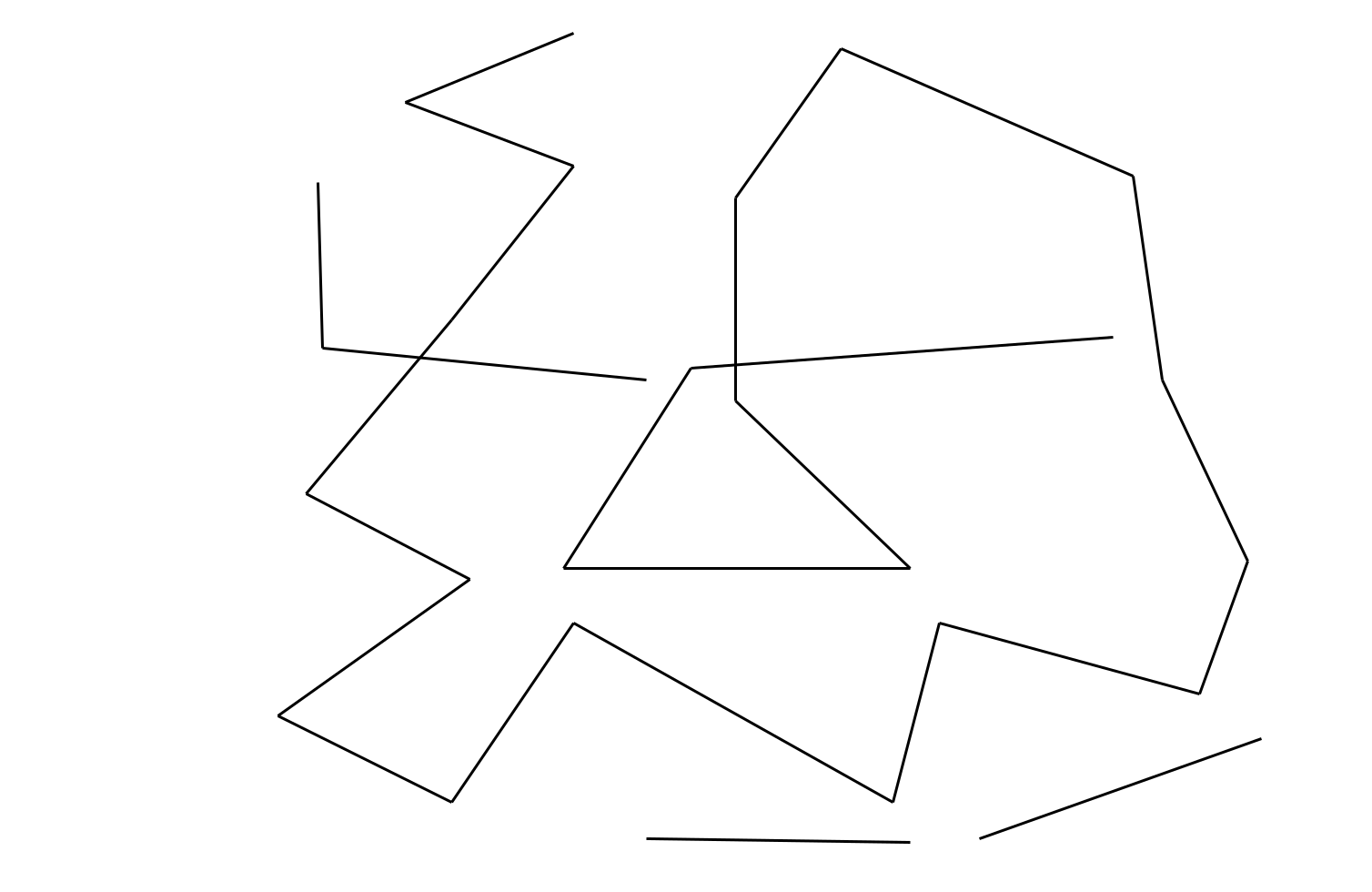
**UNDERMINING DEMOCRACY *VOL 1*:**

**VICIOUS DISTURBANCES OF THE CONSTITUTIONAL BALANCE OF POWER**

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In the following period, Centre for Democratic Transition (CDT) will present a publication series titled “Undermining democracy in Montenegro”. Publications to follow will describe key issues in Montenegro associated with fulfilling political criteria for the EU membership and establishing and defending basic principles of good democratic governance.

Frequent threats to the principle of democratic functioning of the society, in addition to such phenomena being relativised by most of the key political entities, have motivated us to create some sort of chronological overview of how these have been undermined or directly destroyed. The goal is to activate those who are not willing to trade these principles for any kind of lucrative appointment or office, make an attempt to confront such authoritarian phenomena, while also making a written record of how honest the politicians actually were when endorsing “European values in the functioning of the society”.

The first publication is dedicated to unmediated deterioration of the relationship between the most important branches of power in Montenegro, as proclaimed by the national constitution. We will write about public and well-known cases indicating clear intentions of certain branches of power to gain unconstitutional supremacy over the others.

The 15 cases here displayed will merely illustrate some basic features of how political elites have been causing the collapse of our constitutional order; we are, however, fully aware that the number of such cases in the recent years has been substantially higher. In the last six years, Montenegro has seen some extremely hazardous phenomena and unprecedented developments which have been undermining its democratic order. Such phenomena have come in different forms; what they, however, have in common is the two-faced behaviour of politicians: on the one hand, publicly affirming EU integration and democratic principles, while on the other, destroying them completely by constantly justifying and finding week alibis for failures.

We will show you in the publication that this country, whose politicians brag about their successes, the country known as the “European integration frontrunner”, has actually been the venue of unimaginable processes: government humiliates parliament, parliament obstructs its own operation, parliament also obstructs judiciary, president threatens the prosecution service, prime minister represents himself as the chief of criminal prosecution, parliament ignores decisions of courts, while government provides funding to prosecutors and judges. And a lot more.

Such constant undermining of democracy has created a spiderweb, having entangled the state and society, and, sadly, many citizens. The following words best describe these entanglements, i.e. the cases we have shown in this publication: humiliation, ignoring, abuse of power, boycott, suspension, violation, taking charge, announced arrests, threats, blockages, ignoration, populist expenditures, instrumentalisation, interference, “curse of the third term". Hopefully, our activities and those of other progressive segments of our society will, if nothing else, give at least a modest contribution to liberating ourselves from this web. Indeed, it is high time we did so.

We remain open to any suggestions and well-intentioned and constructive criticism of our work, including the present publication.

***How we envisaged it***...

Democracy is a fundamental value in modern political systems, while a democratically legitimate order is that which affirms political freedom of citizens through guaranteed political and civil rights. The precondition for the exercise of such rights entails rule of law and observance of the law.

Political theory has developed to establish division of power into legislative, executive and judicial branches. Efforts to regulate national social and legal systems resulted in the constitution, fundamental act legally interpreting the entities of such different branches of power and delineating the boundaries of their remits.

The importance of such separation of powers, but also the serious consequences of their disbalance were identified as early as in the 18th century by James Madison, according to whom “accumulation of all powers, legislative, executive and judicial, in the same hands, whether of one, a few, or many and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny”[[1]](#footnote-1) After the 2006 referendum on the legal status of the state, a new constitutional identity of Montenegro was defined. Separation of powers and the concept of parliamentarism were proclaimed as the fundamental constitutional principles.

According to Montenegrin constitution, legislative powers are exercised by the parliament and 81 members of this body. Parliament passes legislation, forms the government accountable to it and exercises political control over public authorities. Parliament’s legitimacy is based on citizens’ votes cast in direct and periodic elections, rendering citizens the holders of sovereignty.

President of Montenegro represents the state, proclaims laws and has the power of temporary suspensive veto, calls parliamentary election, nominates constitutional court judges and ombudsperson, commands the military. President is elected by the citizens, in direct elections. Their term of office, lasting five years – which is one year longer than that of MPs and government ministers, enables the president to call elections and nominate prime minister-designate, so as to avoid absence of crucial authorities in the period between two elections. President of the state is brought to account in cases of potential violation of the national constitution, while parliament may initiate a process to determine president’s liability if 25 MPs file such motion.

Independent judicial power is exercised by basic and higher courts, commercial court, administrative court and court of appeals. Judiciary is headed by the supreme court tasked with ensuring uniform application of the law by judicial instances across the country. Constitutional court does not belong to any of the branches but it does control them by assessing constitutionality of their decisions.

No less important judicial authority in prosecuting perpetrators of criminal and other punishable offences in Montenegro is the state prosecution service. Prosecutors decide whether criminal proceedings will be instituted and investigation launched; based on the outcome of investigations, they make criminal prosecution decisions. Judicial and prosecutorial council are tasked with managing the judicial system and ensuring professional development of judges and prosecutors.

...***And how it turned out***

**Government vs. Parliament**

A functioning parliament, efficiently exercising control over the executive branch, is the prerequisite for implementing the democratic control mechanism, ensuring balance of power and constitutional functions of the key institutions. Although “sparks“ in the interaction between parliament and government are quite normal in a democratic life, this process in Montenegro is slightly different:

**Case 1: Humiliation**

It is a basic political rule that MPs and other participants of parliamentary debates are required to show respect when communicating to each other.[[2]](#footnote-2)However, political life of Montenegro is substantially different from written communication. Informed discussion in this representative body has been replaced by insults, threats and degradation of the parliament.

Former prime minister Milo Đukanović was the one to introduce political practice of insulting elected citizens’ representatives and getting away with it; his response to unpleasant political provocation by MPs was: “Well done, idiots!”.[[3]](#footnote-3) When he lost parliamentary majority, i.e. when the parliament of Montenegro started changing previous patterns of behaviour and being more independent from the government, Đukanović created the famous “parliamentary dictatorship” slogan.[[4]](#footnote-4)

This was obviously welcomed by the former prime minister Zdravko Krivokapić, who used the following words to address his voters during one of the parliamentary debates in June 2021: “One can hear so many lies here that one could ask what politics is. It is not a culture of trade and of what you do. You talk to me about morals, here we have immorality, political hypocrisy”.[[5]](#footnote-5)

There’s plenty of other similar examples we could give here, but it’s more important to understand that these types of behaviour have not caused the parliament to confront them – parliament has failed to muster the courage to defend its constitutional position or to launch mechanisms to punish this kind of treatment received from the executive branch.

**Case 2: Ignoration**

The mechanism of parliamentary control hearing is one of the key mechanisms of democratic control over the executive power. It is employed to determine the method of pursuing policies and carrying out other activities of the parliament, while ensuring that the chair of relevant parliamentary committee “invites to meetings responsible representative of the government, representatives of public authorities, organisations and institutions and requires them to give a statement.[[6]](#footnote-6)

Late October 2021, parliamentary defence and security committee invited prime minister Krivokapić to a control hearing about potential unlawful management of the police activities. Prime minister refused to attend the hearing and shared his interpretation about “the decision to hear the prime minister not being based on the constitution, or the law or the parliament rules of procedure” and thus not binding on him in any way.[[7]](#footnote-7)

This wasn’t the only case of Krivokapić’s government clearly demonstrating how they felt about and treated the Parliament. According to our colleagues in the Institute Alternative[[8]](#footnote-8), until December 2021, former ministers had failed to show up at as many as eight parliamentary hearings. Not even once did MPs manage to protect dignity of the parliament or require that arrogant ministers be held to account for that.

**Government vs. Government**

Government headed by Zdravko Krivokapić was composed of political actors of diverse political profiles, which, in a complex political and social situation, sometimes resulted in mutual usurpation of powers by its representatives.

**Case 3: Abuse of power**

An unconstitutional and illegal body, or rather, a get-together, composed of members of executive and legislative branches the night before enthronement of the Serbian Orthodox Church Metropolitan in Cetinje is the example of disturbed balance of power and of internal confrontation between representatives of the government.

Former prime minister Zdravko Krivokapić publicly demonstrated that he was observing policing activities during the enthronement together with ministers, head of the national security agency, MPs, secretary general of the government secretariat and a couple of other unknown citizens.

Despite the police being politically and ideologically neutral and operationally independent from the ministry and other state administrative authorities according to the Law on Internal Affairs[[9]](#footnote-9) on the day of enthronement Krivokapić gave the then interior minister Sergej Sekulović both binding and unlawful instruction, in an effort to single-handedly or together with the newly-formed “team” take over the management of police activities in Cetinje. Sekulović rejected this “instruction” and continued to do what he believed should be done.[[10]](#footnote-10)

Such actions of the former prime minister clearly constitute wrongful use of the constitutional powers of the government given that he included his preferred MPs in the decision-making process; they also clearly point out to the issue with public officials acting contrary to their statutory powers.

**MPs vs. Parliament**

Lack of initiative on the part of MPs was not visible only when they needed to protect parliament from government; Montenegrin style of democracy was also demonstrated when parliament was being degraded by the very MPs:

**Case 4: Boycott**

In Montenegro, parliamentary boycott has become an instrument “routinely“ used by political parties to achieve their political objectives. After the 2016 parliamentary election, opposition MPs agreed to boycott the parliament, an action harshly condemned and called obstruction of democracy and European processes by the then ruling Democratic Party of Socialists (DPS). At the time, major legislative developments entailed the passage of systemic legislation by way of summary procedures, without holding discussions or responding to the general public opinions. Parliament looked like a “pay-as-you-go” institution, rather than the most important political institution in the country.

However, already in the following term, now the opposition MPs from DPS changed their opinion about the boycott and abstained from participation in the parliament on several occasions. At the time, boycott to them was not the destruction of parliament but a fight for democracy, just as such fight was described by those who were in the ranks of the opposition while DPS was in power.

Still, the current composition of the parliament has brought a whole new dimension of boycott, which could probably be studied by political theory textbooks: parliament has been boycotted by the opposition DPS, but also by the party in government – Democratic Front; taken together, these two parties account for more than two-thirds of parliamentary seats.

Such a phenomenon can only be interpreted as a desire of political parties to subordinate the most important institution in the country to themselves and interests of their parties, thus deliberately obstructing its work and consequently all relevant reform efforts in the country.

**Case 5. Suspension**

In February 2022, following the vote of no confidence in the government of Zdravko Krivokapić and removal of the president of parliament Aleksa Bečić, parliament was out of operation for three months. During this time, acting president of parliament was a DF member, the then vice president of parliament Strahinja Bulajić.

Contrary to the constitution[[11]](#footnote-11) and the rules of procedure of the parliament[[12]](#footnote-12), Bulajić rejected a legitimate request for holding a session of parliament[[13]](#footnote-13) to discuss election of the next president of parliament. Bulajić explained that by doing so he was “defending the will of the citizens of Montenegro”.[[14]](#footnote-14) This was followed by a statement of one of the DF leaders Andrija Mandić, about Bulajić, who “would not do anything contrary to the positions of DF and New Serbian Democracy“[[15]](#footnote-15), clearly indicating that political parties have supremacy over decisions made by legislative branch representatives.

**Case 6: Violation**

Those MPs who wanted to hold the parliamentary session that vice president Bulajić did not want to convene, took charge of the “initiative” and convened the session to enable forming of new government, in contravention of the rules of procedure and other customary rules. They “took the law into their own hands”, claiming they were protecting the constitution; consequently, in order to correct one error, they made another. They responded to violation of rules by violating rules.

The biggest loss sustained in the process was that of parliamentary integrity. Instead of systemic resolution of problems, working to improve the rules with legal gaps and making parliamentary practices “laws”, for years MPs have been doing just the opposite.

Although the public arena had previously seen a consensus on the need to pass a law in the parliament to address these phenomena and increase the “strength“ of parliament, activities of a special working body formed to prepare such law turned into a fiasco. Such fiasco was followed by another, still operational, body tasked with developing the law. It remains to be seen what the results of their work will be.

**Government and President vs. Prosecution Service**

Arbitrary interpretation of constitutional powers entrusted to public officials and institutions they represent, and of the system of separation of powers have resulted in increasingly prominent political influence exerted by the executive branch over the prosecution service. Over the last decade, such influence has been constant and reflected in either the selection of politically suitable members of the prosecutorial council, who would then influence the activities of the prosecution service, or in direct influence on the prosecutors. After the forming of the new prosecutorial council this influence has evolved, become even more visible to the public and materialised in new ways:

**Case 7: Taking charge**

On the occasion of Cetinje enthronement of the SPC metropolitan, prime minister Zdravko Krivokapić did not hesitate to inform the public that “following his instruction, swift police response resulted in arrest of former police director”.[[16]](#footnote-16)Although this kind of activity is contrary to the Criminal Procedure Code[[17]](#footnote-17) regulating the principles of fair conduct of criminal proceedings, although prime minister in fact publicly admitted wrongdoing and meddling in the powers of another branch, once again his behaviour went unpunished, politically or legally.

**Case 8: Announced arrest**

Former deputy prime minister of the 42th government and current prime minister of the caretaker government, Dritan Abazović, has introduced in the public discourse a practice of giving public statements during or immediately after the arrest of suspects by the police. Abazović and his party have several times violated presumption of innocence by presenting such police activities as though the persons concerned are already found guilty[[18]](#footnote-18) These messages coming from the governing entities fail to make a distinction between different concepts in criminal proceedings, change the status of these persons, while not only misleading the public but also interfering with the constitutional powers of the judiciary. Presumably, this was yet another political move that went unpunished, politically or legally.

**Case 9: Threats**

President of Montenegro Milo Đukanović also exerted direct pressure on the prosecution service by giving prosecutors some sort of a warning which actually constitutes a threat regarding their future decisions. Following the arrest of former supreme court president Vesna Medenica and her son, commercial court president Blažo Jovanić and members of the management board of "Plantaže" company, Đukanović said prosecutors would be held to account if these indictments were not confirmed by convictions in courts and in such case, they would not be allowed to hold their office[[19]](#footnote-19).

Unlike the previous prosecutorial council, the current one was quite vocal about these messages conveyed by politicians. Members of this council issued a press release to call on the president, prime minister and other senior public officials to refrain from suggestive messages to prosecutors[[20]](#footnote-20). This is how they clearly made it known that they perceive messages from highest state instances as threats.

**Courts vs. Parliament**

Over the last four years, Montenegrin parliament has avoided electing the holders of key judicial functions. Despite assumedly numerous excuses for such behaviour, this key political institution has acted in a way that deprived key judicial institutions of their legitimacy and significantly diminished their integrity, while causing some of them to completely collapse. Furthermore, it has made several decisions subsequently revoked by courts and never rectified any of them; instead, it has simply ignored decisions of the judicial branch.

**Case 10: Blockage**

After 2018, when the parliament of Montenegro lacked political will to elect new judicial council members from the ranks of reputable lawyers and subsequent consultation with the Venice Commission, term of office of the existing members was extended. This has substantially decreased the strength, integrity and capacity of judicial institutions to be fully operational.

Four years later, such will still does not exist, given that the session of 16th of August 2022 was another missed opportunity for the parliament to ensure appointment of all judicial council members, requiring a two-thirds majority.

The July 2022 attempt to appoint judges of the constitutional court, also elected by two thirds of MPs, wasn’t a success either. They found none of the 18 applicants good enough for the judgeship. Constitutional court is prevented from hearing cases as only three out of seven judges are in office. Constitutional committee denied support to the candidates who applied for judicial appointments in the three previous public calls and who have been subjects of consultative hearing. New public competition is underway for judicial posts in the constitutional court.

Failure to appoint judges and blockage of the constitutional court is one of the most dangerous examples of undermined democracy; among other things, it could lead to citizens’ inability to protect their rights or direct denial of their right to vote and stand for election; if this happens, Montenegro could not be categorised as a democratic country.

**Case 11: Ignoration**

In 2017 and 2018, Montenegrin parliament saw political “purges“ in a number of its bodies. Members of the RTCG council were the first to be dismissed and replaced by politically suitable personnel. This was followed by dismissal of a member of the anti-corruption agency council, despite the fact that her case against this agency was still pending at the time.[[21]](#footnote-21)

Interestingly enough, basic courts’ decisions were followed by a principal legal position of the supreme court, according to which decisions of the parliament are not subject to administrative or civil proceedings. This is how the key court enabled political elimination and removal of opponents of the government.[[22]](#footnote-22) The supreme court decision came as a shock to the public in Montenegro, but also to the European Commission which raised concerns over such legal position in the 2020 Montenegro report[[23]](#footnote-23).

Despite the legal position of the supreme court, there were judges in basic courts who showed resistance and courageously subjected decisions of the parliament to a review.

Parliament, however, ignored those court rulings that found the dismissals unlawful.

**Parliament vs. Stability**

An important segment of public finances and fiscal strategy is the estimate of revenues and expenditures. Montenegro has a major issue arising from the fact that irrational decisions receive funding while public officials’ are not held accountable for their decisions; these phenomena, however, are also a populism tool used in both economy and politics. As a result, the state is constantly getting indebted to fund its spending needs rather than development projects. Therefore, it comes as no surprise that IMF announced a period of high economic instability for the state.[[24]](#footnote-24)

There’s plenty of other similar examples we could give here, but it’s more important to understand that these types of behaviour have not caused the parliament to confront them – parliament has failed to muster the courage to defend its constitutional position or to launch mechanisms to punish this kind of treatment received from the executive branch.

**Case 12: Populist expenditures**

One of the most important decisions to remember Zdravko Krivokapić’s government by is the adoption of the “Europe Now“ programme. As any other tax reform, it has its pros and cons.

Apart from increasing minimum wage to 450 euro, “Europe Now” also abolished contributions for health insurance while introducing progressive income and profit taxation. Certainly, this was a substantial step forward from the aspect of the quality of life of the disadvantaged groups in the society, but also a step towards more just distribution of social wealth.

However, what the more realistic part of the public and many international institutions[[25]](#footnote-25) were warning about has unfortunately come true. Absence of healthcare contributions has threatened the functioning of the health insurance fund. This programme has also reflected on the pension and disability insurance fund of Montenegro, given insufficient funds for increasing the minimum pension and harmonising pension and salary levels.[[26]](#footnote-26) Introduction of non-taxable portion of the salary, up to the gross amount of 700 euro, has caused local governments to lose substantial revenues, especially in underdeveloped municipalities whose staff salaries are among the lowest.[[27]](#footnote-27)

Eight months into the implementation of ”Europe Now”, according to Ministry of Finance data[[28]](#footnote-28), budget deficit, initially projected at 268 million euro, has increased to 438 million. In an effort to prevent a complete collapse of the healthcare system, government started with budget rebalancing activities and announced new borrowings. Interestingly enough, the biggest critics of this reform and its effects are now those who once voted in favour of it for reasons of populism. This is what political accountability in Montenegro looks like, and this is yet another example of how democracy and democratic processes get undermined for the purpose of achieving particular political goals.

**Government vs. Judiciary**

Government has used the housing commission to instrumentalise important judicial elements. That's how we have ended up in a situation where at the moment of proclaiming fight against corruption as one of top priorities, with such fight involving legal action against high-level government officials, this same government is channelling high amounts of money to judges and prosecutors who are supposed to be the key implementers of this fight. Again, this is how the constitutional principle of separation of powers has been creatively brought into question, the same principle that guarantees independence of the three branches of power and their mutual control mechanisms.

**Case 13: Instrumentalisation**

Since 2007, when the decision on the method and criteria for meeting housing needs of public officials was adopted, government has enabled them to get loans or apartments under the conditions which are much more favourable than the market ones.

The commission in charge has published a list of officials having received such loans or apartments during the term of the 41th government (2016-20).

Among those who have benefitted from this government policy were members of all three branches – including president of the constitutional court, former president of the supreme court, state prosecutor, special prosecutors...

The issue of non-transparent criteria for the award of apartments, creating room for potential undermining of independence of different branches, i.e. undue influence of executive over judicial branch, was also raised by the national council for combatting high-level corruption[[29]](#footnote-29). Furthermore, in May 2021 anti-corruption agency issued an opinion, stating “that each branch of power should make plans for solving the housing issues of its managers and employees“.[[30]](#footnote-30)

The 43rd government (2022-22), self-declared as European and reform-oriented, started its term by appointing new members of the housing commission tasked with reviewing previous decisions. Following negative feedback from the public, proposal was filed to revoke the decision on methods and criteria for meeting housing needs of public officials.[[31]](#footnote-31)

**Case 14: Interference**

Dritan Abazović, deputy prime minister in the 42nd government (2020-22) showed how he felt about the constitution and independence of the judiciary by criticising the decision of Miroslav Bašović, investigative judge in the higher court in Podgorica, not to order detention[[32]](#footnote-32) of several persons charged with membership in a criminal group.

On the same occasion he also raised concerns about links between criminal structures and the institutions of the system along with the need to change judicial, prosecutorial bodies and the entire system.

NGO Human Rights Action and a major part of the professional community have qualified this as an example of executive branch exerting undue pressure on courts.[[33]](#footnote-33)

**Concentration of power – Segue into a spiderweb**

When Filip Vujanović was elected president of the state for the third time, this meant establishing a practice of making decisions which are disputable in terms of their constitutionality; at the same time, this practice violated an important democratic rule of one person being allowed to stay in one office for a maximum of two terms.

**Case 15: “Curse“ of the third term**

Despite the constitution, specifying that one individual may be elected president of Montenegro not more than two times, constitutional court allowed Vujanović to run for president for the third time. This guardian of constitutionality found differences between the office of president of Republic of Montenegro, a constituent part of the federal state (SRY) and the state union (SMN), and that of president of Montenegro as a sovereign, independent and internationally recognised state.[[34]](#footnote-34)

Third term of office of the supreme court president Vesna Medenica was also confirmed in contravention of the constitution. Judicial council found no issues with her third candidacy and unanimously supported her for the third time. This means that Medenica was in office for 13 years, given that her first term began in 2007.

Constitutional court and judicial council have here demonstrated

their lack of interest in protecting the democratic order, while subordinating

the fundamental values of democracy to the people in power who aspire

to spend a substantial portion of their life exercising the same function.

However, democracy, even if only symbolically, can sometimes hit back those who have been destroying it. Vujanović’s third term went without any significant result and hardly anyone can remember even one important social activity he conducted between 2013 and 2018. Medenica did even worse – in 2020 her office was terminated early and in April 2022 she was arrested on suspicion of having committed two criminal offences - creation of a criminal enterprise and undue influence. Concentration of power in the Montenegrin judiciary was not an exception, but a rule.[[35]](#footnote-35)

Perhaps, after this epilogue, some find it easier to understand why it is important

to curtail the power of politicians and other officials *via* different mechanisms, including the exercise of term limits. Because, as power grows, so does the appetite for a continuing rule, which may have inconceivable consequences on societies like ours.

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