

DEMOCRACY AND HUMAN RIGHTS

BALKANIZATION INSTEAD OF EUROPEANIZATION

Fight against corruption in Montenegro

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November 2020



Over the past eight years, Montenegro has not achieved the expected track record in combating corruption.



EU has also demonstrated political inconsistency regarding the continuous and necessary external pressure in, thus Montenegro, despite all, has been making progress in the accession process for a long time, with an evident deficit of political will to effectively approach the prevention and suppression of corruption.



Consequently, corruption remains widespread and a matter of serious concern.

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The views and opinions in this analysis "Balkanization instead of Europeanization - fight against corruption in Montenegro" are partially expressed in the "EU's Failure in Europeanizing Montenegro", a doctoral thesis of the main author, defended at Masaryk University in 2018.

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Summary

Montenegro was granted candidate status in December 2001, and in June 2012, the European Union (EU) opened accession negotiations with Montenegro. After eight years, the European Commission (EC) country report¹ notes limited progress in 25 chapters, good progress in seven chapters, while for one chapter it noted that no progress has been made.

Accession negotiations with Montenegro started with the so-called *new approach* of the European Union, which referred to Chapter 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), as starting and ending points. Thus, the advance in these chapters has become crucial for the overall dynamics and quality of Montenegrin EU accession negotiations.

This study, the first one in a series of three, aims to scrutinize one of three political membership indicators that the EU closely monitors during the accession process - **the fight against corruption**. *Judicial reform, strengthening regional cooperation and the improvement of good-neighborly relations* will be additionally addressed. These EU membership conditions are included in the most important strategic documents on the enlargement policy, starting with the Stabilization and Association Agreement (SAA), i.e. the Stabilization and Association Process (SAP), as well as the new negotiating framework adopted in 2012, according to which Montenegro started negotiations. At the same time, they represent the basis for further progress on Montenegro's path towards the EU. Finally, these are three dependent variables that must be kept in mind for the systematic analytical framework.

Over the past eight years, Montenegro has not achieved the expected measurable results in combating corruption. However, the EU has also demonstrated political inconsistency regarding the continuous and necessary external pressure to Montenegro. Hence, Montenegro, despite of all, has been making progress in the accession process for a long time, with an evident deficit of political will to effectively approach the prevention and suppression of corruption. Consequently, corruption remains widespread and a matter of serious concern.

There was also a visible change in the recent approach of EU conditional policy through a strategy of conditionality in strengthening anti-corruption policy, i.e. allowing the candidate country to progress in the EU integration process, although it does not achieve satisfactory results in the fight against corruption. Therefore, given the limited progress in the fight against corruption, Montenegro has paradoxically made for long time progress in the EU accession process.

However, the fact that only eight years after opening the accession negotiation all 33 negotiation chapters have been opened and only three provisionally closed, as well as the fact that a new methodology is in force, points to the need for a significant change in the approach of the Montenegrin authorities to dynamize this process and use it effectively for the process of internal democratization and Europeanization.

¹ European Commission, Montenegro 2020 Report, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf (last access 15 October 2020)

METHODOLOGICAL FRAMEWORK

The new EU negotiating approach towards Montenegro, with an emphasis on Chapters 23 and 24, has an additional focus on anti-corruption functionality. This is the area in which Montenegrin authorities continuously face the challenges of strengthening anti-corruption mechanisms, i.e. ensuring the independence of the institutions and achieving a track record in the area of investigations, indictments and final convictions of high-level corruption cases, but also the work of anti-corruption institutions outside the investigative and judicial system such as the Agency for Prevention of Corruption (APC).

When assessing the effectiveness of the EU's transformative power, two variables were taken within the fight against corruption: 1) *prevention of corruption*; and 2) a *credible track record of investigation, prosecution, and final conviction of high-level corruption cases*.

Of course, the comprehensive picture of the Europeanization of Montenegro could be perceived only when taking into consideration all three areas and accompanying variables, which are often interdependent, because through them we can assess the extent to which Montenegro as a candidate country adopts and applies EU rules to achieve internal institutional and political reforms². The alignment with the *acquis communautaire*, aiming at institutional and political structural and other changes, represents a defined dependent variable.

Following the defined methodological framework, this paper distinguishes three forms of adoption of European rules and norms, which is correspondent to different levels of institutionalization of the EU political criteria:

- 1) *Verbal* – i.e. rhetorical endorsement of the EU rules and norms by internal decision-makers;
- 2) *Legal* - a process in which the government attempts to pass legislation or establish a certain formal institutional framework in line with the EU requirements;
- 3) *Substantive* - which refers to the implementation process and in which European standards and norms are transposed, adhered to, and finally enforced at the domestic level.³

2 F. Schimmelfenning and U. Sedelmeier (ed.), *The Europeanization of Central and Eastern Europe*, Ithaca and London, Cornell University Press, 2005.

3 Arolda Elbasani, *Europeanization Travels to the Western Balkans*:

Based on the defined research subject, a mixture of both “top-down” and “bottom-up” concepts of Europeanization may serve as a suitable research approach to assess the effectiveness of the EU transformative power on institutional and policy changes in Montenegro.

The application of this dual methodological approach has its affirmation in the claims that the process of Europeanization is a two-way process that entails both ‘top-down’ and ‘bottom-up’⁴ dimensions. Precisely, the concept of dual methods demonstrates evident advantages in terms of controlling the bias of both individual approaches and their usefulness to detect whether and when domestic political elites face strong adaptational pressure, particularly in the cases when political actors have to complete certain unpopular measures to reduce pressures of the EU external incentives.⁵

Enlargement Strategy, Domestic Obstacles and Diverging Reforms, Routledge, Abingdon, 2013.

4 T. Börzel, ‘Member states responses to Europeanization,’ *Journal of Common Market Studies*, 40 (2), 2002, p. 193-214.

5 K. Lynggaard. and I. Manners and K. Lofgren (ed.), *Research Methods in European Union Studies*, New York, Palgrave Macmillan, 2015.

MOTIVATIONAL SPEECHES ARE NOT HELPFUL

Like other countries of the former Yugoslavia, Montenegro has defined integration into the European Union (EU) as its main strategic and foreign policy priority⁶. Upon the renewal of independence in 2006, Montenegro started making progress in addressing political criteria through the process of European integration, positioning itself as a frontrunner among the countries of Western Balkans.

The opening of the chapters went relatively quickly in the first phase, and the advancement of Montenegro has been continuously monitored and underlined in a positive context by high-ranking EU officials. Thus, statements of support could be heard in the speech of Federica Mogherini, former High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, when addressing the Parliament of Montenegro, by stating that during the last decade Montenegro has made incredible progress in the process of joining the EU. Additionally, Jean-Claude Juncker, former European Commission President, during his visit to Podgorica, highlighted the country's substantial efforts to meet the Copenhagen criteria, by progressing faster than other Western Balkans country, particularly thanks to serious reform efforts having been implemented in the previous period⁷.

Introduction of *A Credible enlargement perspective for and enhanced EU engagement with the Western Balkans* strategy by the European Commission (EC), in February 2018, could also represent an incentive. Unlike other similar documents, this strategy announced a step forward in intensifying the process of further integration dynamics

and membership perspective of the Western Balkans region. Namely, for the first time since the adoption of the enlargement package for the Western Balkans, the EC envisaged possible deadlines, particularly for Montenegro and Serbia, i.e. the opportunity to meet full EU membership status by 2025.

However, the political conditions for EU membership are strictly defined and in its essence, these underline the necessity of proven strong and unequivocal internal political will of the candidate countries to achieve a track record in the area of the rule of law and to demonstrate unquestionable commitment and a proactive approach to resolving open bilateral issues with neighboring countries⁸. In that context, motivational speeches were simply not enough.

6 Parliament of Montenegro, Resolution on the manner, quality and dynamics of the integration process of Montenegro to the European Union, p.3, http://www.skupstina.me/images/dokumenti/pristupanje-eu/Rezoluciju_o_na%C4%8Dinu_kvalitetu_i_dinamici_procesa_integracija_Crne_Gore_u_Evropsku_uniju.pdf. (last access on 3 September 2020)

7 European Union External Action, Speech by the High Representative/ Vice-President Federica Mogherini at the Parliament of Montenegro, https://eeas.europa.eu/headquarters/headquarters-homepage/21734/high-representativevice-president-federica-mogherini-parliament-montenegro_de (last access on 3 September 2020); EU Delegation to Montenegro, European Commission President Jean-Claude Juncker visits Montenegro, https://eeas.europa.eu/delegations/montenegro/42430/european-commission-president-jean-claude-juncker-visits-montenegro_ku (last access on 3 September 2020)

8 European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, p. 2, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf (last access on 3 September 2020).

A SOLID BASE FOR A SUCCESS STORY

Over time it has turned out the ease of opening negotiation chapters is not followed by the fulfillment of interim and closing benchmarks. This resulted in the fact that after eight years of accession negotiations all the 33 screened chapters have been opened, and that only three chapters in which there is essentially no *acquis communautaire*, have been provisionally closed⁹.

Montenegro had a huge potential to be a success story of European integration in the Western Balkans, with the outcomes that could be transferred to the rest of the region, but also concerning those issues that remain too long and unjustifiably inadequately addressed in the country. This is how it was sometimes presented by some high-ranking EU officials through their motivational efforts directed towards Montenegro.

There are several reasons for the peculiarities of Montenegro:

- 1) Montenegro has positioned itself as a frontrunner among the Western Balkan countries within the process of European integration, which indicates the existence of potential and capacity;
- 2) Since 2012, in line with opening the EU accession negotiation with Montenegro, the Union has specified new pre-conditions in terms of opening negotiation chapters, emphasizing the importance of the rule of law through the initial opening of Chapters 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) together with the constant monitoring and evaluation during the entire accession process¹⁰;
- 3) In Montenegro, there is a consensus of all political parties towards the future EU membership¹¹;
- 4) Montenegro plays an active role in the development of regional cooperation and in improving good neighbourly relations with the Western Balkan

countries through its proactive approach in addressing open bilateral issues and legacies of the past;

- 5) Montenegro has become a NATO member and passed a certain path in the EU enlargement process, but at the same time faces serious problems of bad governance, widespread and widely perceived corruption within the institutions of the system and the judiciary under the undue political influence;¹²
- 6) Finally, as is the case with the other Western Balkan countries, Montenegro has been, until recently, subjected to the influence of *stabilitocracy* - a weak democracy, in which the state is governed by semi-autocratic (unautocratically-minded) leaders who strongly influence internal political processes through informal patronage networks and claim that they have the support of the West to preserve internal political stability¹³. The recent change of the government with the narrow victory of the former opposition still does not provide a convincing response in terms of vision and strategy for shaping a different Montenegro that integrates civic and democratic principles, but also can respond to numerous accumulated and emerging challenges in the field of health and economy.

9 Chapter 25 - Science and Research, 26 - Education and Culture, and 30 - External Relations are temporarily closed

10 European Commission, Montenegro 2020 Report, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf (last access on 15 October 2020)

11 V. Vučković, 'The Europeanization of Political Parties in Montenegro,' *Romanian Journal of European Affairs* 16(3), 2016a, p. 36-55.

12 V. Vučković and B. Vučinić and V. Đorđević, 'Partnership for a Secure Future: Montenegrin Road to NATO from 2006 to 2015,' *The Journal of Slavic Military Studies* 29(4), 2016b, pp. 602-625; Arolda Elbasani, 'Europeanization Travels to the Western Balkans: Enlargement Strategy, Domestic Obstacles and Diverging Reforms', Routledge, Abingdon, 2013; Marko Kmezić, 'EU Rule of Law Promotion: Judiciary Reform in the Western Balkans', Routledge, London and New York, 2017; BiEPAG., 'Western Balkans and the EU: Beyond the Autopilot mode,' BiEPAG, 2015, p. 6.

13 BiEPAG, 'The Crisis of Democracy in the Western Balkans. Authoritarianism and Stabilitocracy,' 2017, p. 7.

OBJECTIONS FROM ALL SIDES

The lack of consolidated democracy in Montenegro, but also in the rest of the Western Balkans, has opened the door for decision-making processes to be used to satisfy party and particular interests, but also for the widespread abuse of executive powers to ensure that political decisions significantly satisfy clientelistic interests¹⁴.

Consequently, corruption in Montenegro has pervaded all levels of society, and a particular reason for serious concern is its presence within the institutions of the system. All this further limits the possibilities for the establishment of an independent institutional apparatus and weakens its legitimacy, and it is also not stimulating for building democratic institutional and administrative capacities. Ultimately, the result is a powerless state apparatus that simulates reform processes and therefore it is incapable to adequately respond to the growing challenges of the Europeanization process¹⁵. The EC also notes that “further improvements in this regard will only be possible in an environment where independent institutions are shielded from any undue influence and encouraged to fully use their powers... Strong political will is needed to address effectively issues of corruption...¹⁶”

The problem of endemic corruption, especially political corruption, has also been recognized by relevant international NGOs, such as *Freedom House* and *Transparency International*.

In the 2019 report, Freedom House points out that Montenegro, a leader in EU integration processes, is partly a free country, primarily because of widespread patronage based on merit and widespread corruption that encourages loyalty to the ruling Democratic Party of Socialists (DPS) which has been in power for nearly three decades. The report also states that many members of the ruling party are believed to have ties to organized crime,

14 Arolda Elbasani, *Europeanization Travels to the Western Balkans: Enlargement Strategy, Domestic Obstacles and Diverging Reforms*, Routledge, Abingdon, 2013.

15 Institute Alternative (IA), Centre for Civic Education (CCE), Center for Development of Non-governmental organizations (CRNVO), Centre for Monitoring and Research (CEMI), “Montenegro between reform leader and reform simulacrum” 2018, <http://media.cgo-cce.org/2018/03/Montenegro-simulacrum.pdf> (last access on 5 October 2020).

16 European Commission, Montenegro 2019 Report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf> (last access on 15 October 2020)

while public-sector and private-sector employers with links to the state pressure employees to vote for the ruling coalition¹⁷.

In the Freedom House’s latest 2020 report, Montenegro ranking declined to the level of hybrid regimes¹⁸, which represent the lowest rating that Montenegro recorded since this organization followed it. This has drawn considerable attention in Montenegro, but also of those who analytically assess it from abroad.

| | 05 | 06 | 07 | 08 | 09 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
|-----|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Alb | 5.25 | 5.25 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 |
| Bos | 4.50 | 4.25 | 4.25 | 4.25 | 4.50 | 4.50 | 4.50 | 4.50 | 4.75 | 4.75 | 4.75 | 5.00 | 5.00 | 5.00 |
| Cro | 4.75 | 4.75 | 4.75 | 4.50 | 4.50 | 4.50 | 4.25 | 4.00 | 4.00 | 4.00 | 4.00 | 4.25 | 4.25 | 4.25 |
| Kos | 6.00 | 6.00 | 6.00 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 6.00 | 6.00 | 6.00 | 6.00 | 5.75 | 5.75 |
| Mac | 5.00 | 4.75 | 4.75 | 4.50 | 4.25 | 4.00 | 4.00 | 4.00 | 4.00 | 4.25 | 4.25 | 4.50 | 4.75 | 4.75 |
| Mon | 5.25 | 5.25 | 5.50 | 5.25 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 4.75 |
| Ser | 5.00 | 4.75 | 4.50 | 4.50 | 4.50 | 4.50 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 | 4.25 |

Table 1: Political corruption, 2005 – 2018, Source: Freedom House – Nation in transit¹⁹

Similar views and determined political corruption level can be identified in Transparency International reports²⁰. Although little progress was recorded in 2020 in comparison to the region, positioning on the ranking list is still very low given the reform and integration phase of Montenegro.²¹

17 Freedom House, Montenegro 2019 Report, <https://freedomhouse.org/country/montenegro/freedom-world/2019> (last access on 7 October 2020).

18 Freedom House, Nation in transit, Montenegro 2020 Report <https://freedomhouse.org/country/montenegro/nations-transit/2020> (last access on 7 October 2020)

19 Arolda Elbasani, ‘Untangling Europeanization, Compliance and Reform: The Missing Link of Domestic Resistance and Accountability’ in Vučković (ed.) *Balkanizing Europeanization: Fight against Corruption and Regional Relations in the Western Balkans*, Peter Lang, Berlin, p. 194

20 Trading Economics, Montenegro Corruption Index, <https://tradingeconomics.com/montenegro/corruption-index>, (last access on 7 October 2020).

21 Slobodna Evropa, Transparency International: Izuzev Crne Gore, Zapadni Balkan još korumpiraniji, <https://www.slobodnaevropa.org/a/transparency-korupcija-u-svetu/30391427.html>, (last access on 7 October 2020).

ANTI-CORRUPTION POLICY - LAWS AND INSTITUTIONS WITH FLAWS

Reflecting on the integration dynamics in general, the empirical results in the fight against corruption in Montenegro reveal two main characteristics during the eight years of accession negotiations with the EU.

Firstly, at the EU level, the need of the Union to strengthen the anti-corruption framework in Montenegro is noticeable, particularly when it comes to strengthening preventive and repressive policies²². More specifically, the Union insisted on further strengthening of the legislative and institutional anti-corruption dimension, in particular the State Election Commission (SEC), the State Audit Institution (SAI), the former Commission for Prevention of Conflict of Interest (CPCI) and the later Agency for Prevention of Corruption (APC). Amongst the sensitive areas, the EU expressed serious concerns regarding the lack of transparency in the financing of political parties and election campaigns, as well as insufficiently independent and efficient mechanisms for detecting various sources of income of political actors. Then, the focus was on conflict of interest, especially in the part of the control of the state property and resources that are exposed to abuse by public officials. Also, the lack of timely exchange of information of state institutions as one of the prerequisites for improving the conditions for preventing corruption was pointed out.

Secondly, at the national level, empirical data indicate that Montenegro has made limited progress in the fight against corruption throughout this period. The effort of the state to further develop and strengthen the existing legislative framework in the field of preventive anti-corruption measures is also noticeable. However, there has been insufficient progress in improving the legal measures of anti-corruption prevention policy through frequent amendments to some of the key laws that have not contributed to systemic responses to the identified problems. This applies, for example, to the Law on Financing of Political Entities and Election Campaigns, the Law on the Prevention of Conflicts of Interest, Criminal Procedure Code (2015), etc²³. Also, limited track records are

noticeable in the area of strengthening institutional anti-corruption prevention system, especially when it comes to the adoption of the Law on Prevention of Corruption (2014) and the establishment of APC, whose competencies relate to the suppression of all forms of corruption and the supervision of the direct implementation of legal provisions on the prevention of conflicts of interest and the financing of political parties²⁴. Last but not least, some progress has been made in the area of improving legal repressive mechanisms, especially when it comes to investigations, indictments and final convictions for high-level corruption cases through the adoption of the Law on the Special State Prosecutor's Office (2015) and the establishment of a separate and independent Special State Prosecutor's Office for the fight against organized crime, corruption, terrorism and war crimes²⁵.

However, although Montenegro has made some progress in strengthening the legislative and institutional framework in the field of prevention and repression of corruption, the problem of corruption remains widespread in many areas and remains a matter of serious concern. It is evident that the state is not demonstrating strong enough efforts to tackle endemic corruption, especially in the field of strengthening preventive anti-corruption dimension and ensuring credible results in investigation processes, indictments and final convictions for cases of high-level corruption. Therefore, the application of the established legal and institutional framework in the fight against corruption remains insufficient.

[odbor-za-stabilizaciju-i-pridruzivanje/dokumenta](#) (last access on 17 September 2020).

²² European Commission, Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2010 – 2011, p.11.

²³ Government of Montenegro, Information on the implementation of key activities from the Action Plan for the implementation of recommendations from the opinion of the European Commission, p. 11, <http://www.skupstina.me/index.php/me/pristupanje-eu/parlamentarni->

²⁴ European Commission, Montenegro 2015 Report, p. 14-15, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_montenegro.pdf (last access on 17 September 2020); Government of Montenegro, Action Plan for Chapter 23 Judiciary and Fundamental Rights, Report No. 5, p. 125, http://www.gov.me/biblioteka/izvjestaji?pagerIndex=29_ (last access on 17 September 2020)

²⁵ European Commission, Montenegro 2016 Report, p. 15, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf (last accessed 17 September 2020); Government of Montenegro, Action Plan for Chapter 23 Justice and Fundamental Rights - Semi-Annual Report January - June 2015, p. 115, <http://www.gov.me/biblioteka/izvjestaji?pagerIndex=24> (last access on 17 September 2020)

SAI, SEC AND APC - SLOW AND SELECTIVE

Despite some improvements, the facts point to visible shortcomings of the anti-corruption system in Montenegro.

Namely, the competent institutions are late and reluctantly strengthening their capacities, and there is a lack of efficient and non-selective application of existing anti-corruption mechanisms, especially in the area of control over the financing of political parties and election campaigns, as well as prevention of conflicts of interest.

Besides, preventive anti-corruption bodies - the State Audit Institution (SAI) and the State Election Commission (SEC) - do not have sufficiently effective sanction mechanisms if entities do not comply with legal provisions. Consequently, they become marginal players in the domain of effective control of the obtained funds of the parties for conducting the election campaign. Thus, SAI and SEC do not have effective independent control mechanisms, reliable reporting, functional supervision, and sanctioning power that they can use against those political parties that provide inaccurate or false information about obtaining funding through private donations²⁶.

It is similar in the domain of functioning of the former CPCI, i.e. current APC. Although the new legislative framework strengthens the APC's control mechanisms in the part of checks of submitted property records by public officials, the practice indicates selectivity, but also the need to improve the legislative framework. There is no legal obligation for public officials to allow access to their own and their families' bank accounts, which is an obstacle in the Montenegrin context, especially given the numerous indications, including publicly presented evidence, of the illegal enrichment of some of them²⁷.

Another obstacle is the still insufficient exchange of information between preventive bodies and other competent state bodies to prevent conflicts of interest of

public officials, which calls into question the expediency of the adopted legislation²⁸.

Overall, preventive anti-corruption bodies continue to face challenges in the area of the independence of control of property records of public officials, primarily due to the strong political influence that limits the application of adopted legal provisions. Consequently, the issue of political corruption remains a serious problem, especially due to its predominant influence in preventive institutional mechanisms, i.e. a situation is created in which these institutions are in the service of powerful decision-makers instead of in the public interest, whether it is control of property records of public officials or money used to fund election campaigns by political parties.

26 Law on Amendments of the Law on Financing of Political Entities and Election Campaigns, 2017, <http://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/333/1619-10253-23-2-17---.pdf> (last access on 5 September 2020), Law on Financing of Political Entities and Election Campaigns, 2019, https://www.paragraf.me/propisi-crnegore/zakon_o_finansiranju_politickih_subjekata_i_izbornih_kampanja.html (last access on 5 September 2020).

27 Official Gazette of Montenegro, Law on Amendments of Law on Prevention of Conflict of Interest, No 53/2014 and 42/2017 – Decision of the Constitutional Court.

28 Institute Alternative (IA), Centre for Civic Education (CCE), Center for Development of Non-governmental organizations (CRNVO), Centre for Monitoring and Research (CEMI), "Montenegro between reform leader and reform simulacrum" 2018, <http://media.cgo-cce.org/2018/03/Montenegro-simulacrum.pdf> (last access on 5 October 2020).

HOLLOW NET FOR BIG FISH

Limited progress can also be noted in the fight against corruption.

The 2009 Criminal Procedure Code introduced the possibility of concluding a plea agreement for criminal offenses punishable by up to 10 years in prison. Following the amendments to the Criminal Procedure Code in 2015, a plea agreement can be concluded for all criminal offenses except for the criminal offenses of terrorism and war crimes. Obviously, the legislator failed to exclude the possibility of concluding an agreement for high-level crimes. This legislative shortcoming could have been corrected by the Supreme State Prosecutor by issuing mandatory instructions for work of a general nature based on the authority given to him by the Law on the State Prosecutor's Office. Namely, this instruction could have ordered state prosecutors not to conclude plea agreements in acts of high corruption or not to negotiate sanctions below a certain level. The failure of the legislator and the passive attitude of the Supreme State Prosecutor has led to high corruption cases ending in sanctions lower than the range provided by the Criminal Code for such a crime²⁹.

Consequently, these legal shortcomings in the Criminal Procedure Code have been significantly exploited by those perpetrators of criminal offenses who were suspected of cases of high corruption and organized crime resulting in receiving significantly less punishment for a serious crime. For example, in the "Zavala" case, in 2015, the High Court in Podgorica upheld a previously imposed sentence of three to five years in prison for the former mayor of Budva, his deputy and a former MP of Democratic Party of Socialists (DPS), while in the "Košljun" case, another person, also a former mayor of the municipality of Budva, was sentenced by the High Court in Podgorica to six years in prison. They all signed a plea agreement³⁰. Moreover, in 2016, the High Court in Podgorica concluded a plea agreement with Svetozar Marovic, former president of the State Union of Serbia and Montenegro and vice president of the DPS. It was a final conviction of three years and nine months in prison for crimes of high corruption, with the obligation to return EUR 1.1 million to the state budget and to pay EUR 100,000 to charity³¹. That verdict has not been executed yet, because in the meantime Marovic

29 Official Gazette of Montenegro, Criminal Procedure Code, No 57/2009, 49/ 2010, 47/2014 - Decision of the Constitutional Court, 2/2015 – Decision of the Constitutional Court, 35/2015, 58/2015 – other law and 28/2018 – Decision of the Constitutional Court.

30 European Commission (2015), op. cit., p. 54

31 European Commission (2016), op. cit., p. 15

went to Belgrade, from where he avoids its execution under the justification of the necessary medical treatment.

The latest in a series of scandals related to political corruption, which is also in the focus of the European Commission, refers to the "Envelope" affair. Although the public had the opportunity to see the involvement of the party leadership of the DPS in highly corrupt activities, through direct receipt of undeclared money for election campaigns, as proven in the video published by a controversial businessman and long-time personal friend of Milo Đukanovic and DPS donor, Dusko Knezevic, this case has not yet received a judicial or political epilogue. After strong public pressure, the Special State Prosecutor's Office (SDT) reluctantly filed an indictment against the perpetrators of the affair, Slavoljub Stijepovic, former mayor of Podgorica and minister of education in the Montenegrin government, now a member of the cabinet of the president of the state Milo Đukanovic, for taking EUR 97,000 and its illegal use for pre-election purposes. Also, on the occasion of this event, the potential client and president of the DPS, Milo Đukanović, was never invited to testify. The political influence on APC is also visible in the case of the "Envelope" affair after the decision of APC that the DPS must pay a fine of EUR 47,000 as the alleged amount of money taken by Knezevic. Additionally, this APC decision was inaccessible to the public for a long time and was finally published at the persistent request of civil society³².

In brief, the data indicate that in this part the positive and strengthening effects of the EU in the fight against corruption in Montenegro during the integration phase so far cannot be noted. Montenegro, as a candidate country, has made progress in strengthening the legal and institutional framework, as well as in building the accompanying administrative capacity in the fight against corruption. However, the implementation of the adopted legislative framework remains insufficient even under the strong political influence of the until recently governing structure.

Therefore, since Montenegro is currently facing the most demanding and challenging integration phase, it would be reasonable to expect the country to show a far stronger and more proactive approach to tackling corruption through effective implementation of EU commitments, especially those related to strengthening preventive anti-corruption measures and producing measurable results through final judgments for cases of high corruption.

32 Decision of the Agency for Prevention of Corruption, https://www.antikorupcija.me/media/documents/Rje%C5%A1enje_-_Demokratska_partija_socijalista.pdf (last access on 10 October 2020)

RECIPE FOR FAILURE – INCONSISTENT EU AND DECEIVING MONTENEGRO

Having an unconvincing performance of Montenegro in preventing and fighting corruption during the EU accession process so far, the question arises: how to explain the constantly declining trend in strengthening anti-corruption policy in Montenegro when performance in this area is one of the conditions for further progress?

Several main explanations have been taken into consideration.

The strengthening of anti-corruption policy in Montenegro during the entire integration period is primarily characterized by the production of a large number of strategic documents and legislative acts. For example, from 2006 to 2013, the Government of Montenegro adopted five different versions of action plans for the fight against corruption and organized crime (2006, 2008, 2010, 2011, 2013), as well as one strategy (2010). As expected, frequent changes of such documents in a short time complicated the practice because it was accompanied by a change in reform priorities in this area. In the meantime, the production of laws and other bylaws continued. In this case as well, the EU stimulus resulted only in the frequent and non-implemented adoption of uneven and inadequate laws and bylaws (more than 70), which were limited in scope and influence³³. In addition, accelerated and strategically ill-conceived changes in the legal framework had a domino effect on the underdeveloped and party-networked administrative apparatus, which was not ready to seriously face and cope with extensive legal changes, especially when it came to establishing effective independence of anti-corruption institutions. Thus, bad foundations were created that did not strengthen the anti-corruption system or pave the way for sustainable results in the field of investigations, indictments and final verdicts in criminal offenses with elements of corruption. Furthermore, a situation has been created in which due to non-functional legal changes, anti-corruption institutions remain limited in their scope of activities without even implementing a control preventive approach. The work of the SEC, the SAI, the CPI and later the APC have provided many specific

examples that have indicated and continue to indicate serious concerns that these bodies are not substantially independent or ready to implement the existing legislative framework. Illustrative to the public are examples related to the verification of property records of public officials, but also the manner of financing political parties during election campaigns. These institutions remained at the formal level, under the party discipline of the governing structure and without the will or ability to use control and disciplinary measures. In brief, certain conditions set by the EU have been formally met, but there has been virtually no necessary change.

The lack of budgetary resources to strengthen the administrative and institutional capacity of law enforcement agencies (police, Prosecutor's Office) can be partially used to explain the regressive trend in combating corruption in Montenegro, although there are numerous international donor programmes used by Montenegro in this area. Although some improvements in the administrative and institutional capacity of state bodies in the fight against corruption have been noted, primarily through increased national budget expenditures and EU financial support through Instrument for Pre-Accession Assistance II (IPA II), there has been no full capacity building for law enforcement. This is emphasized within the investigative bodies, through the lack of appropriate skills, adequate work equipment and human resources to prevent and combat high corruption. Also, the level of cooperation between the police and the Prosecutor's Office is not at a satisfactory level, which makes it difficult to effectively combat endemic corruption. Last but not least, the capacity of law enforcement agencies in the field of financial investigations remains a matter of serious concern due to the inability to adequately investigate suspicious assets and gather evidence that is viable in court proceedings. In overall, both the financial and political aspects have a significant impact on the limited development of anti-corruption capacities and results in the fight against corruption.

The lack of political will on the part of the governing structure to essentially strengthen the legislative and institutional framework in the fight against corruption, which would ensure the sustainability of the reform process, is one of the key explanations for the regression in the fight against corruption. Political corruption in Montenegro, expressed through the widespread misuse of public resources for

33 MINA, 'Glavni pregovarač Crne Gore Andrija Pejović: Borba protiv korupcije: Setom zakona unaprijeđen normativni okvir', *Café del Montenegro*, <https://www.cdm.me/politika/borba-protiv-korupcije-setom-zakona-unaprijeđen-normativni-okvir/> (last access on 4 October 2020).

financing political parties or election campaigns, as a rule, remains inadequately investigated and unprocessed, which is stated as extremely concerning in relevant international reports. There have been numerous and serious allegations of misuse of public finances for internal political and party purposes during the 2012 parliamentary elections, then the 2013 presidential elections, as well as the 2016 parliamentary elections, and have remained without a legal epilogue in prosecuting and convicting those for which there is a reasonable suspicion that they have committed the criminal offense of corruption and abuse of office³⁴. Corruption is widespread in all parts of the system and administrative apparatus, and a politically burdened judiciary with a ruined reputation has no power to break the vicious circle of corruption or prosecute powerful individuals from the political sphere for whom there are serious suspicions, and often publicly presented evidence, that they were part of various corruption scandals. The "Recording" affair from 2013, where the public had the opportunity to hear, from the audio recording of the meeting of the ruling DPS, how public resources are being misused for party purposes, never received its adequate legal and political epilogue, and was followed by the "Envelope" affair from 2019 confirming this assessment³⁵.

It is important to point out the consequences of impunity for political corruption, as these are reflected in all the strong pressures on employees in state institutions or public companies from the governing structures. Additionally, there is reason to suspect that DPS party activists used to buy ID cards or other identification documents of those citizens facing a poor financial situation to ensure the survival of the ruling elite, which is actually buying votes in this manner³⁶.

There are also numerous (un)intentional shortcomings in the legislative framework. Inadequate control of party donations from private sources opens the possibility of money laundering, which consequently endangers the public interest in combating corruption, especially in the area of organizing fair and free elections. These controversies were open to the public, but without a valid

34 Institute Alternative (IA), Centre for Civic Education (CCE), Center for Development of Non-governmental organizations (CRNVO), Centre for Monitoring and Research (CEMI), "Montenegro between reform leader and reform simulacrum" 2018, <http://media.cgo-cce.org/2018/03/Montenegro-simulacrum.pdf> (last access on 5 October 2020).

35 Radio Slobodna Evropa, 'Afera "Snimak: Pozitivna Crna Gora dostavila snimak Đukanovića,' *Radio Slobodna Evropa*, <https://www.slobodnaevropa.org/a/afere-snimak-ko-je-smjestio-milu-djukanovicu/25157499.html> (last access on 7 October 2020).

36 Portal Vijesti, 'Na dan izbora u Petnjici: Davali smo 30 eura prije, a 30 eura poslije glasanja', *Vijesti online*, <https://www.vijesti.me/vijesti/politika/256328/na-dan-izbora-u-petnjici-davali-smo-30-eura-prije-a-30-poslije-glasanja> (last access on 7 October 2020).

reaction from the competent institutions. In doing so, APC does not sufficiently use the existing mechanisms to control private monetary donations or contributions awarded to political parties, which is also a consequence of political influences on the work of this anti-corruption body. For example, during the 2012 parliamentary elections, the DPS provided the Montenegrin public with a list of 2,000 donors who paid a total of € 654,000 to support the election campaign. However, the curiosity of this report is not the amount of funds collected to support the DPS election campaign as much as the individuals mentioned in the report who publicly denied that they donated any funds to this party and stated that their names and data were misused³⁷. Data on a similar type of payments also appeared in connection with the parliamentary elections held in 2016³⁸.

Widespread political corruption in public administration is also visible through the (lack of) achievements when it comes to sustainable and measurable results in investigations, indictments and final judgments in cases of high corruption. Under strong pressure from the EU to produce a track record, then the governing structure skilfully resorted to the principle of sacrificing the weakest link. More precisely, the DPS brought to the altar of the further accession process several high-ranking officials who were assessed as the least damage for replacement. But even such officials were essentially given preferential treatment, as all branches of government adopted or applied those legal provisions that allowed them to be relatively lightly convicted given the crimes they were charged with. The example of the former vice president of the DPS and the president of the former State Union of Serbia and Montenegro, Svetozar Marovic, stands out here. Before initiating proceedings against Marovic for his participation in corruption scandals that damaged the local and state budget for millions, the Parliament adopted amendments to the Criminal Procedure Code (CPC), introducing the institute of plea agreements for most corrupt crimes, including those concerning high corruption. Thus, Marovic received a lower sentence for the committed crime, i.e. he was sentenced to only three years and nine months for a case of high corruption. It is important to note that this institute can facilitate the work of Montenegrin investigative bodies, but the way it has been applied so far has raised many justified questions in terms of efficiency and transparency, especially due to the fact that the Montenegrin public still does not have access to details of this or similar cases.

37 ND Vijesti, 'DPS od ličnih donacija uknjižio 654.000 eura,' *ND Vijesti*, <https://www.vijesti.me/vijesti/politika/361039/dps-od-licnih-donacija-uknjizio-654-000-eura> (last access on 10 October 2020).

38 MANS, <http://www.mans.co.me/kako-je-dps-kreirao-sistem-za-ubacivanje-gotovine-svi-predsjednikovi-ljudi/> (last access on 11 October 2020).

In short, both the legislature and the executive have only declaratively adopted the European legal framework in the field of strengthening anti-corruption policy, while the practice of applying the adopted EU norms is sporadic and selective.

And finally, the decline of enthusiasm in the EU for the further enlargement process with the countries of the Western Balkans is the last explanation in the part of the inconsistent attitude towards the lack of fight against corruption. Obviously, a large number of internal and external crises have shaken the EU, starting with the economic and financial crisis, problems in institutional reforms, differences between member states over the future of the EU, growing populism, ultra-right parties and semi-authoritarian leaders, coping with the migrant crisis, etc. that also left traces on enlargement policy. The membership perspective exists for the countries of the region, but compared to some previous examples, it is indefinite and without detailed road maps.

Thus, the inconsistency of the conditionality policy of the EU has had an impact on the absence of the expected political transformation in Montenegro during the integration phase so far. More specifically, the insufficiently strong influence of the EU has had a weak effect on certain aspects of anti-corruption, especially the sustainability of anti-corruption prevention policy and in ensuring solid and convincing results in investigations, prosecuting of perpetrators and passing final judgments in cases of high corruption. The avoidance of the EU to be more explicit in its demand to strengthen the anti-corruption dimension has been abused by Montenegrin decision-makers to preserve existing monopolies of power based on corruption. Consequently, the fight against corruption in Montenegro has begun to acquire regressive characteristics.

CHANGE OF APPROACH – REPLACEMENT FOR STICK AND CARROT

What is and how significant is the real impact of the so-called transformative powers of the EU to domestic political circumstances and effective systemic changes in Montenegro? Why has Montenegro, as a (self-) proclaimed leader in the European integration framework, experienced a substantial failure in the process of Europeanization, despite long-term reform interventions, which has called into question the transformative power of the EU to systemic changes in candidate countries?

The answers to these questions can be obtained by measuring three key indicators in the accession process - *the fight against corruption, the reform of the judicial system and the strengthening of regional cooperation and the improvement of good neighbourly relations*. Such an analytical and empirical framework also contributes to shedding light on the dilemma - *has Montenegro earned the status of a leader in the EU integration process or is its progress a reflection of the EU's permanent policy of concessions to Montenegro as the rest of the region declines or stagnates?* Additionally, having in mind the approach to negotiations with Montenegro, established in 2012, and then the new methodology that Montenegro adopted in 2020, it is time to discuss *the outcomes of the existing conditionality policy the EU towards the region, positive and negative incentives, as well as monitoring mechanisms*. It is also important that *the EU stops favouring the maintenance of "stabilocracies"* instead of effectively applying political criteria for membership as there are still strong ties and cooperation between political elites, which are predominantly autocratic, and the post-communist legacy in many respects, especially in terms of avoiding the implementation of measurable results, simulating reforms and preventing the implementation of sustainable reform processes.

The fact is that since 2006, that is, i.e. since Montenegro, as an independent state, began the reform process, which included the fight against corruption, it has continuously faced a parallel and strong problem of limited statehood. Like many post-communist countries in transition, Montenegro has a problem of an undeveloped democratic system, characterized by weak and dependent institutions, systemically rooted and widespread corruption and clientelism, with an underdeveloped and politicized administrative apparatus that is unable, and often unwilling, to effectively tackle the problem of corruption. The problem of such limited statehood in Montenegro has

had a deep mark on endemic political corruption within the anti-corruption institutions designed to prevent or combat conflicts of interest of public officials and to enable the creation of reliable and transparent control mechanisms that would be able to examine the financing of political parties and their election campaigns. To this should be added the lack of expertise, funds and human resources, and the insufficient development of the administrative capacity of law enforcement agencies to understand that failure to fight corruption was inevitable, especially when it comes to achieving concrete and sustainable results in investigations, indictments and final judgments for cases of high corruption.

Second, the remnants of the post-communist legacy are not negligible in the fight against corruption throughout this integration phase. A strong influence of the so-called veto players in the fight against corruption is another factor that contributes to the regression in this area, and especially the lack of track record in cases of high corruption. Veto players (post-transition profiteers, financial tycoons, corrupt business elites, etc.), dating back to the post-communist period, support governing structures through various financial forms and are deeply infiltrated at all levels of management and administration. The intertwining of criminal and collaborative networks between the corrupt political elite and veto players primarily ensures the political protection of these players from potential investigation, indictment and final verdicts, and through political influence in the judiciary, where the independence and accountability of judges and prosecutors are more incidents than rule. The non-resistance of the Montenegrin judiciary to corruption protects both the ruling elites and veto players who are practically legally untouchable for all potential anti-corruption actions. With the financial support and donations for the election campaigns, the ruling parties of this organized group, which are mostly controversial businessmen, realize their private interests. The calculation is clear - support for the corrupt executive is an important lever for increasing one's illegal wealth and for preferential status in dealings with state bodies, public companies, etc. The President of Montenegro, Milo Đukanović, once described it as "interest-based volunteering"³⁹. It is about a narrow circle of post-transitional winners who benefit

³⁹ Radio Slobodna Evropa, Tajni fondovi ključ Đukanovićevih izbornih pobjeda?, *Radio Slobodna Evropa*, <https://www.slobodnaevropa.org/a/29724615.html> (last access on 15 October 2020.).

through the connection with the ruling party, and most often through corrupt deals in the field of privatization, urbanism, public procurement, etc. Ultimately, to gain more and more wealth, these interdependent criminal-political ties will remain unbroken until EU pressure exerts positive effects in achieving credible and reliable results in a comprehensive fight against corruption.

Due to unfavourable internal conditions, political elites also demonstrated limited activities in strengthening the prevention and suppression of corruption while at the same time implementing the measures of the captured state through anti-corruption institutions. The integration dynamics indicate that the problem of corruption has not diminished, and it continues to be a matter of serious concern eight years after Montenegro opened membership negotiations with the EU. Clearly the strong political influence on the anti-corruption institutional framework (SAI, SEC and APC) and on law enforcement agencies (police and Prosecutor's Office) acted obstructively in terms of consistent implementation of anti-corruption legislation. Montenegro has elements of a captured state and consequently politically shackled anti-corruption bodies that do not even use the existing legal framework to prevent or limit political-party corruption. Moreover, the chronic lack of credible results in the area of investigations, indictments and final verdicts, especially in cases of high corruption, creates a convincing picture of the dangerous scale of corruption in the country. Although Montenegro has been involved in EU integration policy for almost 15 years, the number of individuals convicted of high-level corruption cases is minimal. However, if we take into account that most of these verdicts were annulled or that most of these convicts used the institute of plea agreement, it is easy to conclude that the candidate country has not achieved measurable results in combating corruption.

In this sense, this study provides part of the arguments that can support the claim that the EU's transformative power to domestic structural change has been uneven and inefficient.

Finally, the EU's reluctance to put consistent pressure on candidate countries to introduce new patterns regarding the fight against corruption is the latest in a series of explanations as to why Montenegro has failed to Europeanise despite a long-lasting reform process. For too long, the EU has focused on the process itself, and too little on achieving realistically achievable results in strengthening anti-corruption policy in Montenegro. Thus, the EU conditioning policy was reduced to monitoring and constant repetition of the same recommendations that were not implemented and were not accompanied by new measures that would prevent existing corruption problems and give impetus to the effective conduct of anti-corruption activities. This is partly due to the EU's declined interest in continuing its enlargement policy, but also to the need to maintain domestic political stability. It is obvious that the EU tried to play a constructive role

in strengthening the internal anti-corruption system by building ties with undemocratic structures and leaders, thus indirectly supporting them in not meeting the political criteria related to the effective fight against corruption. In this way, domestic political structures have developed a sense of irreplaceability in international circles and the belief that the lack of results in the fight against corruption does not jeopardize their survival and power.

So, the fight against corruption in Montenegro during the accession process so far has permanently depended on three interdependent factors - the policy of conditioning by the EU, domestic political structures and efficiency, in other words, the manner of implementing reform activities. The EU's unwillingness to ultimately underline the need to establish effective measures to prevent and combat corruption on the one hand, and the lack of internal political will to address the ubiquitous problem of corruption on the other, resulted in a selective approach to meeting anti-corruption goals, which could not make a truly independent and professional anti-corruption institution.

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This publication is published in cooperation with:

Centre for Civic Education (CCE) is one of the leading non-governmental organisation in Montenegro dedicated to the development of civil society and participation of citizens in policy-shaping and decision-making through the education of various actors in the field of democracy, human rights and European integration.



Centar za građansko obrazovanje
Centre for Civic Education

IMPRESSUM

Friedrich Ebert Stiftung /Office in Belgrade
Dositejeva 51/1 / 11 000 Belgrade/Serbia

Responsible:
Dr. Max Brändle / Director, Regional Office for Serbia and Montenegro

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BALKANIZATION INSTEAD OF EUROPEANIZATION

Fight against corruption in Montenegro



Montenegro had enormous potential to be a success story of European integration in the Western Balkans, as it was sometimes presented by some high-ranking EU officials, with the outcomes that could be transferred to the rest of the region.



The reluctance of the EU to impose measures to prevent and combat corruption, accompanied by the lack of internal political will to address the endemic corruption, resulted in a selective approach of the government in reaching goals that could make genuinely independent and professional anti-corruption institutions.



The recent change of government still does not provide a convincing answer in terms of a vision and a strategy for shaping a different Montenegro that integrates civic and democratic principles, as well as anti-corruption practices.

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