



DEMOCRACY WITHOUT VOL.2 INSTITUTIONS

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NEW ACCESSION METHODOLOGY:

A NEW CHANCE FOR THE WESTERN BALKANS AND FOR THE EU IN THE WESTERN BALKANS

The European Union's policy thus far has had a limited impact on the rule of law in the Western Balkans. Despite the formal fulfillment of the set tasks and gradual harmonization with the EU acquis, it has become obvious that the desired effects are not being achieved and that Western Balkan countries are stagnating and even regressing in the field of democratization.

Negotiations under chapters brought about a number of changes in regulations, institutions and procedures, but this has not fully led to the strengthening of democratic institutions and sustainable democratic practices. The balance of power has not been achieved in any of the Western Balkan countries, in fact, the executive branch has retained dominance over parliaments and the judiciary. At the top

of this unconstitutional pyramid of power, political parties reign supreme by drawing their power from contentious elections. This power has been captured by a small number of individuals, the mighty new class that is gradually removing all mechanisms that might challenge their responsibility. Their political influence has at all times been an effective barrier to the creation of institutions with integrity and credibility and the strengthening of professional public administrations.

Citizens of the Western Balkans also started recognizing these anomalies. Incoherent messages from Brussels and other European capitals have diminished their faith in the European project, as it has become clear that membership is still a long way off, and that the

very process has not triggered changes that would have a meaningful impact on the lives of citizens. European influence in the region has weakened in recent years, while nationalist political elites have used this time to revert to the old rhetoric and raise regional tensions.

Four years ago, the Center for Democratic Transition (CDT) decided not to monitor the progress achieved in the European integration process against the measures envisaged in the negotiating chapters, but to instead apply an in-house methodology to measure the progress in meeting the most important EU political criteria. During the second consecutive cycle, we have been measuring progress in the areas of elections, public administration reform, judicial reform, fight against corruption and organized crime and media freedom, together with colleagues from the Center for Research, Transparency and Accountability (CRTA) from Serbia, the Metamorphosis Foundation from North Macedonia and the Citizens' association "Why not?" from Bosnia and Herzegovina. In our opinion, it is these particular areas that will determine the future of our negotiations with the EU, and not the statistics doctored by the authorities.

Communication of the European Commission "Enhancing the accession process - a credible EU perspective for the Western Balkans" from February 2020 further confirmed that we took the right approach. The new methodology introduces clusters in the negotiations i.e. the grouping of related chapters. The funda-

mentals cluster is the most complex and most difficult to negotiate. It includes Chapters 23 and 24, as well as Public Procurement (5), Statistics (18) and Financial Control (32). However, it is important to note that the new approach has also introduced into this cluster the functioning of democratic institutions and public administration reform - areas that have indeed been part of the accession process, albeit not within negotiating chapters.

Negotiations in the area of fundamentals will be opened first and closed last and progress on the fundamentals will determine the overall pace of negotiations. In addition to the rule of law, the fundamentals cluster envisages the adoption of another roadmap - on the functioning of democratic institutions and public administration reform, all with a stronger reference to the program of economic reforms.

Although there are still many unknowns, it is safe to say that this is a great chance for restoring the credibility of the process of European integration of the Western Balkans. This also applies to countries that have not yet started or are starting negotiations, but also to Montenegro and Serbia, which are stuck in the status quo, where everything was done and nothing was accomplished. The new approach could mean a new impetus for democratization, for freeing institutions, strengthening parliament, protecting the judiciary and the media from influence and decreasing political dominance over public administration and decision-making processes.



ELECTIONS:

THE LEGITIMACY OF DEMOCRATIC INSTITUTIONS UNDER STRAIN

As a rule, electoral processes in the Western Balkans give rise to new political tensions. The legitimacy of such electoral processes further discredits the legitimacy of all the institutions and processes they are in charge of.

The desired changes in the legislative and institutional framework have not taken place in any of the analyzed countries thus far. Bosnia and Herzegovina took small steps in improving electoral legislation, despite the clear international recommendations, and consequently, elections will finally be held in Mostar, thus breaking a decade-long blockade of the election process. Electoral reform in Montenegro got off to a late start and ended in complete failure, with no agreement on key issues and with the ruling coalition unilaterally adopting changes that are technical for the most part. Serbia launched the long-awaited electoral reform, but it resulted in merely formal rather than substantive changes, while practical implementation has not been improved either. The situation is somewhat better in North Macedonia, where improvements have been made in terms of voter registration, voting procedures and financial control models, but without reforms to the electoral model that favors larger parties and the penal policy that is particularly weak in tackling voter pressure and clientelism.

There have been no major improvements to electoral management institutions. Central election commissions are not professional bodies made up of experts, but rather bodies composed of representatives of political parties. The situation is different only in Bosnia and Herzegovina, as the Commission is not made up of party representatives but of members of different ethnicities, although, parties still have a say in candidate selection process. Anti-corruption agencies often lack the capacity or will to tackle political corruption. The misuse of public funds for campaigning purposes and suspicions of illegal financing of parties and campaigns continue to burden the electoral processes and spur public distrust in the elections.

None of the countries covered by the survey can boast of having a balanced reporting and equal opportunity of access to the media during elections. Regulatory bodies often do not conduct monitoring in a high-standard manner, they show bias towards certain media or lack adequate measures and sanctions for those who do not comply with the rules. Self-regulation is weak or non-existent in some of the countries. All of the above undermines the right of citizens to be accurately and impartially informed about a ballot.



PUBLIC ADMINISTRATION: *A SECTOR FOR POLITICAL NEPOTISTS*

The entire region has been engaged in a prolonged public administration reform process, but citizens barely see any results thereof. Ambitious strategies, laws and projects remain ineffective in solving public administration's major problems.

Susceptibility to political influence, nepotism, clientelism and employment based on party affiliation are just some of the phrases inevitably ascribed to public administration in the Western Balkans. Introducing a merit-based employment system has been a step forward in North Macedonia, however, this system is not being applied in practice. As much as authorities in all of the countries covered by the survey wholeheartedly defend their regulations, measures and plans, experts agree in that quality and merit are not the criteria by which vacancies in public administration get filled.

It is precisely this kind of recruitment that led to a major surplus of public administration employees in all of the countries, all the while there is a shortage of professional staff. Optimization processes were not preceded by an adequate functional

analysis, and reorganization and optimization measures are bypassed by means of alternative methods, such as awarding temporary and periodical work contracts.

Citizen participation in decision-making and policy-making exists as a formality and a measure to meet EU requirements, rather than as a genuine openness to proposals coming from the outside. Formal mechanisms for NGO participation are becoming increasingly meaningless with the introduction of GONGOs that give false legitimacy to processes, especially in Serbia and Montenegro.

The reform of local self-government system is not based on real economic indicators, but is often reduced to catering to the needs of different parties. All of these countries record major differences in levels of development of municipalities, with a large number of dysfunctional and financially unsustainable municipalities that dispose of budgets in an irresponsible and non-transparent manner, and fail to meet tax and other obligations.

JUDICIARY:

A FAR CRY FROM DEPOLITICIZATION AND INDEPENDENCE

All of the countries have been carrying out prolonged judicial reforms, which entail the adoption of strategic documents and laws that keep failing to bring us closer to our goal - a depoliticized and independent judiciary.

Despite the favorable assessments of legislative reforms, in practice - the judiciary is not protected from political influences or the influence of the legislative and executive branch. This is especially evident in the selection and promotion of judicial office holders, accompanied by accusations of bias, conflict of interest and inconsistent implementation of law. In Serbia, judges and prosecutors are still elected by parliament, and constitutional reforms that were meant to guarantee the independence of the judiciary did not take place. All this leads to a gradual and steered creation of a judicial staffing base where it will not even be necessary to sway decisions in individual cases - the whole system directs judges and prosecutors to "independently" come to the desired conclusions.

Public confidence in the judiciary is also declining due to scandals involving most senior judicial officers. In Bosnia and Herzegovina and North Macedonia, high-ranking members of the judiciary were linked to corruption scandals, the case of candidates cheating on the judicial exam was uncovered in Montenegro, while creative interpretation of the Constitution in order to award multiple terms to court presidents remains to be a way of securing obedience. In Serbia, there are either no reactions from the judiciary whatsoever, or the epilogue of the proceedings into scandals involving senior state officials are long overdue. This has diminished citizens' trust in the judiciary, which is underperforming in all of the countries covered by the analysis.

The statistics on judicial efficiency and the resolved cases ratio are slightly improving under the pressure of integration processes, but the rationalization of the judicial network is still not yielding the desired results in reducing the workload of individual courts.



MEDIA:

SETTING THE TONE FOR IDEOLOGIES AND POWER HOLDERS

Media environment is nowhere near satisfactory in the countries analyzed. Some of the common key issues are an unregulated market, inadequate regulation, weak or non-existent self-regulation, political influence on the media and an unsafe environment for journalists.

Serbia adopted a solid media strategy with the strong support of the international community, while in other countries there are no strategic documents, and in some cases the legislative framework is outdated and obsolete. Media regulators are not politically independent and display bias and selective approach in their work. In some of the countries, the media scene is burdened by the lack of adequate self-regulation.

Threats, pressures and attacks on journalists continue, and labeling and discrediting of journalists who produce critical news reports have become customary for politicians. In North Macedonia, there have been fewer attacks on journalists, but previous cases of attacks on journalists remain unresolved.

Biased media reporting has become commonplace, there are but a few journalists that are not under political control. Political pluralism is shrinking in both public broadcasters and in other media, so instead of political debates, citizens are often presented with preachings by like-minded interviewees. Another problem is that public broadcasters are not politically independent and financially sustainable either. Privately-owned media are also often not financially sustainable and largely depend on the support and advertising of the public sector, which is often carried out in a non-transparent manner and allows the government to interfere in the editorial policies of the media.

In such a market, numerous media become a means of spreading misinformation and propaganda, be it for political or economic reasons, and no country has functional mechanisms to counter these phenomena in a democratic way.

CORRUPTION AND ORGANIZED CRIME: *OUR WAY OF LIFE*

Captured state, endemic corruption, corruption as a way of life, corruption in all pores of society - these are just some of the phrases more commonly used by civil society organizations, analysts, but also international organizations, to describe the situation in the Western Balkans.

National authorities do not have a sufficiently good response to the criticisms dealt. The reforms implemented are a way of pleasing the international community and not a reflection of a true political determination. The international pressure prompts the adoption of improved laws that are not substantially implemented though, and the results are, at best, presented through often misleading statistics.

The efforts in the prevention of corruption resulted in the setting up of specialized anti-corruption agencies that are not resistant to political influences and are not ready to consistently apply the law if it means opposing political and social power holders. In North Macedonia, a new composition of such an agency was elected in 2019, giving rise to expectations from the public, however, the effects of the work of this agency are yet to be seen and depend on the funding of its operations and

its connections with other anti-corruption institutions.

Not all of the countries give sufficient guarantees for access to information, which is a precondition for the fight against corruption. In some, such as Montenegro, there are tendencies to further restrict the access.

A repressive response to corruption and organized crime yields results that are just as poor. There is a noticeable disparity between the scale of crime and corruption as presented in international reports and in the public perception, and the number of cases that are actually detected and prosecuted in practice. There are grave doubts into the influence of politics and the executive branch on the conduct of investigations, embodied in the occasional "leak of information" or the directed initiation of investigations by a minister or state president, as is the case in Serbia.

At the end of the day, even with the few cases that do get detected, investigated and reach a final court decision, a mild penal policy sends out a message to the society that corruption and crime pay off.

1

NEW NEGOTIATING FRAMEWORK AS A CHANCE TO FOCUS ON DEMOCRATIC INSTITUTIONS AND THE RULE OF LAW

Western Balkan countries should accept the new negotiation methodology and adopt a dedicated approach to developing a new negotiating framework, with a special focus on the fundamentals cluster i.e. roadmaps for the rule of law, democratic institutions and public administration.

Countries that are just starting negotiations can learn a lot from the mistakes of Serbia, and especially Montenegro, which has already reached an admirable level of harmonization in many areas. A formalistic approach and the copy-pasting of regulations and directives did not yield the desired results and showed that weak institutions cannot apply even the best of laws. The processes of legal harmonization and the building and strengthening of institutions that are tasked with their implementation are to go hand in hand, and success can be achieved through dedicated and synchronized action in both fields.

Montenegro and Serbia must rise above the disappointment and the somewhat betrayed expectations, and perceive the new framework as a chance to get out of a state of stagnation and a model through which they can express their value and commitment to the European project. Responsible political elites should be able to understand that an opportunity was already missed due to calculating, diplomatic push-and-pull and deferring necessary reforms and that this door will not reopen. An open and honest approach and acceptance of the revised negotiating framework, especially in the fundamentals cluster, could be a way to slightly open a new door toward the European Union.

2.

NEW ACCESSION METHODOLOGY AS A CHANCE FOR SHARED RESPONSIBILITY

The new approach to negotiations is also a new chance for the national authorities in the region to ensure that political representatives, civil society, business community and citizens take more interest in and responsibility for the process of European integration.

For those preparing or starting negotiations, it is time to establish new and effective mechanisms to involve all sectors of society in the process, and to share the burden and responsibilities with stakeholders outside the executive branch, especially with parliaments.

This is the right moment for Montenegro and Serbia to reconsider their previous models and face difficult issues, such as - how did the authorities manage to lose the support of civil society, media and pro-European political parties for this most important of all processes, and how to regain the support and trust.

The new mechanisms should envisage both co-operative relations and control mechanisms that are much more open and inclusive than the previous formalistic models of participation

3.

IT IS HIGH TIME TO DEMONSTRATE OUR STRATEGIC COMMITMENT TO THE EUROPEAN UNION

The new enlargement methodology also contains an expectation that candidate countries show their commitment to be in step with EU foreign policy and thereby ward off third-party influence. The "sitting in two chairs at once" policy is no longer being tolerated, which is made apparent as the fundamentals cluster maintains that democratic and economic governance are to be intertwined.

The frail Balkan transitional democracies cannot strengthen democratic institutions under the economic and political influence of authoritarian and undemocratic societies. The Western Balkan countries must not allow the lack of financial resources in the wider market and the need for economic development to encourage corrosive

capital and thus send out a ticket to a fast, cheap and aggressive access to our limited resources. As a rule, economic dependence prompts political dependence and weakens democratic control and social potential.

The Western Balkan countries must also demonstrate their strategic commitment to the European Union by showing readiness to accept all democratic rules of the game, one of them being that the building of healthy institutions attracts healthy capital. It is time to do away with a mere verbal commitment to the West accompanied by appropriate images, all the while conducting non-transparent suspicious business deals with third parties.

4.

A CLEAR EUROPEAN PERSPECTIVE, REVERSIBLE AND WITH ESTABLISHED DEADLINES

In order to restore its credibility in the Western Balkans, the European Union must stop the practice of sending incoherent and contradictory messages. A part of responsibility for the lack of progress in the area of democratization, a much smaller one of course, certainly lies with the EU, as it has been giving "pats on the shoulder" to governments of the region, praising a merely formal progress and turning a blind eye on the lack of substantive results for years.

The new methodology is also a new chance for the European Union's comeback in the Western

Balkans through an improved, more systematic and honest approach to the integration process. This entails a clear European perspective for countries of the Western Balkans, with attainable and motivating deadlines, and without raising the bar during the very process. This means a clear and uncompromising application of mechanisms to reward successful candidates and sanction unsuccessful ones, as well as suspending negotiations regardless of how that might affect current political situation, with a clear vision of the ultimate and strategic goal. This includes opening up sustainable economic prospects for the Western Balkans.

5.

DEESCALATION OF REGIONAL TENSIONS AS A PRECONDITION FOR PROGRESS

Nationalist rhetoric, internal polarization, and strained bilateral relations have been on the increase in the Western Balkans while the EU was preoccupied with internal reforms. Balkan countries seem to have forgotten the message that was repeated countless times - regional co-operation, reconciliation and stability are paramount to European integration. The new enlargement methodology also emphasizes that Western Balkan leaders must show further efforts to strengthen regional cooperation and good neighborly relations in order to bring stability and progress to their citizens and convince the EU that the region is addressing the legacy of its past.

It is time for Western Balkan countries to make sure and comply with the principle of non-interference in the internal affairs of their neighbors. Open regional issues must be communicated, and problems need to be resolved through diplomatic and political cooperation mechanisms, and not through inflammatory messages conveyed to the public via loyal media. Our societies, institutions and processes are sensitive to regional upheavals and impacts, which is why we must prove to Europe that we are mature enough to solve both domestic and regional problems on our own.

LITERATURE

For the preparation of this document, 20 analyzes were used, which were prepared and published by research teams from the NGO CRTA, Metamorphosis Foundation, WhyNot? and CDT as part of the Assessment of progress in meeting the political criteria in the scope of the EU negotiation in the following areas:

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