though there are listed a number

⁵⁸ PAR 2015-2020, <http://dap.gov.al/publikime/dokumenta-strategjik/64-strategjia-ndersektoriale-e-reformes-ne-administraten-publike-2015-2020>

⁵⁹ NSDI 2014-2020

⁶⁰ Score of Corruption Perception Index 2018 varies from 0 (highly corrupt) to 100 (Very clean), while the first country is the least corrupt and 180-th country is the most corrupt.

⁶¹ Balkan Barometer 2019 <https://www.rcc.int/pubs/89/balkan-barometer-2019-public-opinion-survey>

of positive efforts and 'progress' as stated by European Commission. There is a list of adopted and amended laws during recent years, like: the Law on the Declaration and Audit of Assets, the Law on Public Procurement, Code of Conduct for members of Parliament and Intersectional Strategy anti-Corruption 2015-2020 with its new Action Plan 2018-2020⁶². As Nation in transit report assessed this strategy is focused only concerning administrative corruption, thus neglecting political corruption and what is called: state capture. Concerning state capture there is still missing a regulation for lobbying, restrictions on public officials to move to private sector after public life or the fact that the legal framework for conflicts of interest is not suitable. The Strategy has failed to address any of these matters.⁶³

The process of adoption of new laws is actually accompanied with the establishment of new institutions and agencies specialised on anti-corruption like (even though there has been a delay in establishing them due to lack of political cooperation and opposition boycott in 2017). These institutions include: High Prosecutorial Council (HPC) , Special Anti-Corruption and Organised Crime Structure (SPAK) and National Bureau of Investigation (NBI). Commission has assessed as good progress the strengthening of the track record while counting the number of cases that have been reported. As Albanian government reports during the period May-December 2018 more than 50 institutions are monitored and the Anti-Corruption Task Force has recommended: 108 suspensions from civil service and 36 criminal allegations. Yet this assessment provided by EU is more quantitative, than a qualitative and thorough one. Thus, stating that the country has made progress because the number of allegations or prosecutions is increased or is higher, does not actually show the real progress in fighting corruption. These numbers would have had a meaning if: a)they are compared as a percentage of the total number of people investigated and prosecuted; b)the profile of people accused and sent in front of the courts is evidenced – whether are they in high-level positions; and more importantly; c)the correlation between the severity of the crime and the level of the punishment were to be analysed and assessed. Report of 2019 of EC reports that “there were 102 new cases against high-level state officials sent to prosecution in 2018 (7 persons indicted), increased compared to 61 in 2017 (10 persons indicted).”⁶⁴ Yet the Report expresses the concern that “these frequent investigations in recent years have so far not resulted in a substantial number of final convictions of high-ranking state officials. This risks fostering a culture of impunity.”⁶⁵ As the case of former minister of Interior in Albania showed. Even though he

⁶² EC report 2019 - <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

⁶³ Nation in Transit Albania report 2018 - https://freedomhouse.org/sites/default/files/NiT2018_Albania_0.pdf, pg. 10

⁶⁴ EC report 2019 - <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf> pg.19

⁶⁵ Ibidem

was charged with serious accusations such as trafficking of narcotics and being part of an organised criminal groups when prosecutors asked for at least 12 years of sentence in prison, the former minister was charged guilty by the court only for power abuse.

“Albania has some level of preparation in the **fight against organised crime**.”- states EC report. An increase of international police cooperation is observed and is noticed that in last year almost no cultivation of cannabis has taken place in the territory of the country. Yet, it looks like the Commission fails to analyse in a qualitative way the real progress of the country in this field. As report mentions “several police operations resulted in multiple arrests, and prosecution of known leaders of organised criminal groups” yet this does not show in reality the real progress. This because the number of people arrested might be a small percentage of the ones that should be arrested; the increase of arrests and prosecutions might come because in the same level the organized crime has been increasing as well. Although, the report highlights the gap that there is between cases and final convictions. “As there are counted 51 new cases in 2018, only one cases has had the final conviction”.⁶⁶ What is missing when it comes to fight against organised crime is that fighting it should be the last measure, while is essential to have all the strategies and actions to prevent it and to reduce the incentives of people to be part of such groups and to be engaged in such activities by adopting new laws and new mechanisms.

Judiciary reform is one of the most important reforms the country has undergone during its 30 years of democracy. This Reform initiating in 2016 has brought Constitutional changes and adoption of new laws (20 laws have been adopted so far from 27 legal proposals in total), has established new institutions like High Judicial Council, High Prosecutorial Council and the Justice Appointment Council, while changing the function and the role for the existing ones. These changes are aimed to strengthen the independence, transparency and accountability of the justice system, whereas is essential to mention that this reform is directly linked with all other priorities. Commission report assesses that Albania has some level of preparation and has made good progress. One of the processes which has been more in focus in the framework of the reform is the so-called ‘vetting process’ which is the re-evaluation of all judges and prosecutors of Albanian justice system. This means that 358 full-time judges and 336 full-time prosecutors (almost 800 magistrates) are undergoing the vetting process. Law on vetting process, actually was the first law to be adopted in the framework of Justice Reform in Albania. There are three elements that are evaluated for each person: 1) a) financial assets valuation; b) background check; c) Proficiency evaluation. So far 140 files have been processed, resulting in 88 dismissals/resignations of magistrates from office and 53 confirmations, most of the cases have not passed the criteria of justifying their financial assets.⁶⁷ It is relevant to mention that EU with the International Monitoring Operation (IMO) composed of international experts from EU and USA (European and Trans-Atlantic partners) is an

⁶⁶ Ibid, pg.35

⁶⁷ EC report 2019

important actor of this process, its role to monitor and oversee all the process. Their deployment in Albania was constitutionally foreseen as seen as crucial to make the process credible. IMOS's role is twofold: 1) It oversees the process of creation of Vetting institutions and gives recommendations on process of selection of candidates to these organs and 2) After the establishment of these bodies international observers of IMO will monitor the process of vetting until all the judiciary members will be evaluated. To conclude, it might be said that IMO is an important actor which oversees and monitor how the procedure of vetting is going and even though it does not have any executive power, it can affect the final decisions and evaluations through its recommendations and suggestions. In this regard, the presence of 'international actors' in the process of vetting and Judiciary reform is assessed by Albanian authorities as necessary (given the fact it is foreseen in the amendments of Constitution) and this shows that: 1) they did not have faith that the reform would be successful if implemented only by Albanian institutions but the international factors was needed; 2) How the trust of citizens is bigger towards international institutions like EU and USA, compared to trust towards national actors; 3) International actors more specifically EU plays still a role of 'guardian' in Albania, which needs EU approval regarding the steps it takes towards consolidation of democracy.

Fundamental rights are a peculiar element that Albania needs to pay attention regarding the measures and actions in this direction. Albania has ratified main international legal instruments on Human Rights and has harmonized its main legislation with European standards. Yet it has to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Convention on Economic, Social and Cultural Rights.⁶⁸ As Commission Report of 2019 states the sectors where Albania is most lacking are: 1) Improvement of institutional mechanisms on further improve institutional mechanisms on protection vulnerable groups like: domestic violence victims, children, convicted, women and guaranteeing social rights. 2) Adoption of various legal acts or sub-legal acts in issues related with anti-discrimination measures, social housing or protection of national minorities. 3) Crucial progress and further measures are needed especially concerning property rights, while is needed advancement on revision of property deeds, compensation scheme, digitalisation and mapping of property. 4) Peculiar attention on freedom of expression/freedom of thought. In this field Albania's progress was assessed as limited, as intimidating language or threats against journalists are being noticed, with 13 cases against journalists were registered in first instance courts during the reporting year. Moreover, implementation of legislation of freedom of expression combined with other legal framework such as Labour Code is not fully achieved. Self-censorship is a concern in Albania. Journalists are prone to self-censorship because of threats and intimidation in one hand, but even because their job is not secure (many of them not having a contract) which means that if they go against the editorial

⁶⁸ EC Report 2019 - <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>, pg.22

direction of the media they work for (which in most of the cases is subject of political and financial interest) they can lose their job.

Democracy and EU integration

Albania case: Democratization for the sake of Europeanization?

Albania is still one of the countries where a majority of citizens support EU integration. Compared with other countries in the Region, according to Balkan Barometer⁶⁹ of 2019 86% of Albanians believe that EU membership would be a good thing for the economy of country (which is actually a high number) compared to second country with highest support, Kosovo that has only 69%. Moreover only 2% of Albanians think that EU integration would be a bad thing, which is to say an insignificant number. In another question on what membership would mean to the citizens, 1% of Albanians sees EU membership as a bad or no positive thing, which is the lowest value compared to other countries of the region. Albanian citizens aspire to be part of the family as soon as possible, while they associate EU membership with economic prosperity, freedom to work and study and peace and stability. It is interesting to mention that the support and aspiration to be part of EU has still remained high in Albania, even though the process is not going as fast as citizens would want to. 5 years have passed, since Albania was granted candidate status, and the country is still expecting to move on to the next stage: Opening of Negotiations, while the Council has yet to decide on 17-18 October 2019.

The integration process of the country is characterised by what is known as '*stick & carrot policy*' – conditions and rewards going alongside each-other. The candidate status would be granted only after fulfilling 12 key priorities, the accession talks will be opened only after there is seen a substantial progress of 5 key priorities and so forth and so on. Meaning that all the rewards of Albania had come with 'buts', while the country had to show that they are fully engaged in this process and are ready to accomplish all the 'home-works' EU is requiring. This is known as well as 'membership with conditions'. The most recent example is the voting in favour of German Bundestag to open negotiations with Albania on 26 September 2019, yet with 9 conditions the country need to fulfil including: Electoral reform and ongoing of Justice reform and other priorities that are also set up by EU.⁷⁰

There is a debate whether all these reforms and legal/policy developments are happening in Albania with the aim to consolidate the democracy and rule of law in the country, to ensure stability and to protect human rights, that would lead eventually the country to be

⁶⁹ Balkan Barometer 2019 <https://www.rcc.int/pubs/89/balkan-barometer-2019-public-opinion-survey>

⁷⁰ European Western Balkans - <https://europeanwesternbalkans.com/2019/09/27/bundestag-adopts-nine-conditions-for-tirana-and-general-guidelines-for-negotiations/>

part of the EU; or for the sake of this big goal which is EU, the country is undergoing this process of democratization. Consequently, the question raised during this process is whether there exists this correlation between democratization and Europeanization, and if one of them is happening in sake of the other. Are we being Europeanised to strengthen our democracy, or is democratization the necessary tool for EU membership?

Another relevant question that should be analysed is if Europeanization of the country necessarily leads to its own democratization? If not, which are the reasons that make this correlation not to work properly?

In case of Albania there are a number of factors that can cause the misconnection between these two processes:

First, history of our state-building and short association we have with **democracy**. As the country was governed by a totalitarian regime for almost 45 years, since the end of World War II democracy was a new word and an unknown process to Albania. Even though democracy was considered a 'dream', the democratization process has not been easy and has not gone smoothly. Democratization is a transformation of all state structures, its economic, social dimension, not leaving behind the change of values as well. This process is long and there are some stages like establishment of democracy, democratic transition and then democracy consolidation.

After the establishment of democratic regime in 1990 Albania, under his Constitution adopted in 1998, is considered a Parliamentary democracy and had endured a long transition phase of democratic processes, almost 20 years. Only recently, the notion of 'transformation' and 'transit democracy' is not used anymore, although the democracy is not yet consolidated and it is still assessed as fragile, not stable, somehow hybrid or always threatened by other actors and factors. Democracy score of the country was 4.11/7 according to Nations in Transit report of 2018⁷¹. This score is relatively high and almost has not changed during past years yet has been noticed a slight deterioration of democracy in Albania. In Nations in Transit Report words, can be assessed that Albania is partially a democratic country. A lack of democratic culture is reflected in all sectors of society: in institutions and their functioning; to political parties and actors; to citizens and how they agree and accept even those actions that are not actually one hundred percent democratic. No transparency, no accountability, no respect for rule of law and human rights, high levels of corruption and a wide acceptance of corrupt manners have actually been for a long period of time part of 'political culture' of the country. This lack of internalization of democratic values, has hindered the progress on consolidating the democratic process. Even though country has the institutional and legal framework similar

⁷¹ Nations in Transit Report 2018 for Albania <https://freedomhouse.org/report/nations-transit/2018/albania>

The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

to a democratic country, the democratic values are not internally embraced, meaning that a substantive democracy actually is still missing in Albania.

This causes another issue for our country, **lack of institutional capacities** to implement democratic processes in country. Institutional framework is relatively new or changed several times. After the fall of dictatorial regime, alongside with new legal framework the need for a new institutional framework was raised as well. Yet it was almost impossible for the institutional framework characterized by a bureaucracy, inefficiency, corruption, lack of transparency, of accountability or of professionalism to change abruptly its substance and philosophy of work. The institutions have not been able to well-manage the transformation process as they are not able nowadays to manage the complex processes of democratization and Europeanization. As these two processes go hand to hand, the institutions lack their human resources and financial capacities, they are not efficient and effective, bureaucracy hinders the fast-pacing reformation and even though the progress on fighting the corruption in public administration, lack of accountability and transparency in hiring professionals and providing services remains high and is still a major problem. Thus, as EU requires the adoption of new national laws to be compatible with EU acquis, their implementation in some cases is really difficult and almost impossible.

Here we see another problem of 'democratization'/ 'europeanization' of the country. **Harmonization of national legislation with EU** without firstly thoroughly examining the 'Albanian reality' and its compatibility with these laws. As EU records the number of laws adopted by Albania, and assesses them as 'progress' there is missing a detailed and in-depth analysis of how an EU law will be implemented in Albania, first whether there are the grounds for its implementation; and second, are there all the elements needed for its full implementation: institutions, logistical and technical matters, financial capacities, level of information and of understanding of the law by citizens. There have been cases when law adopted 'in framework of EU integration process' have not been implemented in Albania or their effect have been not the one expected.

Democratization and Europeanization processes affect all the sectors of a society and economy, and it is easily understandable that citizens are the ones affected by all these processes and their outcomes. As mentioned, Albanian citizens eagerly support the EU integration, and assess it as a good thing for the country's future, Hitherto, their aspirations and their wishes actually are not correlated positively with their knowledge and understanding of the said process. EU integration process and EU per se are always assessed positively by Albanian citizens, yet little do they know about the long and complex process of EU integration. This lack of information makes impossible for citizens to firstly fully understand the process. Knowing and understanding the process of EU membership, what are the negotiations and what will be negotiated, will there be only positive outcomes and benefits from EU, or are they obligations, responsibilities, 'burdens' that we need to accept would give them the possibility to objectively analyse the process and to be aware of all 'pros' and 'cons' that will be derived by the process of EU

membership. Another important element that should be scrutinised is whether Albania is ready to join the Union, and if no, why and what can be done. All these assessments and analysis are recently missing and rarely discussed in political, social, academic or mediatic sphere.

While EU is more as a 'dream', a perfect place that everyone dreams to reach, no one dares to start analysing it in a more objective, rational and realistic manner. This is essential to get prepared for all the effects a future accession will cause to the country. This 'worship' of EU, makes almost impossible this kind of debate in Albania. In this regards the public and citizens are not objectively informed but EU is something promised and offered by political parties, in spite of political support and electoral votes. All the progress made towards EU without analysing it further is proclaimed as a political victory of the current government, while if the contrary has to happen is then government's fault and responsibility. Political actors use EU integration as a way to gain political collateral. All the political parties, aside their ideologies and interests, are joined in one common aim and goal: to make Albania part of EU, and all their actions and policies are declared to have in mind this final goal. Yet, using this process so much-wanted by Albanians had hinder the real progress of democratization and Europeanization of the country. The reforms and needed amendments are made not in a substantial way, but just to show that the country is engaged in EU integration process and are ready to undertake and accelerate all the needed reforms required by EU. What EU says and asks prevail all the actions and promises of any political party in Albania. If EU requires the adoption/implementation of a reform all the parties should accept it and work towards it, if not that means 'political suicidal' for that actor.

The progress towards EU integration is used by political parties to gain political credit and merits. All the reforms applauded by the Union, are more credits for the current government and vice versa. Thus, EU integration has now more rhetoric than real action and substance. For example, as justice reform is being implemented, the fact that is eagerly supported by the EU and is being assessed as a good progress and achievement for the country, makes almost impossible to have an open and realistic debate about it, concerning its real progress, issues and challenges and most importantly its successful implementation.

Montenegro

Introduction

Montenegro started the most demanding phase of the European integration process, the accession negotiations for EU membership, in 2012. Since then, it has opened thirty-two negotiating chapters,⁷² out of which three have been provisionally closed,⁷³ and changed a number of laws and strategic documents. Having in mind that Montenegro is the only Western Balkans' country, alongside with Serbia, to negotiate membership in the EU, but also because of the dynamics of opening negotiating chapters (only the Chapter 8 remains to be opened)⁷⁴, it is often called an EU accession front-runner.⁷⁵ This position is also contributed by the fact that Montenegro has a small number of open issues and, in general, good relations with all its neighbours. Still, key reforms are missing, particularly in the form of implementing the adopted legal solutions and eliminating inappropriate political influence from the work of institutions. On the one hand, looking in strictly technical sense, Montenegro did the most, compared to other Western Balkan countries, in meeting the formal prerequisites that make the accession process. On the other hand, such achievements have been challenged by constant criticism: by citizens, who do not notice any significant progress in their everyday life; by civil society organisations (CSO), through highlighting serious violations of laws and human rights in its reports; by the European Commission, which indicates in its 2018 Western Balkans Strategy that Montenegro shares same challenges with other countries in the region, including links of the political elite with organized crime groups.⁷⁶ The country continues to face significant obstacles in meeting the EU requirements. The lingering issues which have widely characterised this process are: rule of law deficiency, weak and strongly politicized institutions, followed by a slow speed of political transition and transformation of society

⁷² The *acquis* is divided into 35 chapters, covering the main aspects of European Union policy. Chapter 34 – *Institutions* opens at the end of the negotiation process, when it is certain that the candidate country will become an EU member state, and the last chapter 35 – *Other issues*, contains issues that are not covered by other chapters and need to be addressed, See: European Neighbourhood Policy And Enlargement Negotiations, Chapters of the *Acquis*: https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en

⁷³ 25 - Science and Research, 26 - Education and culture 30 - External relations

⁷⁴ Competition Policy

⁷⁵ "Tusk: Montenegro is 'frontrunner' to join EU", EUobserver, 29 March 2016, <https://euobserver.com/tickers/132827>

⁷⁶ "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans", European Commission, 2018, https://eeas.europa.eu/sites/eeas/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

which have ultimately led to the intensification of political, social and economic structural problems.

Technical Progress vs. Measurable Results

In fulfilling what the EU membership implies, guided by the postulate "quality before speed",⁷⁷ Montenegro has committed itself to aligning its legislation and economy with European standards and principles. Having in mind nature of Europeanization,⁷⁸ it is crucial to bring Montenegrin legislation into a complementary position with the European standards. This process can ultimately be viewed through three prisms: legal, objective and subjective.

Chart 1: Montenegro EU integration process timeline



In line with the new European Commission's methodology and approach, which it has started to apply with the Montenegro's accession negotiations, the chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) have to be opened at the beginning and closed at the end of the process, and to be followed by continuous monitoring and evaluation. The idea behind this approach is to allow the candidate country sufficient time, under the EU's mentorship, to fulfil all the necessary preconditions in order to consolidate its democracy. Therefore, the process, first of all, entails and encompasses the fulfilment of technical requirements with the aim of improving legislation and reforming institutions. However, the main point of the Commission's new approach and its enhanced monitoring is to prevent setbacks, so the candidate country must provide measurable results and a *track record* showing that institutions are independent, the law applies equally to everyone, while corruption is being gradually

⁷⁷ "In the EU accession process Montenegro is guided by the principle of "quality before speed". This means that priority is given to the quality of implemented reforms as opposed to the time-frame, i.e. the length of the process", Montenegro and the EU: <https://www.eu.me/en/montenegro-and-eu/faq>

⁷⁸ The notion *Europeanization* has multiple meanings. It represents both the process of changes within the European Union, policies and international relations, as well as the process of accession to and implementation of European standards in the woven tissue of one country through the diffusion of social models and ideas. See: Damir Banović, "Europeanization as democratization",

eradicated from all levels. An additional mechanism at the European Union's disposal is the introduction of a *balance clause*, which blocks further opening of negotiating chapters if satisfactory results are not recorded under the Chapters 23 and 24. The European Commission in its annual reports also pinpoints key priorities for certain chapters, but without clear assessment whether the previous priorities were tackled.

While Montenegro has achieved results within the so-called the first level of conditionality, such achievements are almost completely missing from the second level. The Government is to certain extend more successful in meeting the benchmarks for other chapters, as it has managed to open thirty-two, out of which three have been provisionally closed. The Government has adopted information and plans for meeting the closing benchmarks for twenty-nine chapters.⁷⁹

⁷⁹ "Communication from the 91 Session of the Government of Montenegro", the Government of Montenegro, 27 September 2018, <http://www.gsv.gov.me/vijesti/192020/Saopstenje-sa-91-sjednice-Vlade-Crne-Gore.html>, Documents from the eighty-seventh session of the Government of Montenegro, 26 July 2018, http://www.gov.me/sjednice_vlade_2016/87, Documents from the ninety-sixth session of the Government, 1 November 2018, http://www.gov.me/sjednice_vlade_2016/96, Documents from the 115 session of the Government, 28 March 2019, http://www.gov.me/sjednice_vlade_2016/115

Table 7: The state of play in the negotiations by chapters

Chapter ⁸⁰	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Open	Green	Green	Green	Green	Green	Green	Green	Red	Green	Green	Green	Green	Green	Green	Green	Green	Green
Closing Benchmarks	Green	Green	Green	Green	Green	Green	Green	Red	Green	Green	Green	Green	Green	Green	Green	Green	Red
Provisionally Closed	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red
Chapter	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	
Open	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	
Closing Benchmarks	Green	Green	Green	Green	Green	Red	Red	Green	Green	Red	Green	Green	Green	Green	Green	Green	
Provisionally Closed	Red	Red	Red	Red	Red	Red	Red	Green	Green	Red	Red	Red	Green	Red	Red	Red	

When it comes to the Chapters 23 and 24, Montenegro prepared and adopted comprehensive action plans for these, which was a prerequisite for its opening.⁸¹ Also, in accordance with the European Commission’s interim benchmarks for the chapters 23 and 24 (45 benchmarks for Chapter 23 and 38 for Chapter 24) Montenegro adopted a whole set of laws and strategic documents including the new Strategy for Public Administration Reform (2016), the Law on Prevention of Corruption (2015), and in January 2016, the Agency for the Prevention of Corruption (APC) started with its work. Since the Commission’s criticism and assessment on a weak institutional framework for the fight against corruption influenced the establishment of Agency in the first place, the public has been paying special attention to the Agency’s work and it has succeeded in attracting it,

⁸⁰ Chapters of the Acquis: 1. Free movement of goods; 2. Freedom of movement for workers; 3. Right of establishment and freedom to provide services; 4. Free movement of capital; 5. Public procurement; 6. Company law; 7. Intellectual property law; 8. Competition policy; 9. Financial services; 10. Information society and media; 11. Agriculture and rural development; 12. Food safety, veterinary and phytosanitary policy; 13. Fisheries; 14. Transport policy; 15. Energy; 16. Taxation; 17. Economic and monetary policy; 18. Statistics; 19. Social policy and employment; 20. Enterprise and industrial policy; 21. Trans-European networks; 22. Regional policy and coordination of structural instruments; 23. Judiciary and fundamental rights; 24. Justice, freedom and security; 25. Science and research; 26. Education and culture; 27. Environment; 28. Consumer and health protection; 29. Customs union; 30. External relations; 31. Foreign, security and defence policy; 32. Financial control; 33. Financial and budgetary provisions; 34. Institutions; 35. Other issues

⁸¹ Chapters were opened in December 2013

but not in a good way. Its establishment was marked by frequent violations of the law;⁸² its director has family connections with the Montenegrin prime minister, while the interested parties and the European Commission itself are constantly criticizing lack of proactivity and independence in its work. Local NGOs are highlighting that the Agency is serving as a kind of database, and due to lack of capacity and independence, it does not control (or it is doing it selectively) information submitted by the public authorities and political parties. The Agency itself was in the spotlight in 2018, after the unlawful dismissal of NGO representative, Vanja Čalović, from the APC Council. The same role the Agency had in the case of dismissal of two critically oriented members of the Council of the Public Broadcaster (RTCG). The local courts found such the APC decisions on these members' conflict of interest unlawful.⁸³ Citizens' confidence in the work of APC has never been on a high level. Specifically, the Institute Alternative's survey from December 2017 shows that as many as 57% of those who have heard about APC do not consider that this institution have contributed to the fight against corruption.⁸⁴ Due to low confidence in the work of the Agency, stakeholders are losing their interest in filing complaints to this institution. During the presidential election in 2018, no complaints were filed by interested parties, civil society or citizens, while in 2016, when the parliamentary election were held, a total of 2373 complaints were submitted to the Agency about frequent and various violations of the law during the election campaign.⁸⁵ All these complaints were almost as a rule rejected by the Agency, so one has to look at that fact in order to understand why the interested parties have become passive. Therefore, it could be said that the Agency is attracting attention because of its controversies, not because of its influence or results.

As for the judicial branch, the establishment of the Special State Prosecutor's Office in 2015 did not convince citizens that the fight against undemocratic practices was impartial.

⁸² Jovana Marović, Stevo Muk "Happy New Agency! – Establishment of the Agency for Prevention of Corruption in Montenegro", Institute Alternative, January 2016, <https://institut-alternativa.org/en/happy-new-agency-establishment-of-the-agency-for-prevention-of-corruption-in-montenegro/>

⁸³ "Decision of the Basic Court in Podgorica - Goran Djurovic dismissed unlawfully from the Council of Radio Television of Montenegro ", Action for Human Rights, March 4, 2019, <https://www.hraction.org/2019/03/04/4-3-2019-prvostepena-odluka-osnovnog-suda-upodgorici-goran-durovic-nezakonito-razrijesen-clanstva-u-savjetu-radio-televizije- above black />

⁸⁴ "Attitudes of the citizens of Montenegro on corruption", Institute Alternative, December 2017, <http://media.institutalternativa.org/2018/02/stavovi-gradjana-cg-o-korupciji.pdf>

⁸⁵ Report on the conducted control during the election campaign for election of MPs in the Parliament of Montenegro and election of members in the local assemblies of Andrijevica, Budva, Gusinje and Kotor held on October 16, 2016", the Agency for Prevention of Corruption, December 2016, https://www.antikorupcija.me/media/documents/lzvjestaj_o_sprovedenom_nadzoru_u_toku_izborne_kampagne.pdf

More than half of the Montenegrin citizens, 59%, do not agree that the law is applied equally to all, while only 6% completely agree with such assessment.⁸⁶

As the negotiation process has been underway for more seven years now, due to the lack of necessary reforms and the EU's stance on enlargement policy, a trend of worsening legal solutions is noticeable. The most illustrative example is the Law on free access to information. The decision of the ruling coalition to adopt amendments to the Law on free access to information in 2017, and grant the authorities with the right to subjectively determine whether to declare certain information classified and keep any data hidden from the public was a step backward in ensuring the transparent work of Montenegrin institutions. European Commission reports and European Parliament resolutions have repeatedly urged the Government of Montenegro to increase the transparency of its work and the public's access to information, but without major success. On the contrary, new amendments to the same Law are recently (2019) announced by the Government, which plans to regulate the "abuse of the right to information", which would provide the authorities with legal basis to arbitrarily evaluate reasons and interests of applicants, which is in direct violation of the freedom of access to information of a public interest.⁸⁷ In case of its effective implementation, this would open the door for a complete blocking of organizations and media to oversee the conduct of public administration and would limit the access to viable information. Numerous cases revealed through the use of this Law previously demonstrated the significance of CSOs in the fight against corruption, abuse of political power and resources, and various forms of violations of human rights. A trend is particularly worrying as it also denies the progress made at the technical level during the first years of negotiations.

CSO's Involvement vs. CSO's Impact

When it comes to the cooperation of state authorities with civil society, which the Commission has put at the heart of the conditionality policy since its opinion on Montenegro's readiness to start accession negotiations,⁸⁸ most has been done, again, in the legislative field. At the end of 2011 and early 2012, the government adopted regulations⁸⁹ allowing broad participation of civil sector representatives in the working

⁸⁶ "Balkan Barometer 2019: Public Opinion Survey", RCC, 3 July 2019, <https://www.rcc.int/pubs/89/balkan-barometer-2019-public-opinion-survey>

⁸⁷ "Open letter to the international community in Montenegro regarding proposed amendments to the Law on Free Access to Information", 3 October 2019, <https://www.mans.co.me/otvoreno-pismo-predstavnicima-medunarodne-zajednice-u-cmoj-gori-povodom-predlozenih-izmjena-zakona-o-spi/>, "Open letter from 44 NGOs ahead of the International Day for Universal Access to Information", 27 September 2019, <https://politikon.me/2019/09/27/open-letter-from-44-ngos-ahead-of-the-international-day-for-universal-access-to-information/>

⁸⁸ "Commission Opinion on Montenegro's application for membership of the European Union", 2010, https://eeas.europa.eu/sites/eeas/files/mn_opinion_2010_en_0.pdf

⁸⁹ In July 2018, two regulations were merged into one

groups for drafting legislation and prescribing mandatory public hearing, with two exceptions.⁹⁰ Despite the good framework for civil society participation in the decision-making, the CSO's impact remains limited. Some of the reasons include the extremely low number of proposals that the government accepts, and still the large number of documents that are hidden from the public eye. The European Commission also pointed to this problem in a recent report recommending the Government to respond to the civil sector's inputs in a meaningful way.⁹¹ In March 2012, the Government included the civil sector in the negotiating working groups, which is certainly a step forward comparing to the countries that have been negotiating membership by then. Since the beginning of the negotiations, civil society has been able to fight for the publication of important documents within the process (such as statistics on conflicts of interest and other important concrete cases, which are provided by the Government to Brussels) and, in general, has increased the transparency of the process. However, the central problems remained the same as they were at the very beginning. The voice of civil society representatives is often silenced as they represent a minority (eg 8 out of the 47 members of the Chapter 23 working group) in the negotiating working groups. With the establishment of the Rule of Law Council in 2014, which has the authority to address all key issues in areas that are crucial for democratization and to put pressure on competent institutions which do not implement measures from the Action Plan within the provided deadlines, and with closing its sessions to the public and civil society representatives in the negotiating working groups, the Government has created parallel negotiating structure and downgraded the task and work of the negotiating working groups to a purely technical level. Finally, in February 2018, the Government adopted the Dynamic Plan for Fulfilling the Interim Benchmarks within the Chapters 23 and 24, but did not make it public, even after being requested by local NGO based on the free access to information law.⁹² Moreover, NGO members of the Working Groups 23 and 24 are not able to receive this document, which not only affects the transparency of the process, but also speaks to the highly debatable approach and commitment of the Government not to rely on all available capacity in the society in responding to the challenges. It is also unknown whether the Government is implementing this plan at all.

Additionally, when it comes to the enabling environment for civil society organizations, which is of the utmost importance for functioning of a democratic system, the Commissions 2019 report shows progress again on a technical level. It additionally

⁹⁰ There is no legal obligation to consult the public on the security and defence laws, nor when drafting the state-level budget

⁹¹ Montenegro Report 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

⁹² "Government Hiding the Dynamic Plan", Institute Alternative, 4 July 2018, <https://institut-alternativa.org/en/government-hiding-the-dynamic-plan/>

highlights that media campaigns targeting critically oriented civil society activists are still present in the Montenegrin society. This with the dismissals of critically oriented CSOs from various bodies and practices of institutions to declare relevant information as classified made the European Commission to show great concern regarding the cooperation between the Government and civil society.⁹³ The space for constructive critique is narrowing down by different sorts of censorship implemented by state authorities. Diminishing of the internal democracy is further affirming brutal censorship of non-governmental organisations and media that serve as voice of people.

Reforms vs. Affairs

Comprehensive reform of the electoral legislation leading to free and fair elections is one of the OSCE/ODIHR and GRECO key recommendations but also the EU request during the democratization process, respectively one of the main pillars of a democratic society. It is often said that political elites in the Western Balkans are not only illiberal in their way of governing, but also in the way they are elected. New parliamentary elections in Montenegro are scheduled for 2020, but the basic conditions necessary for reform have not yet been achieved. The ruling party still categorically rejects the opposition parties' demand for the formation of a technical government, as one of the preconditions for the successful organization of fair and free elections. Moreover, one of the biggest obstacles for Montenegro in the European integration in recent years stems from reasons behind the political crisis embodied in the boycott of the Parliament by the opposition political parties. The crisis began after the parliamentary election in 2016. During 2018 it seemed as if the problems on the political scene are improving, when a part of the MPs who boycotted the work of Parliament returned to this institution. But this did not last. The political context of Montenegro is characterized by the inability of establishing a positive and constructive dialogue between political parties, which has been further hampered after divulgation of the latest "Envelope affair"⁹⁴ and decision of a considerable part of the opposition to return to the boycott of Parliament. Allegations on corruption and illegal financing of the Democratic Party of Socialists at the time of the parliamentary elections in 2016 were a motive big enough for the launch of citizens protests and demands for the formation of a technical government, which would allow the overcoming of political crisis and would contribute to development of the rule of law in the country.⁹⁵

At the centre of the affair was the Democratic Party of Socialists (DPS) along with one of their high-ranking officials and a former mayor of Podgorica, Slavoljub Stijepović, who was

⁹³Montenegro 2019 Report, European Commission, p.10, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

⁹⁴ Samir Kajošević, "Envelope' Affair Raises Suspicion over Montenegrin Party Funds", Balkan Insight, 25 January 2019, <https://balkaninsight.com/2019/01/25/envelope-affair-raises-suspicion-over-montenegrin-party-funds-01-24-2019/>

⁹⁵ Montenegro 2019 Report, European Commission, p. 3, 6, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

recorded on video receiving an envelope from the local tycoon, with 97,500 euros earmarked for financing the DPS campaign in 2016.⁹⁶ This case was followed by additional disclosure of black funds and other illegal activities of state officials and the focus is placed on witnesses and the financing of political parties, which, until that point, had represented a kind of an open secret.

Aside from the continuation of the boycott of Parliament by some opposition parties, the affair was followed by citizens' protests. So far, the only imposed sanction to DPS was a rather symbolic fine of 20,000 euros foisted by the Agency for prevention of corruption⁹⁷ regarding only a part of the alleged sum of 97,500 euros.⁹⁸ Similar to critiques by the local NGOs, the European Commission has called on the competent authorities to respond to the allegations on "black funds" in "independent, credible and effective" way. The professionalization and depoliticization of the APC, as the primary independent authority whose competence is control and monitoring of the financing of political entities and electoral campaigns, and in addition the improvement of the existing legislation pertaining financial investigations, remains an imperative prerequisite for obtaining closing benchmarks for chapters 23 and 24. As the consequence of their inability to act there is a low level of trust in institutions which is a persistent problem in Montenegro. Only 36.8% of citizens are satisfied with the work of the State Audit Institution (SAI) while 39.4% of respondents are evaluating positively the Constitutional Court when deciding on complaints within the electoral process.⁹⁹

This year was marked by another corruption affair, known as "Flats", which revolves around the granting of affordable housing loans to many state and local officials.¹⁰⁰ The affair calls into question the justification of the granting of loans to these officials in the context of their existing assets. Another aspect of the affair, which is in large part being ignored, includes the problem of the independence of officials, whose role is to control officials and institutions. It is an emblematic fact that the director of the Agency for Prevention of Corruption is also on the list of 96 officials who have received the loan. To

⁹⁶ "Knezevic hands over an envelope to Stijepovic", Portal Analitika, 11 January 2019, <https://portalanalitika.me/clanak/323056/knezevic-urucio-kovertu-stijepovicu>

⁹⁷ "Elections in Montenegro: Stuck in and Envelope", Politikon Network, July 2019, <https://politikon.me/rol-in-wb-reinventing-the-rules-of-the-game/>

⁹⁸ "APC: DPS returned 47,500€ and paid a penalty of 20,000€", Antena M, 27 February 2019, <https://www.antenam.net/politika/111816-ask-dps-vratio-47-500-eura-i-platio-kaznu-od-20-000>

⁹⁹ "Citizens do not trust in the state institutions responsible for elections", CEMI, June 2018, <http://cemi.org.me/2018/06/gradani-nemaju-povjerenje-u-rad-drzavnih-organa-u-izbornom-procesu/>

¹⁰⁰ "Popovic: Flats are a pyramid affair", CDM, 1 September 2019, <https://www.cdm.me/ekonomija/popovic-stanovi-su-piramidalna-afera-sacinjena-od-viseslojnog-bezakonja/>

make matters more absurd, the loan is not reported in his yearly asset report (while the Agency's is collecting these reports).¹⁰¹

It is accurate to describe these affairs as symptoms of an illiberal democracy. On the one hand, the revelations of various political affairs could be described as progress. None of these affairs revolve around new issues, but rather issues that have been hidden from the public eye for decades. With that in mind, it can be argued that the European integration process is at least partially and indirectly responsible for creating the necessary conditions leading up to these revelations. On the other hand, the resolution to these affairs never seems to yield tangible results.

Rhetoric vs. Practice

Democratization, as a process which is entrenched in the Copenhagen criteria,¹⁰² and it is one of the most important consequences of the EU integration process, does not always fully affect political elites and their behaviour. This is the case especially in the countries where opening of chapters are happening with a fast pace, and Montenegro who was considered as a regional leader is one of these countries. This is a lesson learned from the 2004-2007 enlargement to Central and Eastern European countries where as Grzymala-Busse and Luong noticed, "(...) elites recombine old and new, formal and informal, practices. Such recombination is thus not limited to the political and economic transitions—it is also the linchpin of reconstructing public authority".¹⁰³ EU's conditionality was a major leverage for the reform process and the democratization in Montenegro, however changed political context, the inability of the EU to introduce more severe and concrete mechanisms to influence the pace of the reforms have caused the ruling DPS to lose even minimal interest in the reform processes. Therefore, after a certain period of time being considered as a regional leader and the most progressive country when it comes to implementing the aquis, the semi-consolidated¹⁰⁴ democracy in Montenegro has started to show signs of backsliding. EU's conditionality mechanisms that were the driving force in the negotiation process¹⁰⁵ and were a cause of different democratization related

¹⁰¹ "APC's director also received a favorable loan which is not in his property record", 11 August 2019, <https://www.vijesti.me/vijesti/ekonomija/i-direktor-ask-a-dobio-povoljni-kredit-a-nema-ga-u-imovinskom-kartonu>

¹⁰² Defined at the European Council in 1993: *political*, relating to the rule of law, respect for human rights and freedoms, protection of minorities and stability of democratic institutions; *economic*, within which the candidate country is required to ensure the functioning of market economy and the ability to cope with competitive pressure and the EU market; *legal*, which are reflected in the candidate country's ability to assume the obligations implied by membership in the European Union.

¹⁰³ Grzymala-Busse, A. and Luong, P, "Re-conceptualizing the State: Lessons from Post-communism. Political Theory", 2002, p. 547, <https://journals-sagepub-com.ezproxy.is.ed.ac.uk/doi/pdf/10.1177/003232902237825>

¹⁰⁴ A typology designed by Freedom House, See: Nation in Transit Reports, Freedom House, <https://freedomhouse.org/report-types/nations-transit>

¹⁰⁵ Džankić, J., Keil, S. and Kmezić, M., "The Europeanisation of the Western Balkans", Palgrave Macmillan, 2019

actions are clearly weakening due to enlargement fatigue in the European Union but also in the country.

Government officials often assess the readiness of the country to obtain closing benchmarks under the Chapters 23 and 24. The Minister of Justice for example, announced that Montenegro would meet the interim benchmarks in 2018, but this did not happen.¹⁰⁶ Similarly, the latest European Commission report from May 2019 does not give encouraging notes either. Besides, since the start of the accession negotiations, Montenegro has only once adapted the action plans for Chapters 23 and 24, and while they are completely out-dated, with activities that do not properly address the European Commission's interim benchmarks alongside with poorly defined indicators, the Government refuses to update it or develop entirely new action plans on the grounds that such process will only be started once the EC has defined the closing benchmarks.¹⁰⁷ Montenegro does not have a specific anti-corruption plan or strategy, but all activities are grouped around the measures from the Action Plan for Chapter 23.

While much could be criticized in the way the European Commission presents the results achieved under the chapters of *acquis* in its annual reports,¹⁰⁸ the same assessments from year to year suggest that the Government's commitment to reform is questionable:

Table 8: Reforms over the years

2019	2018	2016	2015	2014
Judicial Reform – moderately prepared; Fight Against Corruption – some level of preparation; Public Administration Reform – moderately prepared;	Judicial Reform – moderately prepared; Fight against corruption- some level of preparation Public Administration Reform – moderately prepared	Judicial Reform – moderately prepared; Fight against corruption - some level of preparation; Public Administration Reform – moderately prepared;	Judicial Reform – moderately prepared; Fight against corruption - some level of preparation; Public Administration Reform – moderately prepared;	Judicial Reform – some progress has been made Fight against corruption - progress has been limited

Moreover, official Brussels stressed out on several occasions that the degree of commitment of Montenegro to make significant progress when it comes to implementing

¹⁰⁶ “Montenegro will meet the benchmarks within Chapters 23 and 24 in 2018”, RTCG, 29 October 2017, <http://www.rtcg.me/vijesti/drustvo/182759/mjerila-poglavlja-23-i-24-ispunicemo-2018.html>

¹⁰⁷ Information from the Negotiating Working Group Sessions for Chapter 23

¹⁰⁸ “Strengthening the Rule of Law in the Western Balkans: Call for a Revolution against Particularism”, BiEPAG, January 2019, <http://bicpag.eu/wp-content/uploads/2019/03/Strengthening-the-Rule-of-Law.pdf>

measurable and structural reforms was lower in relation to Albania and North Macedonia.¹⁰⁹

Another example of the gap between rhetoric and practice which weakens EU's conditionality and influences EU's relations to the political elites in charge of reforms and overall democratization can be seen in sometimes soft Euroscepticism of the current President Milo Djukanovic.¹¹⁰ Such examples are often used to send the message that the EU is not the "only game in town". The leader of the long-standing ruling party in Montenegro often points to constant threats to the stability of the country and potential detachment (based on external influences) from the European path.¹¹¹ In this way, Djukanovic tries to convince the EU that it is less painful if it integrates Montenegro regardless of the unsatisfactory level of democratization, rather than leaving it small and unprotected to be influenced by the non-Western actors. By doing so Djukanovic and his party display inability to take decisive cuts which would mean the collapse of their power. As a reminder, the democratization process is taking place within the country that has never changed its government on elections since the establishment of the multiparty system in 1990.

Conclusion and recommendations

Montenegro has achieved results on technical level since the start of the accession negotiations, setting a precedent over the rest of the candidate countries. The transition process, which in most cases represents a process of modernization, and possibly EU accession, implies a long period. Therefore, this timeframe should be embraced, used as a guide and designed in a way that everyone who is able to influence the process can work adequately and complementary, towards the same goal. However, having in mind that Montenegro's weakest points, as it is consequently stated in EC's country reports, are organized crime and corruption meaning Chapter 23 and 24, comprehensive reforms are yet to come. The EU membership remains a firm ideal Montenegro is striving for, whose achievement will contribute to enhancing democracy, the rule of law and prosperity at the socio-economic level. Increasing the level of information on EU integration and strengthening capacities of the civil sector are the necessary basis, on one hand, for putting pressure on political elites to improve implementing structural and substantive reforms; and on the other, to maintain the European horizon nearby and further increase public confidence in the objectives and the purpose of joining the EU.

¹⁰⁹ "Institute Alternative on the Montenegro Report", *Vijesti*, 29 May 2019, <https://www.vijesti.me/vijesti/politika/institut-alternativa-o-izvjestaju-o-crnoj-gori-prvi-u-treci-a-daleko-od-odlikasa>

¹¹⁰ Predrag Tomovic, "Tensions between Djukanovic and Brussels", *Radio Free Europe*, 14 June 2018, <https://www.slobodnaevropa.org/a/djukanovic-brisel-tenzije/29290418.html>

¹¹¹ "Djukanovic: The EU is still acting like a bride", *Vijesti*, 3 November 2017, <https://www.vijesti.me/vijesti/politika/dukanovic-eu-se-i-dalje-ponasa-kao-nevjesta>

In order to achieve this, there is need for:

- › An open and constructive dialogue between the government and the opposition, as well as the Government and the civil sector. The reforms ahead are demanding and comprehensive so the Government should include all available capacity in the country. Thus, criticisms should not be silenced but welcomed and transparency should be raised to a higher level so that the stakeholders can contribute to the public policy development. All documents from the negotiation process should be available to the public, while the right of free access to information cannot be the subject of arbitrary decisions;
- › As a first sign of responding to requests from the European Commission and interested parties, all affairs have to be resolved and full legal implications and political responsibility have to be clear to all. After more than seven years of negotiations, a track record must entail more than passing a law;
- › Building an independent institution involves more than capacity building, and strengthening some of them, such as the Agency for Prevention of Corruption, has to start from a change of leadership;
- › The action plans for Chapters 23 and 24 should be updated in line with the priorities defined on an annual basis;
- › The Government should prepare information on key challenges within the Chapters 23 and 24 and present to the European Commission a new reporting model that will allow a more targeted approach and address the burning issues.

Recommendations to the European Union

There is a need for new tools in measuring the level of democratization in the country that would motivate political elite to understand that the “political cost” of not progressing with the much needed reforms is too high and damaging for themselves and the whole society. Therefore, the EU should:

- › Adapt content and messages in the country reports to be more clear and concrete and adapted to the lack of progress in crucial areas. Progress or lack of it regarding the key annual priorities should be included;
- › Reduce financial support if there is a lack of progress within the Chapters 23 and 24, that is, abuse of power and serious human rights violations;
- › Adapt and apply the mechanisms it has established at the supranational level to strengthen democracy also in the Western Balkan countries;
- › Use *ad hoc* missions to help in overcoming crises and offer binding recommendations to all parties.

Recommendations

Recommendations for:

› WB countries:

1. Changing Democratic Culture – the first need that Western Balkans countries have is transforming the political culture and to consolidate the relationship that political actors, different interest groups, and citizens have with democracy and democratic values. This means, that it is needed a reassessment of values and changing them to be aligned with democratic ones including: rule of law, freedom, tolerance, justice, equality etc. As countries with a long history under totalitarian regimes, these countries and their citizens have not yet achieved to distance themselves from the practices and non-democratic culture of the past. As democracy is not yet internalized and is not yet consolidated as an identity for institutions, political actors and citizens more work needs to be done to promote democracy, democratic practices and values to all of them, focusing on the younger generations as well.
2. Information and real understanding of EU and integration process. As EU remains a main subject of discussion for the Western Balkans countries, and the main promoter for reformation and development, yet when it comes to knowledge and information about European Union, or EU integration process, data has shown that a considerable percentage of WB citizens do not have the proper information and/or relevant knowledge. While 56% of WB citizens believe that the EU integration would be a good thing for their country as Balkan Barometer Report of 2019 shows, yet they are not quite clear what negotiations process means, or Chapter of EU acquis are, or which are the obligations that the countries need to fulfill. In this regard, a wide debate and discussion about technical dimension of EU integration and how this process will be translated in administrative, legislative and financial terms for the institutions, interested groups and citizens of the countries. All the actors involved in this process should take into consideration offering of the information of such process and what does that really mean for the country to make possible a clear and deep understanding of this process by all sectors of the society.
3. EU integration is not only for the politics. It belongs to everyone. European Integration process and progress is used mostly by political actors of the WB countries as an assessment for their policies and reforms undertaken. In this regard the EU integration is used by the political elites as a tool to increase their credibility, their electoral support, rather than being an aim and objective for the country. Thus, reforms and policies taken in the name of 'EU integration' are not actually implemented thoroughly and for the sake of development of the country, but more as just another step to show to international actors and citizens that the political actors are working towards EU integration and country's democratization.
4. Democratization as main aim. The main aim of the WB countries should be: reformation and democratization of the country. The EU integration process should

be seen as one of the promoters or one of the incentives that would push the actors to draft, adopt and implement such reforms. As the link between democratization and Europeanization is not always visible, the main aim of the societies of the WB countries should be how to consolidate their democracy, how to enforce rule of law, how to empower justice and promote human rights and all democratic values. And then, eventually the progress towards EU integration will happen.

› EU:

1. EU should show first of all credibility on its enlargement process regarding Western Balkans countries. As the process is long and complex, there is a high possibility for aspiring countries and its citizens to start getting tired, the phenomenon known as 'enlargement fatigue'. If this happens, that the countries will lose their motivation in accelerating, continuing or starting the reforms and to strengthen their rule of law, democracy and stability.
2. More financing and investing. EU has provided various financial instruments in supporting and assisting Western Balkans countries, yet this is assessed as not enough to these countries to continue their development. Main focus of IPA funds remains the increase of capacity buildings and technical assistance, while WB countries have needs even in investing in infrastructure, technology, economy, employment, agriculture etc. It is assessed that WB countries receive pre-accession assistance from IPA II from 0.27% of GDP (BiH) up to 1.48% of GDP (Kosovo) per year¹¹², meaning that these values are really low and do not cause a substantial change in these countries. WB countries has a low level of economic development, have major issues with unemployment and labour market, high level of debts, low investment and a low GDP per capita compared with the ones of EU countries. And that hole that EU is not able to fill financially, is filled or could be filled by other countries like Turkey, China and/or Russia, that would start fighting for strategic influence, to become actors and factors in the region.
3. A more thorough assessment of the progress of the countries, and to take into consideration the peculiarities of each country when assessing the progress and the process. As standards EU has put are all the same for all the aspiring countries known as Copenhagen criteria, the process cannot be the same for all of them. The principle 'size fits all' should not and cannot be imposed to all Wb countries. Their history, their political situation, the relation they have with democracy and democratic processes are essential elements to be taken into consideration and to be analysed, in order to assess their progress in a realistic and objective manner for each country. Only in this regard the assessment of the countries and the process of accession can be accurate and fair for the countries and for the region. On the

¹¹² European Movement in Serbia, Twelve Proposals for EU Enlargement from the Western Balkans, May 2019

other hand, quality should be over quantity. As the saying goes: 'more laws does not mean better laws'. The fact that the countries are progressing towards implementation of laws and harmonization of their national legal framework with the EU one, does not always translate that the reforms and policies are being implemented correctly and completely.

4. Enlargement policy should be more technical and less political. What the Decision of European Council showed was that, the enlargement policy does not have only a technical and normative dimension, yet the political one is really strong. The decision towards the countries is not based only in an objective and technical assessment of fulfilling the criteria but other elements are in play as well, like the national interests of some EU countries towards the enlargement or the region. Examples like Greece being against North Macedonia until they reached an agreement, Slovenia hindering the progress of Croatia and now refusing its membership on Schengen zone, France saying no to Albania and North Macedonia. In this regard, as decision-making process of EU is complex, interests of EU as an organization are interlinked with national and state interests, and in some of the cases individual ones can prevail towards the EU ones. Thus, maybe is time for EU to reform the process in such manner that individual decisions of some countries to not undermine the all process of enlargement.

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