

Rule of Law in the Western Balkans

A jogállamiság a Nyugat-Balkánon

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Abstract: Rule of law is a much-debated concept today, and it is one of the fundamental pillars of any democratic system. When it comes to the countries of the Western Balkans striving to become members of the European Union, it is important to look at the characteristics they have in this respect, and to what extent they meet the criteria for becoming a member state. Due to their particular way of development, there are different de facto political systems functioning within the region, which is an obstacle that also stands in the way of rule of law. This study presents those aspects of the rule of law that clearly demonstrate falling behind other political systems. An independent judiciary, civil liberties, media pluralism, and corruption are all factors that require reform in the examined countries. It may be wise to try and point out the shortcomings of the system along the lines of these aspects.

Keywords: rule of law, independent judiciary, human rights, media pluralism, corruption, Western Balkans.

Összefoglalás: *A jogállamiság napjainkban sokat vitatott fogalom, mely minden demokratikus rendszer alappillére. Az Európai Unió tagjaivá válni kívánó nyugat-balkáni országokkal kapcsolatban meg kell vizsgálnunk az egyes országok jellegzetességeit ebben a tekintetben, illetve, hogy mennyire teljesítik a tagállammá válás feltételeit. Az egyedi fejlődési pályák miatt a gyakorlatban eltérő politikai rendszerek működnek a térségben, ami akadályt képez a jogállamiság számára. A jelen tanulmány bemutatja a jogállamiságnak azokat a szempontjait, melyek világosan rávilágítanak más politikai rendszerekhez képesti hiányosságaikra. A független igazságszolgáltatás, a polgárjogok, a médiapluralizmus és a korrupció mind olyan területek, ahol reformra lenne szükség a vizsgált országokban. Célszerű megpróbálni kimutatni a rendszer hiányosságait a fenti szempontok alapján.*

Kulcsszavak: *jogállamiság, független igazságszolgáltatás, emberi jogok, médiapluralizmus, korrupció, Nyugat-Balkán*

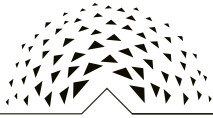
INTRODUCTION

When observing the rule of law in the Western Balkans, one aspect that stands out is the fact that none of the countries meet the requirements of democracy as defined in the Western sense (Orosz, 2019). The countries of the region aim to join the EU, the fundamental requirement of which is ownership of its core values. Today's most prevalent dispute in the EU revolves around the topic of the rule of law, as even the EU member states are struggling to find common ground, although they all still treat it as a top priority.

This study describes the rule of law in the Western Balkan countries to see what challenges it poses in their European integration, and in what ways these countries have been successful in achieving results, and where they still need to make more effort. Although several institutions and organizations issue reports on the individual countries, these do not reflect on one another to a great extent, and some elements that appear in some are missing in others. The study gives an overview of the rule of law in the countries of the Western Balkans and elaborates on the contradictions observed in practice. The following elements are examined: 1) independence of the judiciary; 2) the state of civil liberties and the protection of minorities; 3) media pluralism; and 4) the fight against corruption. Due to limitations of space, a full presentation of the facts is impossible, and therefore brief summaries are presented about the most relevant topics. The Bertelsmann Stiftung Transformation Index, the country-specific opinions of the European Commission, as well as the Nations in Transit and the Freedom in the World reports of Freedom House are used in the analysis.

ALBANIA

The traditions concerning state-building in Albania have a brief history, going back a century in a country where the twentieth century was interspersed with different dictatorial regimes following one after the other. Examples of truly democratic operation can only be observed in the last thirty years, which is also a period lacking some key features. The tropes of a “Greater Albania, the Kosovo crisis, human trafficking and refugees, pyramid schemes and drug trafficking” (Végh, 2019) have occurred in recent decades, all of which indicate the interruption of the operation of the country. Along the imperfections of state development, the Albanian society has organized itself within a pre-modern framework, with tribes and clans as the traditional basis of societal construct, which is less individualistic. The population of Albania peaked in 1990, when there were 3,286,073 people living in the country. By 2020, this number dropped to 2,877,797 (Worldometer, 2020a). Three reasons have been attributed to the decrease in population: 1) low rate of childbirth, also characteristic of the rest of Europe; 2) emigration due to political instability; 3) economic migration. The economic aspect of democratic transition, the transition to a free market came as a shock to the economy of Albania. In 1991, the GDP decreased by 28%. In the following two years, the country managed to turn the trend around, but by 1997 a recession of 10% occurred as a result of the collapse of a pyramid scheme (World Bank, 2020a). Following the turn of the millennium, positive figures prevailed, resulting in a 2.2% increase in GDP in 2019.



INDEPENDENCE OF THE JUDICIARY

The creation of an independent judiciary has been at the core of the reform efforts, most of which are supervised by international organizations operating in the field of the rule of law, including the OSCE, the Council of Europe, and the EU (Bertelsmann Stiftung [BS], 2020a). The EURALIUS mission, the goal of which is to develop a more independent, less biased, more efficient, professional, more transparent, as well as more modern judicial system, has been in place since 2005 and is currently in its fourth extension period. The rapid, constant, and persistent institutional transformation has not been able to curtail political patronage, ties to organized crime, and instances of maladministration within the judicial system.

According to the European Commission, the independence of judges and prosecutors needs to be strengthened, and the quorum of the Supreme Court and the Constitutional Court must be guaranteed (European Commission [EC], 2020a). Upon screening the judges and prosecutors, more than 140 dossiers were processed, leading to 88 cases of removals or resignations, with a total dismissal rate of over 60%. This high rate of dismissal has created problems in the judicial system because the number of judges is low (12 for every 100,000 people) in comparison with the European average (21 for every 100,000 people) (Vurmo, 2020).

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

Freedom of assembly is usually respected. Protests organized by the opposition parties and civil groups are common. There have been clashes between protesters and the police during some events (Freedom House [FH], 2020a).

Due to the atheist state traditions, the possibility of religious groups gaining political influence, even if formally, has never presented itself in the country. The political elite has gradually accepted the French model of secularism, where the autonomy of religious communities is propagated.

As for non-discrimination, the terminology behind the legislation needs improving, and the terms also need clarification. In order for the legal framework of non-discrimination to be implemented, the training of judges and prosecutors needs to be revised. Although the acts against hate speech correspond to international norms, there is a country-wide need for campaigns aimed at raising awareness, and there is much to be done to eliminate hate speech, with special respect to the more remote and rural regions.

When it comes to the equality of men and women, the country has shown little to mediocre progress because the impact of the 2016-2020 national strategy and action plan is falling behind when implementing the branch strategies at the central and local level. With the introduction of, for example, Planned Parenthood services as part of general health care service, and by making modern contraceptives freely available, the availability of contraception has shown improvement (EC, 2020a).

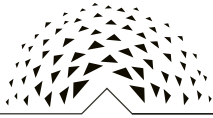
In addition, Roma people experience significant discrimination regarding education, health care, employment, and housing. An act issued in 2010 prohibits discrimination on the basis of race, as well as numerous other categories, including sexual orientation and sexual identity. Furthermore, the 2013 reform of the Criminal Code has introduced protection against hate crime and hate speech based on sexual identity and sexual orientation. However, bias against members of the LGBT community still prevails (FH, 2020a). Hate speech and discriminative linguistic expressions remain a problem in the media, especially online. The national action plan concerning members of the LGBT community, which ended in 2020, has not provided visible outcomes, in part due to insufficient funding. The staff of the police force, prosecutors, and line ministries have participated in training regarding discrimination on the basis of sexual orientation and sexual identity (EC, 2020a).

MEDIA PLURALISM

Albanian citizens, organizations, and the mass media in general can express their opinion freely. The constitutional framework in place guarantees freedom of expression, the organization of mass media, and the right to information. The media is highly varied, with each major political party having their own media outlets. The wide range of media (18 daily papers, 49 radio stations, 47 TV channels, 75 cable TV channels, 5 country-wide commercial multiplexes, and an additional 800 online portals) has been able to improve the transparency of political processes, governmental policies, and maladministration cases (BS, 2020a). However, the concept of plurality is an illusion, as the revenues still end up in the pockets of a handful of groups owned by families that dominate the media market. Even the audience measurement ratings display distorted figures, favouring either of the main media houses of the country, Top Media or Klan. This, on the other hand, has nothing to do with government tampering, but mainly with the post-socialist conditions dominating the media. It is one of the expectations from EU that the transparency of the structure of media ownership should be improved upon, censorship and self-censorship should be rolled back, and sentences should be passed down regarding the violence committed against journalists.

CORRUPTION

According to the European Commission, in recent years some progress has been made in terms of strengthening the fight against corruption. An action plan containing the measures proposed for the 2020-2023 period has been adopted. Another important step forward were the changes made to the law on financing parties and the electoral law, as well as the adoption of the new law on the management of seized and confiscated assets. The continuous scrutinizing of



members of the judicial system and the police force has also produced results in the fight against corruption. The operative capacity of the management of corruption cases is adequate, and the institutional coordination and controlling structures are satisfactory. The proactivity of administrative inspections has improved, owing to the establishment of an anti-corruption work group. Important expectations for the future include from EU: 1) more determined fighting against corruption; 2) further extending the role of the special prosecutor's office, the Albanian National Bureau of Investigation, and the courts handling anti-corruption and cases related to organized crime; 3) improved access for law enforcement authorities to the national electronic records (EC, 2020a).

According to a report published by Freedom House, there has been little progress in the fight against corruption, has been overshadowed by the digitization of points of single contact, the investigation of suspicious partnerships between the public and the private sector, and unsuccessful investigations into suspicions of high-level corruption cases (Vurmo, 2020). The Albanians themselves are sceptical of prosecutions against corruption cases (6 out of 10 people surveyed do not have faith in the investigations going into lower-level incidents of corruption, while for higher-level cases, 7 out of 10 people have the same opinion). Furthermore, the majority of Albanians believe that lower-level as well as higher-level corruption cases are widespread in Albania (87.5% and 85.2%, respectively).

BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina was only successful in preserving its independence through an armed conflict, which meant a great loss of life, as well as severe economic losses. The functioning of the country (or lack thereof) was set down in the Dayton Agreement of 1995 and is in effect even today, creating a complicated system based on a balance between the three founding ethnicities (Kemenszky, 2019). The population of the country exceeded 4 million in 1976, reaching 4.5 million in 1990. Owing to the war, however, close to 800,000 people were either forced to leave the country or lost their lives. In the 2000s, the population size seemed to stabilize, but starting from 2010, it started to decrease once again. By 2019, the number of citizens dropped to 3.3 million (Woldometer, 2020b). The ratio of different communities has also shifted, making the Bosniaks the most populous group, with Serbs and Croats decreasing in number. All of this has generated social unrest, not to mention the differences impacting the functioning of the state. When it comes to the economy of the country, it is difficult not to see the weight of international aid following the war, given the increase in GDP reaching 88% by 1996 and stabilizing around 5% by the end of the decade. The financial crisis of 2009 caused a recession of 3% within a single year, stabilizing once again at an increased rate of 2-3% (World Bank, 2020b).

INDEPENDENCE OF THE JUDICIARY

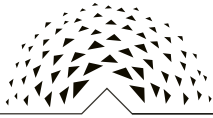
The judicial system in Bosnia and Herzegovina has multiple administrative levels: the two entities as well as the Brčko District have their own independent judicial systems. This, paired with the 10-canton judicial system of the Bosniak-Croat part of the state, has resulted in a complex and ineffective system that does not have clear separation between its jurisdictions. Moreover, the courts are under political pressure (Brezar, 2020). The independence of the justice system and the prosecutors is guaranteed by the High Judicial and Prosecutorial Council of Bosnia, established in 2006 (Bertelsmann Stiftung [BS], 2020b). The 2018 report of the human rights ombudsman concluded that although prison conditions had improved in comparison with earlier years, the issue of overcrowding was still present in the Sarajevo Canton. The greatest issue of recent years has been the Serbian entity and its opposition to the central level, during which legal certainty was being jeopardized.

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

The anomalies surrounding the regulation of the right of assembly pose a serious problem in the Serb entity. It is common for people going into the streets to protest the government's measures to be subject to political intimidation, and at the same time to be condemned by the pro-government media outlets. The law on public order was modified in 2019, and protest movements in the vicinity of government institutions were banned. However, due to international pressure, this was later modified (BS, 2020b). Laws on freedom of assembly must be harmonized with European requirements, with special respect to the areas of restriction and responsibility. In July 2020, the Brčko District adopted a law on the freedom of assembly, which is mostly in line with European standards (European Commission [EC], 2020b).

In Bosnia and Herzegovina officially there is a clear separation between state and religion; in practice, however, religious communities play an influential role in public as well as political life. Apart from some exceptions, religious leaders still emphasize their presumed disadvantage instead of preaching inter-religious (and inter-ethnic) religion, tolerance, and understanding (BS, 2020b). Vandalism at religious sites also occurs in the country (Freedom House [FH], 2020b).

Although it is a widespread phenomenon, mostly against members of the Roma minority, discrimination against minorities is not allowed. In the Serbian entity, Bosniaks and Croats struggle regarding access to social services. Those who returned to their homes following the war have faced discrimination in the fields of employment and housing in regions where their ethnic group is part of the minority (FH, 2020b).



Women are legally entitled to full equality with men. In practice, however, they encounter discrimination in the workplace. The country has an action plan for the 2018-2022 period, but women are still underrepresented both in politics and in public life. Achieving wage parity is still pending because women are paid 78-85% of the salary given to men. Differences in the management of maternity, paternity, and family leave prevail in the individual entities and cantons, resulting in a fragmented system (EC, 2020b).

During the course of 2018 and 2019, more than 50,000 migrants and asylum-seekers arrived in the country, a considerable increase compared to 2017. While the majority had plans to move on to another country, a contingent of 8,000 people was stuck in the Federation, most of whom lacked housing and core services during their stay in the country. This fact was due to the already limited capacities of the authorities becoming overburdened. There was an increase in violent acts between migrants and local communities around camps.

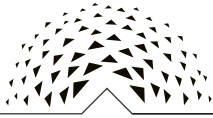
Members of the LGBT community have suffered discrimination, bullying, and occasional physical attacks, and the authorities often do not have the ability to properly investigate and prosecute cases. The country is yet to adopt an action plan for the handling of the issue. In 2019, steps were taken towards the harmonization of hate crimes committed on the basis of sexual orientation and sexual identity in the Criminal Code. There is a lack of legal recognition of the economic rights of same-sex couples, including the right to family life (EC, 2020b).

Roma people are the most vulnerable and most disadvantaged of all the minority groups. According to the EU their social inclusion requires an overall and integrated approach based on reliable data. In order to successfully implement the 2005 action plan, there is a need for adequate funding. With respect to housing, the legalization of illegal settlements is on the way. Discrimination in employment is widespread, and the unemployment rate is very high among the Roma. The rate of mandatory schooling has grown, but the number of early school leavers is still very high. There are no segregated classes or schools. About one-third of the Roma people benefit from health care services (EC, 2020b).

MEDIA PLURALISM

The country has not made progress regarding the assurances made in terms of the freedom of expression, i.e. cracking down on threats and violence against journalists and media employees. Political influence on the public programmers still prevails, partly due to financial dependence. The legislation at the level of the entities still has not been adapted to the federal regulations (EC, 2020b).

The supercharged market of Bosnia and Herzegovina still poses a great problem to the media sector within the country, where several media businesses depend on public contracts rather than commercial funds. Beyond the pressure coming from



the editors and political actors, journalists are also vulnerable to increasing levels of violence, including physical attacks. Furthermore, the unending crises regarding the operation and management of public service broadcasters are still awaiting a resolution.

There are 8 daily papers, 7 news agencies, more than 100 printed weekly and monthly magazines, 32,102 television stations with authorization for national operation, 149 radio stations, and hundreds if not thousands of online news portals. In this small, uncompetitive market several businesses still heavily depend on public funding, and therefore have a tendency to succumb to political pressure: in return for receiving public funding, there is a political favour to be returned somewhere down the line. In Bosnia and Herzegovina the online media has been struggling to cope with the increasing amount of disinformation, spread mainly through portals the proprietary status and editorial structure of which is unknown (Brezar, 2020).

CORRUPTION

Corruption in the country is an enormous problem, and the state is light on combatting it. Continued anti-corruption activities have mostly been carried out by non-governmental organizations and various media outlets, while government institutions steer clear of showing any sort of interest or desire to handle this long-standing and widespread issue. The anti-corruption legislation among the various layers of governments has remained non-harmonized. Thus, the available anti-corruption mechanisms are ineffective at best, irrespective of the lack of political willingness. Prosecutors and judges tend towards undertaking low to medium-level cases, while high-level corruption still remains the main challenge (Brezar, 2020). In 2019, 51 cases of corruption were prosecuted, out of which 13 were finalized, with another 76 persons prosecuted (68 natural and 8 legal persons) submitted to the respective prosecutor's office. A total of 181 indictments were made countrywide, which meant a decrease of 3.8% compared to 2018; there was a total of 221 convictions, the bulk of which were suspended sentences. The majority of the decisions were made public due to administrative or official misconduct (EC, 2020b).

NORTH MACEDONIA

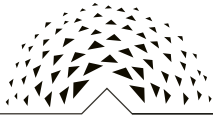
North Macedonia gained independence in 1991, which marked the beginning of the process of state and nation building. The last 30 years have been defined by political debates surrounding the forming of the Macedonian identity, leading up to numerous national as well as international conflicts (Braun, 2019). The name dispute with Greece reached its conclusion in 2019, when the

parties managed to agree on the official use of the prefix “North”, until which point Greece had hindered the full integration of their neighbouring country into international organizations. The internal handover of power has made the political structures of the country unstable today, a central element of which is the attitude towards the Albanian minorities. Ethnic tensions between Macedonians and Albanians turned into an internal armed conflict in the early 2000s, creating a quasi-civil war situation, which was settled under international pressure by the 2001 Ohrid Agreement.

There has been a slow but steady increase in the population of the country. Subsequent to the stagnation period of the 2000s, the most recent decade has produced growth, leading up to a population in excess of 2 million (Worldometer, 2020c). When it comes to the demographic indices, it is important to note that there is a significant economic migratory tendency from North Macedonia to Western Europe, which is counterbalanced by the high fertility rates of the Albanian community. The economic performance of the country resembles a rollercoaster. Upon gaining its independence in 1991, the country underwent a period of recession that lasted four years, which they managed to leave behind by 1996, then relapsing into another 3% drop in 2001. The country recovered from the economic crisis in 2013. Since that time, it has shown a positive yet unsteady performance; in 2019, North Macedonia reached a 3.5% increase in GDP (World Bank, 2020c).

INDEPENDENCE OF THE JUDICIARY

The judicial system of North Macedonia remains prone to unjustified political influence, which is also demonstrated by the lack of substantive progress made regarding the political scandal connected to the “wiretapping case” (Yaneva Gate) that was linked to the former government of the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (Внатрешна македонска револуционерна организација – Демократска партија за македонско национално единство, VMRO–DPMNE). Some of the key figures of the case, accused of abuse of power, corruption, mass surveillance, and other infringements, have either fled to avoid prosecution (e.g. former Prime Minister Nikola Gruevski), or the indictments were prolonged in the lengthy legal procedures (e.g. in the case of Sasho Mijalkov, head of the Secret Service). The Special Prosecution (SJO), the institution delegated to look into the case, ceased its operations due to its involvement in an “extortion scandal”. Moreover, at the end of 2018, the parliament adopted a decision providing amnesty to some of the persons involved in the unrest in parliament that erupted in April 2017, which further eroded the trust invested in the justice system. In March 2019, the Criminal Court in Skopje made its final decision in the case of the unrest in parliament. 16 people in total were convicted, including



Mitko Chavov, former Minister of Internal Affairs, who received 18 years in prison for “threat of terrorism”. Almost all the people convicted received a minimum of a 10-year prison sentence.

Furthermore, an “extortion scandal” took place with the involvement of Bojan Jovanovski, a TV personality, and Zoran Mileski, his companion, who were both accused of extorting money from businessman Orce Kamcev for helping Mileski escape imprisonment in a case that special prosecutor’s office oversaw. Katica Janeva, head of SJO dealt with the case very speedily and had Jovanovski and Mileski arrested. As a result of the extortion scandal, the SJO handed over all of its cases to the prosecutor’s office, and it terminated its operation in 2018.

The implementation of the government’s strategy for the reform of criminal justice has been reviewed for its criminal justice reforms by the Blueprint Group, who found that the adoption of amendments was generally transparent, but the deadlines were not met. Despite having an prominent place in the reform plans, no agreement was made between the ruling party and the opposition parties regarding the new Law on Prosecutors (Bliznakovski, 2020).

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

Freedom of assembly is respected in the country. Nonetheless, protests sometimes take a violent turn, seeing conflicts between the police force and the protesters. Several civil organizations used to actively participate in the protests against the VMRO-DPMNE government and Prime Minister Nikola Gruevski. The Gruevski government made several attempts to exert pressure, which lessened following the change of government. In a June 2017 working plan the new government declared its intention to treat civil society as equal partners, as well as its intention to step up against hate speech, assault, and political pressuring (Bertelsmann Stiftung [BS], 2020c). In June 2018, protests in Skopje against the Prespa agreement took a violent turn, marked by the police shooting teargas and grenades into the crowd of people demonstrating, in order to break them up. On the other hand, the first Pride march was held in Skopje in June 2019, and the event went off peacefully, although the conservative religious and nationalist groups objected to it (Freedom House [FH], 2020c).

The separation of state and church is on its way in accordance with the law, although in practice the religious communities show inequalities in that the Macedonian Orthodox Church and the Islamic religious communities are in a more favourable position. Some high-ranking Orthodox religious figures supported the protests launched by the VMRO-DPMNE in early 2017. Some bishops even supported the boycott of the referendum of 2018 on changing the country’s name, although the official stance of the Orthodox church was

that citizens are politically mature and can decide on their own (BS, 2020c). Islamophobia is present in the rhetoric of politicians as well as in civil discourse, primarily aimed at the Albanian ethnic community (FH, 2020c).

The anti-discrimination act of 2010 does not prohibit discrimination on grounds of sexual orientation or sexual identity, and an anti-LGBT sentiment is present everywhere. In August 2019, Prime Minister Zaev faced public outrage after using homophobic language in his response to a question regarding corruption allegations made by the special prosecutor. Two years ago, an attack on an LGBT activist was carried out by two perpetrators. Online hate speech is widespread, and derogatory terms are commonly used in social media (European Commission [EC], 2020c).

The laws prohibit sexual harassment in the workplace, but the problem still remains. The Albanians struggle with discrimination in the field of employment, and there has been an intensified of anti-Albanian sentiment in recent years. In 2019, the Social Democratic-Albanian parliamentary majority passed a law on the use of the Albanian language, making Albanian an official language of the country, in addition to Macedonian. The right-wing president of the time refused to sign the law, so the Speaker did so instead, which is still debated by the right-wing opposition. Members of the Roma community face employment issues and other forms of discrimination (FH, 2020c). The government has increased the funds allocated to the integration of Roma people, but the utilization of these sources is inefficient (EC, 2020c).

MEDIA PLURALISM

When looking at the media in North Macedonia, political influence has decreased, and the objectivity and credibility of the news has increased compared to the period under the governance of VMRO-DPMNE. These changes were clearly visible in the election campaign. Unlike earlier campaigns, most privately owned electronic media, as well as public service broadcasters abstained from communication, with a biased political backdrop. Furthermore, many journalists and media workers continue to face low wages as well as precarious employment, without basic social security and benefits. The media still has not been able to gain the confidence of the general public. According to a 2019 survey carried out by the Balkan Barometer, only 25 percent of respondents agree with the statement that the media is free from political influence.

Verbal threats and physical violence against journalists continue to be prominent. The Macedonian Association of Journalists has demanded action and the investigation of the atrocities. The presence of fake news also poses problems. The amount of misinformation and disinformation has increased significantly. The government is working to eliminate fake news and has prepared the first action plan to combat misinformation (Bliznakovski, 2020).



CORRUPTION

In North Macedonia, the fight against corruption is anything but successful. New legislation on corruption, incompatibility, and public procurement has been adopted by the Parliament, and a new State Commission for the Prevention of Corruption has been appointed. However, the Committee lacks the staff and financial background needed to carry out its work.

Former President Gjorge Ivanov was prosecuted for improper military appointments, although he was later acquitted of the charges. Legal proceedings were also instituted against Prime Minister Zoran Zaev, Deputy Prime Minister Kocho Angjushy, and Minister of Administration Damjan Manchevski, who were all charged with corruption and nepotism.

In connection with the extortion case, the government set up a high-level anti-corruption ministerial group as a coordinated approach to fighting organized crime and corruption in 2018. In the end, the panel did not meet, so there were no results to show for (Bliznakovski. 2020).

Kosovo

Kosovo had taken a rather bumpy road until unilaterally declaring its independence in 2008. The war in Kosovo in 1998-1999 appears to have caused lasting wounds for the society, and the disorganization in Kosovo's relations with Serbia has also affected its international recognition (Reményi, 2019). The parallel institutions created in the 1990s were replaced in 1999 by a system of international administration, which passed its role over to Kosovo's political institutions in 2008. However, the country is characterized by frequent political instability, which weakens governance. In terms of population, it is a continuously growing community, which saw an increase in its population until 1997, followed by a time of war that led to approximately 300,000 people escaping from the region. Another period of slow increase ensued, totalling in under 1.8 million people (World Bank 2020d). Similarly to the situation in Bosnia, in Kosovo it was the reconstruction that distorted the real value of the GDP increase, and by the end of 2002 caused a minor recession in the economy. Later on, a stable positive range was successfully maintained, resulting in an increase of 4% in 2019 (World Bank, 2020e).

INDEPENDENCE OF THE JUDICIARY

In recent years, the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) have taken steps to guarantee the rule of law and the independence of the judiciary. The KJC has set up a special division of the Pristina Court of Appeals and the Court of Appeal, with the sole aim of combatting organized

crime throughout Kosovo. The board has appointed 37 new judges and 12 new prosecutors. A new law on the Kosovo Prosecutor's Council was adopted, which has increased the composition of the council from 9 to 13 members. The Ministry of Justice has been excluded from participation in the council and determined the competence of the chairman of the council. The Kosovo judicial system has been criticized by the International Notary Association and the German Federal Chamber of Civil Law Notaries for all of these actions (Loxha, 2020).

The independence of the judicial system continues to be undermined by political influence. The appointment and promotion of the judges is weak, as judges are not solely promoted on the basis of professional criteria. The government draws up the budget for the courts, thus creating dependency.

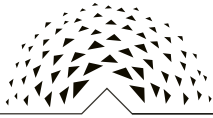
There are problems of discrimination against minorities, delays, and the overburdened courts are dealing with an enormous backlog. According to the 2015 Brussels Agreement, the Northern Kosovo courts need to be integrated into the Kosovo judicial system. Furthermore, the ethnic proportions must be taken into account in the composition of the prosecution (Bertelsmann Stiftung. [BS], 2020d).

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

Freedom of assembly is generally respected, but from time to time demonstrations are restricted for security reasons. In recent years, several demonstrations have been held without incident (Freedom House [FH], 2020d).

The constitution defines Kosovo as a secular state. Islam is the dominant religion, the adherents of which make up 88-94% of the population, according to various estimates; the rest of the population is mostly Christian, predominantly Serbian Orthodox. Islam in Kosovo is moderate and syncretic, with elements from Christianity. Public wearing of the hijab has been banned. Some observers claim that hard-line Islamist clerics and Islam fundamentalist interpretation have gained influence in the country. The Serbian Orthodox Church pursues a hard-line conservative rhetoric but has virtually no political influence outside the Serbian community (BS, 2020d).

The legislation and the institutional mechanisms for equality between women and men are in line with international and EU standards. Despite the institutional efforts, women continue to face discrimination in the workplace, as well as difficulties in accessing proprietary rights and justice. Women are underrepresented, especially those in decision-making positions, in the private sector, and in public institutions. Civil society organizations continue to play a critical role in promoting the rights of women and gender equality. The Gender Equality Strategy (2020-2024) was adopted in May 2020 (European Commission. [EC], 2020d).



Members of the LGBT community are facing social pressures because of their sexual orientation or to conceal their gender identity, and they are also facing obstacles when trying to effectuate legal changes to their gender (FH, 2020d). The constitution also protects the community against legal discrimination. A new action plan has been adopted for the period 2019-2022, and a new LGBT action committee was also set up in January 2020, which operates with the involvement of civil society (EC, 2020d).

Kosovo has well-established mechanisms to protect and secure the rights of minorities at the central and local levels. The country has the right legal framework and the right strategies, as well as the actions needed to implement the plans. However, insufficient inter-institutional coordination at the central and local levels continues to undermine the effectiveness of services and compliance with the applicable legislation (EC, 2020d). Roma, Ashkali, and Gorani people in Kosovo are discriminated in education, employment, and access to social services. Attacks on Serbs were once common in Albanian territories, and the perpetrators were rarely prosecuted, although such events have become less common in recent years (FH, 2020d).

MEDIA PLURALISM

There has been no change in the legal framework governing the Kosovo media sector, which provides the highest level of protection in the region regarding the freedom of expression. Kosovo's media market is quite diverse, with 19 TV stations, 85 radio stations, 87 media providers, and an ever-expanding digital sector. Of the 19 television stations licensed by the Independent Media Committee, 2 are national, 11 regional, and 5 local, while Kosovo Radio Television (RTK) is the public service broadcaster. In terms of linguistic diversity, 14 TV stations broadcast their programs in Albanian and 5 in Serbian, while some broadcast in other minority languages. Similarly, there are 54 radio stations in Albanian, 22 in Serbian, and 9 in the remaining minority languages, including a multi-ethnic radio.

Parliament has failed to pass amendments to the law on public service broadcasting, which would have provided a solution for the independent financing of RTK. The appointment of a new CEO was also seen as political pressure and not a merit-based decision. The European Commission has criticized the public service broadcaster for being politically influenced, lacking professionalism, and using a non-transparent recruitment procedure (Loxha, 2020).

Journalists reporting on radical Muslim groups have received death threats. Although Parliament passed a law on the protection of journalists in 2014, (BS, 2020d), according to the Association of Journalists, there were 13 verbal attacks and three physical attacks against journalists in 2019 (EC, 2020d)

CORRUPTION

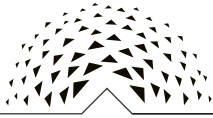
Corruption has become a persistent social norm in Kosovo, despite modest institutional initiatives already having been established. The Anti-Corruption Agency regularly develops and updates the anti-corruption strategy, although its action plan has never been implemented in full. In addition, a number of anti-corruption laws have been enacted over the years, but they have always had implementation problems.

Corruption scandals involving senior officials are an ongoing item on the agenda. The special prosecutor's office has already proposed the suspension of the payment of pensions in the case of war veterans who are involved in ongoing corruption investigations, until their affairs are properly investigated and closed. In March 2019, the Basic Court of Pristina rejected this proposal. As a result, the state continues to pay financial contribution to more than 20,000 veterans. Corruption efforts with some former ministers continued which, however, are often politically influenced. Two judges and one police officer have been arrested on charges of corruption, as well as maladministration and bribery charges. Between June and December 2019, the Basic Courts delivered convictions in only 53 corruption cases out of a total of 340 (Loxha, 2020).

According to the European Commission, it will require particular attention to the efficiency level of confiscation orders; the Code of Criminal Procedure must be reviewed, with special attention to the regulations pertaining to the suspension of corruption cases; and the control and sanctioning of the financial statements and campaign expenses of political parties must be guaranteed (EC, 2020d).

MONTENEGRO

Montenegro only gained its independence in 2006, and in recent decades it has been considered "a brother" nation of Serbia. The democratic transformation was led by the elite, which in the last 30 years has been affected by the governance of the Democratic Party of Socialists and its perception of politics by its leader, Milo Đukanović. In terms of its population, Montenegro is a positive example of a country that has a very slowly yet constantly growing population. The greatest decline in population was seen in the early 2000s (losing about 10,000 people), while today the population stands at 628,066 (Worldometer, 2020d). The largest decline in the country's economic performance happened in 1999, when, as a result of war sanctions, Montenegro plunged into a 9.4% recession. The gradual rise in growth turned into a loss due to the 2009 crisis, and they experienced a fall of 5.8%. The initial solutions were unsuccessful because in 2012 Montenegro once again achieved an overall reduction of 2.7 percentage points of the GDP, although it later managed to turn the curve positive. In 2019, a 3.6% performance increase was achieved (World Bank, 2020f).



INDEPENDENCE OF THE JUDICIARY

Judicial reform began in Montenegro 18 years ago, after the declaration of independence and the adoption of a new constitution, but with a number of strategies Montenegro still has not established mechanisms for a fully effective and independent justice system. The constitutional amendments introduced in 2013 forced them to face the obstacles to its implementation in 2018. However, not enough effort has been made to ensure the independence of the Judicial Council and the Council of Prosecutors (Bertelsmann Stiftung (BS), 2020e). Montenegro also needs to take steps towards the improvement of alternative dispute resolution (European Commission [EC], 2020e), and human, financial, and infrastructure management needs further strengthening.

The government's "Strategy for the Reform of the Judiciary 2019-2022" continues the decades-long reform of the judiciary process. The new strategy focuses on the implementation of Chapter 23 of the acquis, relating to justice and fundamental rights. However, no change has taken place in the legal framework of the justice system. The mandate of the Judicial Council expired in 2018, and the opposition's partial parliamentary boycott has prevented new members from being elected. Although the Attorney General's term of office ended in October 2019, he remained in office and got involved in a corruption case. The Supreme Court has given dubious legal guidance to lower courts, instructing them not to rule in administrative disputes or civil proceedings relating to the appointment or exemption of civil servants (Nenezić, 2020).

In recent years, results have been achieved in the area of judicial transparency. The courts have their own websites, where information is published on scheduled negotiations, court decisions, annual work reports, and other documents of public importance.

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

In 2016, Parliament passed a new law on public gatherings to clarify, among other things, the obligations and responsibilities of the state in relation to the maintenance of public order. However, the Ministry of the Interior has also announced amendments to the law that would ban the organization of public gatherings in front of the parliament building, which has been widely criticized. The authorities have the prerogative to temporarily restrict the freedom of assembly for the purposes of preventing criminal activity or threats of crime, protecting people's health, morals, or safety (BS, 2020c). While citizens in general enjoy the right to freedom of assembly, the authorities have tried to restrict protests organized by the Democratic Front, at times turning them violent. The 2019 demonstrations took place peacefully, with no incidents of violence due to attempts at repressing the protest, but the DPS-controlled media have often deemed these protests "anti-state" (Freedom House [FH], 2020e).

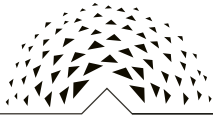
The state is largely secular, and religious dogmas have limited influence on politics and decision-making. However, some religious leaders also comment on political issues and constantly strive to exert political influence. A total of 21 religious groups are recognized in the country. The adoption of a new law on religious freedom has been postponed several times. After failing to organize public hearings on the bill, the government withdrew its first proposal in 2015. In January 2019, the government published a new proposal, focusing on churches needing to prove that they owned their property before 1920, before Montenegro joined the South Slavic Kingdom. It was believed by some that this was another element of Montenegrin identity framing, where the assets of the Serbian Orthodox Church were to be transferred to the Orthodox Church of Montenegro (BS, 2020e). In December 2019, roadblocks and protests took place after the adoption of the bill (FH, 2020e). In the fall of 2020, the new government initiated the repeal of the law.

The Gender Equality Index Methodology was first used in 2019, with Montenegro scoring 55, well below the EU average of 67.4. Women are still underrepresented in the labour market, in entrepreneurship, in political decision-making, and politics in general. In May 2019, the government adopted the Beijing Declaration and a report on the implementation of the action platform. In December 2019, Parliament adopted a new labour law aimed at bringing national legislation in line with EU directives (EC, 2020e).

In 2019, the government adopted a national strategy for 2019-2023, aimed at improving LGBT individuals' quality of life. The Ministry of Human Rights signed an agreement with twenty municipalities to combat discrimination based on sexual orientation or gender identity. After two unsuccessful votes, Parliament adopted the government review of the law on cohabitation, creating legislation governing the registered partnership of people of the same sex. The management of hate crimes and hate speech remains a problem, as well as the reporting, investigation, prosecution, and proper sanctioning of such cases (EC, 2020e). Roma and Ashkali people, as well as Egyptians and other minority groups, face discrimination, especially in the fields of employment, housing, and education (FH, 2020e).

MEDIA PLURALISM

The media is generally free to judge the government. However, attacks against journalists and media assets are common, and these crimes often remain unsolved. Journalists therefore do not feel completely safe in exercising their freedom of expression. Most press outlets have tax and other debts. Montenegro has 56 radio stations, 19 TV channels, five daily newspapers and one weekly newspaper, a news agency, and 35 registered online portals. The average salary in the media is lower than the national average salary.



The size of the advertising market is estimated at EUR 12-13 million, EUR 2-3 million of which comes from advertisements by state and local authorities, as well as state-owned companies (BS, 2020e).

The key feature of the Montenegrin media community is strong political polarization. The institutional framework is provided by the Self-Regulatory Local Press Council and the Media Council for Self-Regulation. Some media organizations have also set up a media ombudsman to implement the Code of Ethics for Journalists more efficiently. The media tends to work hand in hand with certain political parties, which is especially evident during election campaigns. In the first half of 2018, the civil members of the council of the Public Service Broadcaster (RTCG) were removed by the decision of the Anti-Corruption Agency, citing a conflict of interest. In 2017 and 2018, seven attacks against journalists and media assets were registered by civil society organizations, the investigation of which has not taken place to this day (BS, 2020e).

CORRUPTION

In Montenegro, the Anti-Corruption Agency's capacity building activities and technical infrastructure has been developed successfully. However, challenges remain with respect to its independence, priority setting, approach, and quality of decisions. Corruption remains widespread in many areas. Strong political will is needed to effectively address this issue and create a strong judicial response to high-level corruption involving politicians (EC, 2020e).

Montenegro has so far failed to show convincing results in the fight against corruption, especially in the fight against high-level corruption. Several scandals in the past have undermined the rule of law and shown the lack of political will to eradicate and prosecute corruption, as well as prosecuting those responsible. Of the five new members of the Anti-Corruption Agency, three are pro-government affiliates, which also undermines its independence.

Many potential high-level corruption cases have been ignored by the Agency. For example, President Đukanović was charged with possession of unexplained assets and violation of the corruption prevention law, when photos surfaced showing him wearing watches worth EUR 1.5 million (USD 1.62 million). The agency ignored the fact that the president did not list these in his official report (Nenezić, 2020).

SERBIA

Serbia's state and national development goes back several centuries, but a real democratic state was only established at the end of 2000. In the last twenty years, democratic values in the newly designed system could develop only in light of how they correspond to the ruling political elite. Reaching a level that is still

in the category of unconsolidated democracy has been a result of a slow progress because individual politicians' ideas have been more important than catching the nation up to the West (Ördögh, 2019). Serbia's population was the largest in 1995, reaching almost ten million people, driven by the population fleeing and relocating to the mother state as a result of the war. After this, however, by 2019 the population gradually dropped to 8,737,371 (Worldometer, 2020e). This population decline has had the same three causes here as in Albania: 1) low childbirth rates, which is typical for Europe; 2) emigration due to political instability; and 3) economic emigration. The country's economy was almost annihilated by the wars of the 1990s, reaching its lowest point in 1999, when the country experienced a 9.8% recession, along with hyperinflation. In the 2000s, the economy was restored with the help of foreign aid, but the crisis of 2009 again led to a reduction in performance, and it subsequently became unpredictable. A positive direction has successfully been achieved from 2015 onwards, achieving a 4.2% GDP growth by 2019 (World Bank, 2020g).

INDEPENDENCE OF THE JUDICIARY

No significant progress has been made regarding the reforms to improve the efficiency and independence of the judiciary in Serbia. Despite the rhetorical commitment to reforming the judicial system, especially in the context of the EU accession process, lack of independence and professionalism remain the greatest problems in the Serbian judicial system (Damjanović, 2020).

The adoption of constitutional amendments has been criticized in this area, as the clauses adopted give Parliament a decisive role in filling the positions of the Judicial Council, and there is a lack of guarantees for the independence of the future Academy of Justice. The Academy, controlled by the government, would in fact become a means for government parties to control judicial appointments. One major problem that remains is exposing judges to political pressure, while another concern is the self-censorship of prosecutors.

According to the European Commission, 1) the independence of the judiciary and the autonomy of the prosecution needs to be strengthened; 2) it is necessary to amend the constitution and the legal provisions attached to this area; 3) it is necessary to change the laws pertaining to the Supreme Justice Council and the State Prosecutor's Office; and 4) a human resources strategy for the entire justice sector must be accepted and implemented (European Commission [EC], 2020f).

CIVIL LIBERTIES AND THE PROTECTION OF MINORITIES

Freedom of assembly is guaranteed by the constitution, and these rights are generally respected by the government. In February 2016, Parliament passed a new law on public gatherings, which has made a difference especially in connection



with opportunities for legal remedy. However, civil society organizations have also criticized the new regulation. During the “Protests against the dictatorship” in 2017 and the mass protests called “One in five million”, which have taken place since December 2018, police and prosecutors have tried to arouse fear, with public servants afraid to attend these events because they were afraid of losing their jobs (Bertelsmann Stiftung [BS], 2020f).

Serbia defines itself as a secular state. The Serbian Orthodox Church often tries to exert political influence and even act as a moral and political arbitrator. It strongly criticizes the independence of Kosovo, marriage between same-sex couples, abortion, and the protests by opposition parties criticizing the government. The Church also implicitly supported the historical role of the royalist Chetnik movement during World War II (BS, 2020f).

Legal safeguards for socially vulnerable groups are weak in Serbia. Women are entitled to equal pay for equal work under the law, but this rule is not observed widely. The Commissioner for the Protection of Equalities has drawn attention to the fact that women’s socioeconomic situation is significantly worse than that of men. In March 2019, the UN Convention on the Elimination of All Forms of Discrimination recommended Serbia to take measures to eliminate gender discrimination and violence against women (EC, 2020f).

The Roma minority is particularly disadvantaged in terms of employment, housing, and employment due to the discrimination in education. Members of the LGBT community are still facing hate speech, threats, and even physical violence, and the perpetrators of such crimes are rarely punished despite hate crime and discrimination laws already being in place (Freedom House [FH], 2020f). Through an amendment to the Act on Registration of Birth, it has also become possible to record gender reassignment in official documents (EC, 2020f).

MEDIA PLURALISM

Serbia’s new media strategy came into force in January 2020, but the implementation of the new document has not yet begun, and no progress has been made regarding the improvement of freedom of expression, either. Threats and violence against journalists continue to be a matter of concern. The unhindered exercising of freedom of expression needs to be strengthened further.

As for the media monitoring of the election campaign, according to the findings of OSCE, the newly established commission of inquiry in Parliament, the regulatory authority as well as the Regulatory Authority of Electronic Media (REM) remained passive (CRTA, 2020). The OSCE has also found that most TV channels and newspapers with nationwide coverage promote the policies of the governing parties. The few media outlets that offer to communicate alternative views are limited in number and do not serve as effective counterbalance (EC, 2020f).

CORRUPTION

Although the current governing parties came to power in 2012 and promised to combat corruption in Serbia, the problem has only worsened in the years since. Even though there have been some improvements in the legal framework for the fight against corruption in early 2019, no significant progress has been made in implementing it. On the contrary, the existing national anti-corruption strategy expired at the end of 2018, and the fact that no new strategies have been created ever since is clear evidence that the fight against corruption is not a priority for the government. The report of European Commission in 2020 also found that the adoption of anti-corruption legislation, along with other measures, has failed on many occasions, all of which is indicative of a lack of political will to address the issue.

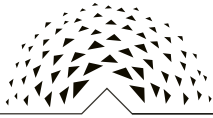
Transparency International's Corruption Perceptions Index (CPI) also indicates a deteriorating situation. While in 2016 Serbia was ranked 72nd in the world (1st place for least corrupt and 176th place for most corrupt) and scored a total of 42 (0 for very corrupt and 100 for very clean), in 2019, Serbia was ranked 91st in the world, with a score of 39.71. This is the country's lowest global ranking since 2006 (Transparency International [TI], 2019).

As in previous years, a number of corruption scandals have shaken Serbia, but most dwindled away without serious investigation and prosecution. These cases include the one of Predrag Mali, brother of Minister of Finance Siniša Mali. Another scandal was the network of links between Hungarian and Serbian companies that had close ties to the circles of Viktor Orbán, Aleksandar Vučić, and Ana Brnabić, which won parts of major contracts for street lighting. A third case of suspected corruption may have taken place in the state-owned Krušik weapons manufacturing plant. Minister Nebojša Stefanović may have used his influence to have Krušik offer weapons for export to a privately owned company that happens to be owned by his father (Damnjanović, 2020).

CONCLUSION

Overall, every state in the Western Balkans is struggling with gaps in the area of rule of law. The legal regulations are controversial, and their practical implementation falls short of expectations.

- 1) Political influence is commonly practiced to curb the independence of the judiciary, and the appointment of prosecutors and judges often results from political bargaining. In addition, the financial autonomy of the judiciary is also undermined.
- 2) The regulation of civil liberties is adequate, but there are obstacles to the exercising of rights. The right to assemble is guaranteed everywhere, which is mostly respected by the governments. However, physical violence is



commonplace, and there is a lack of a culture of peaceful protests. Various groups are facing discrimination. Equality for women is not guaranteed, and women are limited in several areas. The LGBT community is often subject to hate speech, and its members' rights do not meet European standards, either. Minorities are often excluded from employment, housing, or education.

- 3) In most states, the media is pluralistic, with the appropriate institutional framework. However, they are struggling with the influence of the political sphere, which is visible in the public sector market. Balanced information is not presented either, resulting in the predominance of governing parties.
- 4) The fight against corruption is the most significant problem in the region, as the established institutions do not have adequate human and financial resources. Each special prosecutor's office finds itself bumping into walls due to the scarcity of resources on a regular basis. Thus, the investigation of high-level corruption and accountability is pending in all the examined countries, and politicians in governing parties are becoming untouchable. Although society is aware of the presence of corruption, its elimination still awaits action.

In their rhetoric, individual governments consider the rule of law important. However, in practice it is not treated as a priority, aside from the adoption of action plans. As long as this remains unchanged, real results cannot be expected.