Justice Reform or Facade Reform: The case of the Western Balkans

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Abstract: *EU transformative power is put into question and constantly challenged by the political actions of leaders in the Western Balkans. Although the political elites in this region have internalised a pro-European discourse, they are still guided and governed by authoritarian logic and practices colliding with the EU's governing model. The paper analyses precisely this relationship between the EU and internal politics, namely, the transformative power/powerlessness of the EU towards the aspiring countries for membership in a single dimension; namely, justice. The paper reviews the reforms developed and the effects they have produced in the justice system in a calculation relation: costs and benefits. In this logic, this paper analyses costs and benefits of the internal elites of the Western Balkans, representing a classic oxymoron. On the one hand, pro-EU discourse is superficially used and, on the other, substantive actions are far from the EU's governing model. The central argument emphasises that the reform process in the region has turned into a repetitive system of itself and destined to fail right from the beginning. So, we see a loss in reforms and plunging into a vicious circle, whereby each time elements increase and intensify but deteriorate one another, inevitably leading to the deterioration of the situation and producing multidimensional corruption.*

Keywords: ***Europeanisation; Justice System; Reform; Costo; Benefit; Facade.***

Introduction

The changes that were driven globally by the fall of the Berlin Wall permeated states across Europe and produced different results in different regions of the continent. While examples of success in building a democratic state and

European Union (EU) integration are found in most countries in Central and Eastern Europe[1], examples of fragmentation and mismanagement are found mainly in the Western Balkans.

In the 1990s this region faced chaotic situations, such as the violent breakup of Yugoslavia, which produced four wars, three of which had devastating consequences, as well as the riots like those in Albania in 1997. Such events in this region were reflected and classified in the literature with terms like 'delayed transition', 'double transition' and were described by many scholars under the term 'Balkanization'. However, with the establishment of peace and the creation of a commanded stability, these studies were added to the research centred on observing the transformative power/powerlessness of the EU vis-à-vis the region. In the line of these research activities, this paper also aims to analyse the Europeanisation process specifically in the justice system.

Although the countries of the region are at different levels in the process of Europeanisation, the EU's February 2018 strategy of 'a credible enlargement perspective for and enhanced EU engagement with the Western Balkans' describes the main political challenges common to all these countries, and which they must face on their way to EU membership. These challenges include: the rule of law, fundamental rights and good governance, strengthening democratic institutions, economic reform/creating a competitive economy, fighting corruption and organised crime, and solving bilateral problems and deepening regional cooperation (European Commission 2018a). Yet in all this architecture of challenge, the EU's top priority for the region is the reform of the justice system as the key foundation for strengthening the rule of law and creating capable and independent mechanisms to cope with or, to put it another way, to fight corruption and organised crime. Justice reform is the set of complex and comprehensive tools, agendas and actions taken to strengthen the justice mechanisms in general. This paper analyses the judicial reform process undertaken over the years in the Western Balkan region by 'focus on the costs and benefits for self-interested reformers and on power struggles between reformist change agents and reform-resisting veto players' (Mendelski 2018: 118). The central argument in this paper emphasises that the process of reforms in the region has turned into a repetitive system of itself destined to fail right from the beginning. Now the question may be asked: what can be understood by 'a repetitive system of itself'?

The term 'self-repeating system' describes the governing logic of the elected in the Western Balkans expressed in the form of reformology (containing the requirement for system variability), but which results in system renewal. So while during electoral campaigns the voter is captivated by the illusion of change (mainly by opposition parties), with the takeover of power these political forces

1 Despite the new democratic backsliding of Poland and Hungary.

manifest the same governing mindset as previous governments, degenerating and functioning on the basis of phenomena such as corruption, patronage, nepotism and clientelism. In this way the state capture system is reproduced, but with a slight difference, the captors change. As a result, the reform process in the region turns into a facade process destined to fail from the outset, the main effect of which is to remove supporters/militants of other parties from public office (established there during the governance of their parties) to be replaced by supporters/militants of the ruling parties. Thus, in the case of the Western Balkans, we are dealing with a loss in reforms, overlapping reforms or, alternatively, a dive into a vicious circle, where each time the elements add up and intensify and aggravate each other, inevitably leading to a worsening of the situation and producing even more rampant corruption than before. In this way, through a pathology called facade-reform, the system reproduces itself. However, this represents only one way of reproducing. The other way implicates stakeholder interaction in defining rules and institutions in order to prevent the infringement of these stakeholders' dominant positions. Thus, in Albania in 2008, some constitutional changes were initiated following the agreement between the two main political parties, DP and SP. The main effect of these changes was to reinforce the positions of both parties and the leaders of these parties, whose power goes 'up to the limits of arbitrariness' (Hoxhaj 2015: 45). They, the heads, are the main power that determines the lists of candidates for deputies whose selection is generally based on the principle of obedience and preference (Hoxhaj 2015). In this way the parliament becomes a neglected institution for the executive power, subject to the will of the leader/leaders. However, the commonality of these two modes of system renewal is the technique of keeping the justice system in a state of weakness. Thus, referring to the 'World Justice Project' rule of law index, all Western Balkan countries (part of the indexing does not include Montenegro and Kosovo) show poor grading (below average) on most of these components (6 of 8) such as: Constraints on Government Power, Absence of Corruption, Open Government, Regulatory Enforcement, Civil Justice and Criminal Justice (World Justice Project 2019). Even in the Freedom House report, these countries in the rule of law rank with an average score on most indicators (see: Freedom House report 2019). Consequently, state capture in the Western Balkans does not just appear to be tied to one party or leader but turns out to be an ongoing process, which Solveig Richter and Natasha Wunsch (2020: 53) call a 'state capture trap'.

This article has four parts. After the introduction in the first section, the second part deals with theoretical and conceptual considerations about the judicial reform and the third part discusses the judicial reform process in the Western Balkan region. The paper ends with a concluding section, which contains its final conclusions.

Theoretical Framework

Concept of the Rule of Law

Since the beginning of the transformation processes, the aspiration for EU membership has been stated as the main goal of the leadership and peoples of the Western Balkan region. However, the road to the EU goes first and foremost to reforms that make the rule of law operational. The concept of rule of law is a multidimensional, flexible and contentious concept defined by many and in a variety of ways (Lautenbach 2013: 19). First of all, the concept incorporates two basic elements: on the one hand it involves the separation and balancing of powers and on the other hand the legality (ibid.). Yet in the Western Balkan region both of these dimensions are violated by executive power. In this region the justice system suffers from politicisation, instrumentalisation and patronage (Elbasani 2018; Mendelski 2015; Mendelski 2016; Mendelski 2018).

Europeanisation of the Rule of Law

Europeanisation is the concept that first of all investigates the impact that the EU exerts on the internal changes within states. This influence generally extends to all three dimensions of politics: policy, politics and polity (Elbasani 2013: 7). Thus Europeanisation is first and foremost a process of 'a) building, b) diffusing, c) and institutionalizing formal and informal rules, procedures, policy models, styles, ways of doing things, and common norms or beliefs that are established and consolidated at EU policy level, which are then embedded in the logic of local discourse, identity, political structures and public policy' (Radaelli 2003).

The EU exerts its influence on the internal change within states through the mechanisms of socialism, externalism and imitation, but first and foremost through the conditionality mechanism (Schimmelfenning 2012: 8–10). According to Tanja A. Borzel (2011: 12) 'conditioning can have a decisive impact on countries' readiness to meet EU standards and implement its obligations'. However, '1) internal reformist elites must be able to prioritize EU requirements and 2) functional state institutions must be able to coordinate and carry out reforms on the ground' (Elbasani 2014). However, the process of Europeanisation can take the form of a facade, where formal rules are imported, but no sustainable reforms are made. Thus, when EU pressure and monitoring ceases, reforms are overturned and instrumentalised for particular purposes, thus exploiting both the internal vacuum (Elbasani – Sabic 2018: 3) and the vacuum created by EU policy towards the region of the Western Balkans.

Since the first EU initiative towards the region, besides democratisation, stabilisation has been an important dimension. This EU approach has been criticised by many scholars who believe that the EU has favoured the second

dimension to the detriment of the former. All this EU behavior towards the region has led some scholars to use the term stabilocracy (Beha 2017; Bieber 2018a; Bieber 2018b; Pavlovic 2016) to describe the political systems of WB countries. A stabilocracy, according to Florian Bieber (2018a), implies 'a regime that includes significant deficiencies in terms of democratic governance but enjoys external legitimacy by providing assumed stability'. For Antoinette Primatarova and Johanna Deimel (2012), a stable democracy 'provides external stability but internally fluctuates between democracy and autocratic tendencies' (p. 19). So, a stable democracy has two main characteristics: one is the external support or legitimacy that is provided by mainly EU actors/states as a result of the promise of democratic reform, but above all the promise of maintaining regional stability, while the latter is the derivative of the former. The EU's approach to the region, namely the external legitimacy that local actors benefit from European state players, has left them free to adopt undemocratic and authoritarian practices for obtaining and maintaining power (Bieber 2018a; Bieber 2018b) by using democratic means. Today 'autocrats in the Western Balkans rule through informal structures of power, state capture by ruling parties, patronage and media control' (BIEPAG 2017: 3).

Dimensions of the Rule of Law

In Martin Mendelski's conception, the rule of law appears as a multidimensional concept consisting of two main qualities; *de jure rule of law* and *de facto rule of law* as well as of four distinct dimensions. *The de jure rule of law* refers not only to the quality of formal rules but also to the way they are created and the values they promote. *The de jure rule of law* consists of two dimensions: formal legality and substantive legality. *The formal legality* is a dimension that implies that laws that are enacted must be enforceable, clear, coherent and contain no contradictions. They must be easy to follow, as well as consistent or unchanged for a long period of time in order to provide the constraints and predictability needed for decision making (ibid.). *The substantive legality* refers to the essential quality of laws, namely the presence of good laws that contain and provide rights and principles widely accepted and promoted by the international community, as well as good governance practices. 'Adherence and approximation to these international rules has been called "embeddedness", as well as "legal approximation"' (Mendelski 2016: 321–322).

The de facto rule of law refers to the quality of the judicial system and includes two dimensions: *judicial capacity* and *judicial impartiality*. *Judicial capacity* refers to the capacities in the judicial system, such as human resources, financial capacities, computerisation and automation levels such as quality of administration and management. So this dimension focuses on the inputs, tools and resources needed to create a capable and professional judicial system to enforce legisla-

tion in an efficient and timely manner. However, building and ensuring judicial capacity does not in itself lead to the rule of law. Capacities can be misused for particular purposes, so the fourth dimension is the determination dimension *judicial impartiality*. *Judicial impartiality* consists of six sub-dimensions, as follows: 1) judicial independence; 2) separation of powers; 3) judicial corruption; 4) accountability towards the law; 5) judicial accountability; and 6) citizens' trust in justice. So this dimension refers to impartial and impersonal law enforcement focused on the results of the rule of law, which include impartial judicial verdicts made by independent, uncorrupted and responsible magistrates (Mendelski 2016: 321–322).

Both of these qualities and the four dimensions, though different from each other, are complementary and interdependent, whereas EU conditionality does not affect them uniformly. 'Externally (EU)-driven judicial reforms, reinforce judicial capacity and substantive legality, but at the same time reduce some crucial aspects of formal legality and judicial impartiality' (Ibid.). However, reforms are context-dependent and countries that are most exposed to these adverse effects are those that already have weak rule of law and weak institutional capacity (Mendelski 2016: 348–349), so under these conditions it is also necessary to investigate the behavior and preferences of the local political players involved in the process.

Rational Choice Institutionalism Approach

During the 1980s a concept known as *new institutionalism* was developed, as an appropriate tool to describe the nature and complexity of the international system, and the impact that international institutions and organisations have on the EU in particular with internal change within states (March – Olsen 1998; Hall – Taylor 1996). New institutionalism emphasises the importance of institutions and their structures in explaining these phenomena (March – Olsen 1998; Bulmer 1998) but without overlooking the informal rules, agendas and values embedded within institutions (Bulmer 1998; Kerremans 1996). Three important approaches have been developed within new institutionalism: rational choice institutionalism, historical institutionalism and sociological institutionalism (Hall – Taylor 1996: 936).

Rational choice institutionalism is an approach developed within the great theory of new institutionalism alongside the other approach *historical institutionalism*, but nevertheless relatively isolated from its influences, born originally in studies of American congressional conduct (Hall – Taylor 1996:942). This approach involves a dual interpretation of institutions; on the one hand there is a concept that considers institutions as constraints or as a given exogenous form of play. This implies that institutions are fixed forms and rules, which are above the will of the actors. On the other hand we have the endogenous conception of institutions which implies that the rules are not fixed but are the product of the interaction

of the actors provided by the institutions, so a set of rules can and probably will produce better results for a set of interests rather than another set. In this way, institutions are simply a way of balancing things (Shepsle 2006: 24–27). However, in addition to this distinction, there must be a distinction between structured and unstructured institutions, the main difference here being the extent to which the rules are codified. Thus, structured institutions maintained approximately the same form year by year, unlike unstructured institutions, which are more amorphous and implicit than formalised (Shepsle 2006: 28–32).

This approach is quite broad and contains numerous internal debates, however its underlying assumptions generally emphasise that actors are strategic actors trying to maximise their fixed preferences and tastes and, consequently, politics in this respect emerges as a series of dilemmas of collective action 'individuals acting to maximize the attainment of their own preferences are likely to produce an outcome that is collectively suboptimal (in the sense that another outcome could be found that would make at least one of the actors better off without making any of the others worse off)' (Hall – Taylor 1996: 945). Even with regard to European integration this approach follows a cost-benefit calculation relation and with this logic this article analyses the costs and benefits of the internal elites of the Western Balkan region derived from maintaining pro-EU reform discourse and their actions that collide with the European spirit. Although at first glance the linkage between the theory of new institutionalism, Europeanism and state capture seems weak, yet the theory of new institutionalisation by understanding institutions not only as fixed rules but also dynamic products of stakeholders' interaction allows us to make a cost-benefit analysis of these interactions. At this point it is extremely appropriate to investigate the products of the interaction of stakeholders, thus institutions and rules, and analyse whether they are in line with the Europeanisation process or are instruments in the service of state capture enterprise.

Reform to Reform: Loss in Reforms

Discussion of Reforms

Since the beginning of democratic change, reforms or, more specifically, reforming the justice system and other areas such as education, health, etc., have been and remain an important dimension in the discourse of the Western Balkans' political elites, especially during electoral campaigns. And so Aleksandar Vucic in Serbia, Edi Rama in Albania, Zoran Zaev in Macedonia and most recently Albin Kurti[2] in Kosovo, have all won elections in the name of reforming the

2 It should be clarified that at the time this research was conducted, Albin Kurti won the elections in Kosovo; however, he has not yet been appointed as the country's prime minister, so his behavior and policies and their consequences are not addressed in this research.

system in general and strengthening the rule of law, in particular the fight against corruption. However, 'instead of tackling systematic reform, the political elites in Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo and Albania have put state institutions and media under their control to the utmost degree. Only several weeks ago, the Prime Minister of Albania Edi Rama got two new laws off the ground, subjecting independent Internet media to a greater degree of state control.Judicial systems in the entire region are groaning under endemic corruption and party influence. The paradigm of law and order has been grotesquely reversed. Local laws and international legal standards do not determine what is lawful, but rather powerful criminal cartels, closely intertwined with the dominant parties' (Kraske 2019). Thus the discourse of reformology in practice has taken the form of promise, where everything is promised but in the end what is achieved is state capture. Otherwise the only transformation that takes place in these countries is that the capturers are changed, but the governance remains the same. The main consequences of this approach are best seen in the justice system, which continues to be one of the weakest links in the political systems of the Western Balkan countries.

State Capture and Instruments that Help Capturing

The EU's February 2018 strategy related to the WB region states, among other things, states that 'countries show clear elements of state capture, including links to organized crime and corruption at all levels of government and administration, as well as a strong confusion of public and private interests' (European Commission 2018a: 3).

State capture, according to Transparency International (2009: 43), presents the situation in which some powerful persons, whether institutions or groups of individuals, shape the political and economic environment of a country in their favour through the instrument of corruption. However, 'state capture can be widely understood [also] as disproportionate and unregulated influence of interest groups or decision-making processes, where special interest groups manage to propagate state laws, policies and regulations through practices such as illegal contributions paid by private interests for political parties and election campaigns, parliamentary vote buying, buying presidential decrees or court decisions, as well as through illegal lobbying and door-to-door appointments' (Transparency International 2014: 1).

So, in its entirety, state capture is understood as the appropriation or control of state resources by the elites, who then use these resources for both personal and political gain, thereby distorting the democratic process (Gryzmala-Busse 2008: 640; Fazekas – Toth 2016). The forms of state capture and the types of capture are different. In discussing the type of state capture, Lily Evelina Sitouris (2011: 47) believes the emphasis should be on the institutions that are

subject to capture and on the type of actors who aim at capturing. In the wake of this logic, referenced by Fazekas and Toth (2014: 3), the capture appears in two ways: local, which means entering into a captured relationship of only some public and private organisations leaving a certain number of 'islands' relatively autonomous and global, which presents the situation where an elite at the national level controls the captured organisations, which are linked to one another. Even in the typology of state capture provided by Abby Innes (2013: 1), state capture appears in two ways: state capture by party and state capture by corporations. The former implies the politicisation, or the re-politicisation, of state institutions by political parties for the purpose of pursuing and securing political monopoly, while the latter is defined as the exercise of power by private interests through the overthrow of legitimate channels of political influence. However, in the case of the countries in the WB region we are dealing with the first type, namely the capture of the state by party, where, after the progress of the early 2000s in building independent institutions, we now see a partition of these institutions and control of the parties over them. 'This reaffirmation of party control is articulated through the erosion of independent institutions, the penetration of state administration by party members, and the use of informal mechanisms to secure control' (Bieber 2018b: 348).

The instruments used for the appropriation or control of state resources by the elites are different; however, referring to Arolda Elbasani (2017) in the case of Albania we are dealing with state capture through the mechanism of the judiciary. Similar features to that of Albania are present in all of the countries in the WB region in which the functioning and independence of the judiciary are seriously violated. According to the European Commission's 2019 reports, Western Balkan countries such as Serbia, Albania and Bosnia and Herzegovina are considered to have achieved some level of preparation in the field of the judiciary (see: European Commission report for Serbia, Albania and Bosnia and Herzegovina: 13, 14, 28). Montenegro is considered to be 'moderately prepared' (European Commission report for Montenegro 2019: 15), Northern Macedonia has a dual classification of 'some level of preparation' and 'is moderately prepared' (European Commission report for North Macedonia 2019: 15), while the Kosovo judicial system is considered to be 'at an early stage in developing a well-functioning' (European Commission report for Kosovo 2019: 14). However, despite the differences in qualification, all countries across the WB region face similar problems in establishing the rule of law.

Since 2015 Serbia is considered to have achieved some level of preparation in the field of the judicial system (European Commission 2015: 11); however, the progress achieved since then has been at a reduced level. Serbia's judicial system continues to suffer from political interference, the constitution and legal framework still leave room for political interference. Pressures on the work of judges and prosecutors, as well as commentary on court cases by individuals at

high political levels, remain high. Likewise, government control over the media and selective justice and impunity continue to be serious problems that oppose the rule of law (see: European Commission report for Serbia). To address these problems in the justice system, 'Serbia has adopted the basic legislative conditions and founding stones for vetting, [however] the current government has failed to design a comprehensive vetting process and institutional restructuring. This is due in large part to a lack of political will' (Haider 2018: 46).

Lack of political will by all Serbian governments in the period following Slobodan Milosevic's[3] overthrow is also seen in the prosecution of war criminals. Initially the Serbian governments refused to cooperate with The Hague Tribunal, for many years refusing to turn over criminals such as Ratko Mladic or Radovan Karadzic, while internally they initiated improvisation processes that culminated during the governance of A. Vucic and his party. Among others, this government has begun the process of accommodating war criminals and those convicted in The Hague, through Serbian institutions.

In Albania, the justice system characterised by profound politicisation, partial justice, corruption, links between crime and politics has emerged as the weakest cog in the chain, the 'Achilles' heel' of the system throughout the post--communist transition. To change this situation, a comprehensive reform of justice has been initiated, which aims at building the institutional and human capacity needed to ensure the rule of law. One of the most important aspects of this reform is the process of reviewing the purity, competence and wealth of judges and prosecutors, otherwise known as the vetting process. However, vetting as a key instrument of justice reform in Albania is not a novelty for the Western Balkans. Bosnia and Herzegovina, Serbia and Kosovo have also gone through such a process before. Thus 'even radical measures did not produce the intended effect: in 2009 – 2010, Kosovo and Serbia, for example, attempted a mass evaluation and reappointment procedure for all magistrates, with mixed results at best, and possibly with the solution being worse than the problem' (SELDI 2014: 75). This process in Kosovo exposed the failure in training of new professional staff. Among other things, this process was characterised by political implications in cases of reappointment and appointment to leading positions and in the filtering of judges and prosecutors (Gashi – Musliu 2013: 16–18). Serbia and Bosnia and Herzegovina have experienced similar symptoms as Kosovo. For this reason, new EU justice reforms have been initiated in all Western Balkan countries.

3 Slobodan Milosevic was a Yugoslav and Serbian politician who served as the President of Serbia from 1989 to 1991 and within The Federal Republic of Yugoslavia from 1991 to 1997, and President of the Federal Republic of Yugoslavia from 1997 to 2000. He was the representative face of Serbian ultra-nationalism and the main cause of the violent dissolution of the Federal Republic of Yugoslavia. During the NATO bombing of Yugoslavia in 1999, Milosevic was charged by the International Criminal Tribunal for the former Yugoslavia (ICTY) with war crimes in connection to the wars in Bosnia, Croatia and Kosovo. He died in his prison cell in The Hague on 11 March 2006.

This process has shown in a large number of cases the links between prosecutors and judges and segments of organised crime. In other cases, such as with former Chief Prosecutor Adriatik Llalla, corruption and incompetence appears. 'Llalla was apparently involved in transactions worth millions of dollars, which fitted into a clear scheme of money laundering, such as the reevaluation and sale of properties, which he had bought only a few months before, at a much higher price. In one case, the transaction involved selling a property for a price 23-times higher than the one he had allegedly bought it for from a person with an official record of killings and various crimes. The public also learned that Llalla's high school diploma cannot be found but the alleged lack of secondary education seemed rather insignificant amidst the allegations of criminal charges that have surfaced' (Elbasani 2018: 29–30).

In cases similar to that of A. Llalla, judges and prosecutors could not justify the origin of the personal property, and cases of incompetence were found as well. All of these cases reveal the decay of the judicial system in Albania and its transformation into a party branch where recruitment and management of particular individuals is done not on the basis of meritocracy but on the basis of loyalty to the party. 'Five out of six post-communist presidents have been nominees of one party and the first and last two presidents hailed from that party's close circle of leadership, the Albanian presidents usually served to carry out party patronage schemes by positioning individual and party loyalists across the judiciary system. [...] Since those appointees owed their job to the party, they served the party patronage schemes – by controlling active investigations, nominating lower level appointments, distributing cases to suitable prosecutors and judges, etc. – in order to advance their careers. Consequently, not only did the Albanian presidents establish a long-running mechanism of political patronage, but they also helped to maintain low professional standards, as the second side of the same coin' (Elbasani 2018: 31).

This context has prompted obstruction or, in other words, promoted the veto of this reform by the actors involved in the deformation of the legal system (Elbasani 2018). Nevertheless, the speed at which this reform is being implemented and the political environment in which it is taking place are two of the main concerns for its future and for the justice system itself. The justice system in Northern Macedonia just like Montenegro, Kosovo, Bosnia and Herzegovina[4] appears to have the same symptoms in Serbia and Albania. Political interference and influence in the justice system, biased justice and lack of media freedom, commentary on court cases by senior government officials, corruption and

4 In the Bosnian case some time ago a scandal broke out where the President of the Judicial Council was offering his services to a businessman. Instead of holding him accountable, other Council members came out in his favour (see Kraske 2019). This scandal proves once again the decay of the justice systems of the Western Balkan region, the links of judges and prosecutors with segments of organised crime and their involvement in corrupt affairs.

links to organised crime are evident in each of these countries (see European Commission reports on 2019).

Thus, in general the rule of law in the WB region remains weak due to the unwillingness of the elites to strengthen the justice system, as this would also mean breaking authoritarian practices and informal networks. By keeping the justice system weak, the political elites have succeeded in extending their power through corruption, clientelism, nepotism and patronage. The flooding of institutions and state companies with party members is obvious in all countries of the Western Balkan region. Contribution and loyalty to the party remain the two main premises for recruiting new members against whom the party has countermeasures that ensure that they are kept under control, such as the promise of employment and promotion, temporary positions, insecurity or fear of losing jobs. Thus 'state institutions in the [Western] Balkans are sacrificed to political party influence, the result of which is an utter rupture of their functionality. Captured state structures reveal that criminal structures are stronger than any corrective mechanisms in these systems' (Kraske 2019). In this way, destroying the corrective mechanisms opens the way for the enrichment of some persons through the use of state resources or other forms of abuse. This money is later used to finance the political campaigns of the parties to which these individuals are affiliated, as well as to purchase votes, a phenomenon that is widespread in every Western Balkan country. So here we are dealing with a chain phenomenon that is networked and encompasses a wide range of institutions vital to the functioning of democracy and is presented with symptoms such as structural corruption involving high levels of politics.

High levels of corruption since the beginning of the transition have been a major problem for societies in the WB region. Rosa Balfour and Corina Stratulat (2011: 22) discuss a uniform scenario involving the political elites of all Balkan countries. This scenario first assumes that in the moments of political and economic transformation, the political elites took advantage of the vacuum created so that political and economic reforms could be tailored to their personal interests and status. This strategy proved to be successful in many countries, making it difficult to distinguish between politicians, businessmen and magistrates. In these cases 'the government acted more as an invisible captured hand than as an invisible hand and deliberately promoted partial reforms with the general aim of capturing the state'. As Othon Anastasakis (2013: 108) states, the beginning of transition determines its continuation, namely, 'the early years of transition lay the groundwork for a climate of corruption'. Such a corrupt climate, despite its improvement over 2008–2011 (see metrics index), has followed and continued to dominate politics at the highest level in all countries of the Western Balkan region. Today this region is one of the most corrupt in Europe. However, ethnic divisions such as Bosnia and Herzegovina, Northern Macedonia, Montenegro and Kosovo, as well as

nationalist discourse and the EU's own approach to the region, contribute to this state-capturing approach.

'The exploitation of public resources in election campaigns creates a major corruptive force in the electoral process, as it introduces or exacerbates power inequalities and provides unfair leverage for the elected incumbent or political parties via patterns of clientelism, party patronage, corruption, and nepotism. It erodes the quality of democracy, as incumbent elites can take advantage of a civil service, public contractors, government communications, public media, and even private companies and privately owned media which are part of the established clientelistic chain. After the elections, powerful voted officials can pay back the services rendered during the campaign by securing well-paid positions in the public sector for their supporters, providing access to privileged information, granting favorable procurement contracts, and so on' (Kmezic 2020: 5).

The Role and Impact of EU Policy in the Process of State Capture by Local Elites

The role and influence of the EU in the development and results of justice reforms have been analysed by a large body of research (Mendelski 2015; Mendelski 2016; Elbasani – Sabic 2018; Kochenov 2008; Ritcher – Munsch 2019), and although the conclusions are different, there is increasing agreement on the counter-effect of EU conditionality on the reform process.

'The presence of informal networks that capture formal institutions and impede deep democratisation explains why the EU has been able to induce partial compliance with membership criteria, but has not had a profound democratising impact in the region. [so] not only that the presence of state capture inhibits the operation of conditionality as a trigger for democratic transformation, but that conditionality unintentionally enables informal networks to consolidate their power, creating a dynamic that durably undermines any progress towards sustainable democratization' (Ritcher – Wunsch 2020: 56).

Thus, according to Solveig Ritcher and Natasha Munsch (2019) 'EU conditionality has not only failed to effectively address state capture, but also inadvertently contributes to the consolidation of such processes by enabling informal networks to tighten their grip on power'. There are three reasons that make EU conditionality an instrument that helps to consolidate state capture. First, in the absence of a comprehensive legal framework, external pressure to liberalise markets created favourable conditions, namely allowing a small political and economic elite to derive private benefits and influence political decision-making through powerful informal networks (Ritcher – Munsch 2019). 'Governing the reform processes has helped the ruling parties [...] gain a clear edge over their political competitors in the process of the redistribution of

powers. Institutional reforms in view of Europeanization enabled the possessive parties direct personnel policies in the state sector. The "perturbation of established arrangements" within the state apparatuses opened opportunities for a new generation of bureaucrats. Due to ruling parties' claim to consolidate their influence over the state, many among them have owed their appointments to their loyalty to the party and its leader. In the economic field, the privatization and deregulation of the markets opened new spaces for the re-distribution of power. It created a powerful nexus between economic and political power. This led to the rise of new pro-government elites, including managers of state-owned companies, large businessmen and emergent middle-sized entrepreneurs' (Günay – Dzihic 2016: 8). Second, robust top-down conditionality eliminates almost any discussion in the domestic political scene and with it undermines internal accountability mechanisms (Ritcher – Munsch 2019). However, inter alia, EU conditionality, especially in the area of rule of law and the fight against corruption, is focused, as Jovana Marovic (2017) puts it, on quantity, thus bypassing quality by creating the appropriate ground for the ruling elites to silence internal opponents. Third, the interaction between the ruling elites of the countries of the Western Balkan region with EU officials or with the officials of the member states respectively strengthens the legitimacy benefiting the WB elites and leaders within this interaction (Ritcher – Munsch 2019).

In this way, according to Cengiz Günay and Vedran Dzihic (2016), European Union integration reforms stemming from the latter's (EU) conditionality mechanism along with the promise of redistribution and redirection of public resources and narrative national-populist constitute the macro-strategy of the dominant parties in hybrid regimes such as Turkey, Serbia and Northern Macedonia. Thus 'EU reforms functioning as "legitimising devices" opening new spaces' (Günay – Dzihic 2016). So, 'The Rise of Strong Balkan Rulers, such as Nikola Gruevski (Former Yugoslav Republic of Macedonia), Milorad Dodik (Republika Srpska, Bosnia and Herzegovina), Milo Djukanovic (Montenegro) and Aleksandar Vucic (Serbia), and their machines of the party, came under EU scrutiny and often with tacit support and approval. These autocratic-minded leaders – all, of course, self-proclaimed pro-European democrats – have been able to stay unmatched in their domestic political arena because there is no democratic acquis to bring the monopoly of power, the organization of party and competition or informal practices' (Stratulat 2017: 13).

This tacit approval by EU leaders of the autocratic powers of strong Western Balkan leaders has come primarily as a result of the destabilising power these leaders possess. These leaders have repeatedly transmitted insecurity, which has served as an instrument for strengthening supporters' dependence on parties (Günay – Dzihic 2016), but also for sending messages about and related to the power they have for destabilising the region. In this way, by tolerating their autocratic power, the EU has succeeded in neutralising this force and thus

maintaining the status quo in a region where there are no hot spots, which have the potential to destabilise the entire region. An important dimension in this regard is the geopolitical context of the Western Balkans. Thus, aiming to maintain the pro-European spirit and policy of the political elites of the Western Balkan region and to neutralise the presence of third parties such as Russia, China or Turkey, the EU has tolerated and funded the region's autocratic powers. However, the refusal to open accession negotiations with Albania and Northern Macedonia may produce an optimal context for the action of these actors and thus trigger a new wave of authoritarianism, which would undermine even the region's few European achievements. This ambiguity of the EU has created the desired space for the absorption of Russia's authoritarian sentiment towards the region (Mujanovic 2018: 111–117)

Conclusions

In the Western Balkans, both the political elites and the justice institutions have been unable to support and implement the Europeanisation process. On the one hand political elites have proved ineffective, corrupt and self-interested in state capture or certain state segments or resources, so generally reformist political elites have appeared too weak to undertake radical reforms and change (Anastasakis 2005: 84; Elbasani 2013: 10; Bieber, 2018b: 341; Halili 2019). On the other hand, justice institutions have served as a key instrument in the state capture enterprise. Thus, the reform process in the region has become an iterative system destined to fail at the outset. So, we see a loss in reforms, overlapping of reforms and plunging into a vicious circle, whereby each time the elements increase and intensify but deteriorate one another, inevitably leading to a deterioration of the situation and producing multidimensional and rampant corruption. In the meantime, the impact of the EU has not been transformative, but rather stimulating authoritarian and non-legalistic authoritarian practices. In this respect, therefore, it is necessary to change the EU's approach to the region. This (new approach) should not be rejective (refusing to open accession negotiations with individual countries as in the case of Albania and Northern Macedonia may produce counter-effects) but coercive (coercion should be of a financial nature, i.e. benefit only those countries that carry out sustainable and independent reforms).

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