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EDITOR'S NOTE

Before the readers is the second issue of the scientific journal "COMPARATIVE BALKAN POLITICS" that discusses phenomena of democracy, parliamentarism, elections, electoral systems and political parties, respectively and political institutions in political systems of young democracies in the region of the Balkans, generally. We confirm our intention to convert this project into a platform for exchanging researchers' views on problems which the states and societies in the Balkans in the process of democracy consolidation are facing, along with all the problems that the beginning of a scientific publication entails.



*Milan Jovanovic,
Editor-in-Chief and
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The above mentioned themes are precisely the contents of this issue. The first article analyzes the democracy consolidation process in three Balkan states – candidates for EU membership– in the context of internal and external factors. It shows how the anchoring of democracy in Macedonia, Serbia and Montenegro hovers between clientelism and the EU incentive, indicating some possible directions for reducing weaknesses that slow down the process of consolidating democratic institutions. The second article is dedicated to the parties in Bosnia and Herzegovina as causes and prisoners of ethnic divisions. Fighting for the votes, the parties are positioning themselves as protectors of ethnic interests, which the authors consider as an obstacle to modernization and building of democratic institutions. The third article is dedicated to the neglected area of internal party democracy in the case of the Montenegrin party system. Results of the research show that parties in Montenegro do not have any built in mechanisms of internal party democracy, which reduces their capacities to build democracy in a political system - and the Montenegrin society specifically. The respect of the electoral rule is often put in doubt. In young democracies it is one of the basic divisions. The fourth article that shows protection of the electoral rule in the electoral system of Montenegro is precisely dedicated to that. The subject of analysis of this article is the fragmentation of legal norms, focusing on important moments of processes in candidacy, voting, determining results, funding electoral campaigns and the role of media in elections in the electoral law of Montenegro.

The presented papers reflect the editors' intentions in shaping this journal – challenges and dilemmas of democracy in the Balkan states in a comparative dimension. We believe that studies that were published in this issue will find their readers not only in the academic society and the interested community, but will also encourage researchers to present their works to the public through "COMPARATIVE BALKAN POLITICS".

The Achilles Heel of Democracies in Southeast Europe: Responsiveness Trapped Between Clientelism and the EU

[Research article submission for the special section: Linking Citizens and Political Parties in Southeast Europe]

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The Achilles Heel of Democracies in Southeast Europe: Responsiveness Trapped Between Clientelism and the EU

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Abstract

The process of democratic consolidation in the Western Balkans is a thorny subject both in practice and in academia. An apparent stalemate and the constrained development of democracies in the former Yugoslav countries in particular seem to stem from a particular conjunction of internal factors that pertain to the relationship between citizens and the governing political parties and external factors pertaining to the relationship between the EU as the key promoter of democracy in the region and the domestic elites. This article attempts to examine the state of democracy in Macedonia, Montenegro and Serbia as the only EU candidate countries in the former Yugoslavia. Particular attention is paid to the specificities of domestic and external 'democratic anchoring' in these countries as well as the democratic quality of responsiveness. Following the elaboration of the research puzzle in the introduction, Section II of the article briefly presents the framework of democratic consolidation and outlines how it might be used to analyse the selected cases. The analysis of the domestic democratic anchoring focuses on a particular anchor the political elites in the region use to create intermediary structures that bond the voters to the political system – clientelism. External democratic anchoring revolves around the promotion of democracy by the EU as an external anchor of these three democracies. In Section III, the two anchoring mechanisms are assessed in the light of the data pertaining to responsiveness and the most recent EC Country Reports. The conclusion section summarises the findings of the article, indicating the lessons learned, as well as the constraints on and opportunities available to Western Balkan democracies in the future.

Keywords: democratic consolidation, democratic anchoring, clientelism, European Union, responsiveness, accountability

I Introduction

There is no doubt that in the literature, as well as among practitioners, the path towards democratisation in the Western Balkans has been a thorny one.¹ The progress of the countries in this region from the breakdown of communist regimes to the elusive moving target of a fully-fledged liberal democracy has been beset with setbacks, gridlocks and ups and downs, such as civil wars, territorial disputes and authoritarian resurgences. Hence the question of the success of efforts towards democratisation, and the lack thereof, is a pertinent one – not least because comparative data shows that there are no guarantees of a ‘happy ending’. It is now clear that the majority of ‘third-wave’ countries have not become well-functioning democracies.² A quarter of a century after the process was unleashed by political liberalisation and the introduction of a multiparty system, it is still not clear how much further these countries have to go. One missing link in the literature which additionally impedes our ability to make credible suppositions about the distance to the point of arrival of democratisation is an acute lack of consensus in academia about the point along the journey that these countries are now at.

While some authors champion an optimistic estimate that in “all the Western Balkan countries democratic consolidation has been achieved” albeit with “clear differences in the quality of democracy” (Sakellariou & Sotiropoulos, 2014: 12), or have attempted to demonstrate through process-tracing how some of these countries have “democratised [their] hybrid regimes” (Vukovic, 2011; Levitsky & Way, 2010),³ others tend to portray a more nuanced picture. As an example of this more sensitive register, some SEE countries are regarded as democracies (e.g. Slovenia, Croatia, Romania and Serbia), while others are labelled as hybrid regimes (e.g. Montenegro, Albania, Macedonia, Bosnia-Herzegovina and Kosovo) (Berglund et al., 2013). If Dahl’s procedural conception of democracy as *poliarchy* is taken as a

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- 1 In this article, the two overlapping denominators for the region – the Western Balkans and Southeast Europe – will be used interchangeably. ‘Western Balkans’ is a neologism coined by the European Union to politically demarcate the countries of the former Yugoslavia (minus Slovenia) and Albania, which have a clear perspective for EU membership, at least since the EU-Western Balkans Summit in Thessaloniki in 2003. See: Declaration, EU-Western Balkans Summit, Available at: http://europa.eu/rapid/press-release_PRES-03-163_en.htm [Accessed on: 18 January 2016]. The other *genus proximum*, South-East Europe (SEE), is a term with a much longer pedigree dating back to the 19th century (Hösch et al., 2004). I shall explain why it is important to keep SEE as a regional denominator in relation to democratisation later on in the article.
 - 2 According to McFaul, the transition to democracy in post-communist Europe was successful in only eight out of 28 cases (2002: 212). The author refers to post-communist democratisation as belonging to the fourth wave, so as to differentiate it from the earlier processes in Southern Europe and Latin America, but that is not relevant here.
 - 3 In this article as well as in his later doctoral thesis (2014), Vukovic examines the diverging party outcomes of the incumbents in power after the regime change, and attempts to explain why Serbia and Croatia underwent a turnover of power while Montenegro did not. In their formidable study of competitive authoritarianisms, Levitsky and Way (2010) analyse the trajectories of regimes that began the transition from authoritarian rule but fell short of establishing democracy, only to subsequently succeed after a prolonged lingering of hybrid regimes. Serbia, Croatia, Macedonia and Albania are to be found within the scope of the examined cases.

benchmark for a minimally functioning democracy,⁴ and a *hybrid regime* is defined as a stable configuration that is neither authoritarian nor democratic in the above procedural sense because it lacks at least one of the minimal conditions,⁵ labelling may prove to be very difficult in cases where compliance with those conditions is murky and fluctuating.

Among these countries, our interest here lies particularly with Macedonia, Montenegro and Serbia. These three former Yugoslav countries all experienced political liberalisation and the beginning of transition in the early nineties; all three have gone through a period of national and state uncertainty and had to simultaneously push for democratisation and the restabilisation of state borders and national identities; all three embarked on an upward trajectory of democratisation after transitioning from the hybrid regimes of the 1990s; and finally, all three are under a high degree of political conditionality from the European Union since, unlike other former Yugoslav countries, these have the status of candidates for EU membership⁶, which arguably dramatically increases the effectiveness of EU democratic conditionality (Schimmelfennig & Sedelmeier, 2005). Nevertheless, they are still considered to be fragile democracies with a variety of domestic issues and external factors hampering democratisation (Bieber & Ristic, 2012). Moreover, the latest empirical evidence suggests that instead of moving forward, they are stagnating or even backsliding. According to Freedom House's 'Freedom in the World' index for 2016, all three countries experienced a downward trend, or at least stagnation. It was particularly steep for Montenegro, which went from being considered 'free' to 'partly free' for the first time since it recovered from this status in 2010, and Macedonia, which has never managed to pass the threshold of a 'free' country.

The puzzling democratic stagnation of the SEE region can best be illustrated when juxtaposed with the similar process that another group of post-communist countries with similar constitutional set-ups and prerequisites for the development of vibrant multiparty systems and under the influence of EU conditionality and democracy promotion – Central and Eastern Europe (CEE). In her analysis of the 'democratic

4 Dahl's classic definition of democracy is a common point of departure for most later conceptualisations of democracy. For example, recalling Dahl (1971), Morlino provides the following minimal empirical requirements of a democratic regime: (a) universal suffrage, for both males and females; (b) free, competitive, recurrent, and fair elections; (c) more than one party; and (d) different and alternative media sources (2011: 32).

5 Morlino (2011: 56–57) defines a hybrid regime as a set of institutions that have been persistent, be they stable or unstable, for at least a decade, that have been preceded by authoritarianism, a traditional regime (possibly with colonial characteristics), or even a minimal democracy, and that are characterised by the break-up of limited pluralism and forms of independent, autonomous participation, but the absence of at least one of the four aspects of a minimal democracy.

6 Macedonia was granted the status of candidate for membership as early as 2005, but accession negotiations with it have still not commenced. Montenegro became a candidate for membership in 2010 and began negotiations in 2012. Serbia became a candidate in 2012 and began negotiations in 2014. In addition, Macedonia would have received an invitation to join NATO as soon as 2008, had it not been for Greece's veto on the move, because of the notorious naming dispute between the two countries. Montenegro received its invitation to join the alliance at the end of 2015. While Serbia persists on its course of military neutrality, it remains committed to NATO's Partnership for Peace framework of cooperation.

advances in post-communist regions for period 1991–2012’, Dolenc (2013: 10) has shown that despite some similarities, the two regions exhibit important differences in their democratisation trajectories. Disregarding for a moment the different interceptors, i.e. starting points of democratisation, her analysis, based on Freedom House (FH) data, shows that the CEE countries went through two critical junctures or windows of accelerated democratisations (1992–1995 and 2003–2005) whereas the SEE countries have gone through just one (1998–2002).

If we assume, as I think is correct, that the first brief period of accelerated advancement is the period of a largely successful transition in the cases of both regions,⁷ although protracted in the case of several SEE countries due to conflicts and hybrid regimes, and the second period marks the definite consolidation of democracy, which coincides with the final stage of EU accession, beginning with the granting of candidate status to the applicant country, the puzzle this paper aims to solve is: *why then is the second jump upwards not happening in the case of SEE?*

Superficial and purely outcome-based explanations of democratic consolidation cannot explain this conundrum. One such way of looking at consolidation is an internal outcome-based glance at consolidation. For example, Macedonia and Serbia passed the ‘double-turnover test’ that was suggested as an indicator of democratic consolidation (Huntington, 1991) in 2002 and 2008 respectively. Additionally, the fragile democratic institutions have survived major crises: the breakdown of public order after the assassination of Zoran Djindjic in Serbia and the Albanian uprising in Macedonia. In contrast, Montenegro is the only European democracy (excluding Belarus) that has not experienced a democratic change of government. Another option, however, is to look at external outcome-based indicators of democratic consolidation. Here, the picture is reversed, as Montenegro is currently the regional champion on the path to EU accession. How then can their democratic stagnation be explained?

The following lines offer an analysis of the state of democracy in these EU candidate countries in the Western Balkans. It stems from the context that we must focus on processes and not outcomes, and that both national and international factors are important. Particular attention will be paid to the specificities of both domestic and external ‘democratic anchoring’ in SEE as well as the democratic quality of responsiveness. Leonardo Morlino stated that responsiveness is the ‘Achilles heel’ of democracies at the beginning of the 21st century (Morlino, 2011). Such an empirically based finding is a lighter articulation of the pessimistic theoretical assessments of contemporary democracies as being ‘hollowed out’ from the inside (Mair, 2013) or even the notion that, in the light of the widening gap between citizens and governments and the convergence of the latter with private economic interests, we are standing at the brink of ‘post-democracy’ (Crouch, 2004). Section II briefly

7 This window of opportunity in SEE was characterised by the first democratic changes of government in Romania, Bulgaria and Macedonia 1996–1998, as well as the ‘democratic turn’ elections in Serbia and Croatia in 2000 (Schimmelfennig: 2005; Dolenc: 2013). Note that Montenegro is the only country that has not, to this date, had a turnover in power since the collapse of the communist regime.

introduces the theoretical framework of democratic consolidation and outlines how the two aspects of ‘anchoring’ may be used in the analysis of the selected cases. Section III provides evidence for the dynamics of domestic and external anchoring in the three countries. Due to space limitations, the analysis of domestic anchoring immediately homes in on the particular mode that the political elites in the region use to create intermediary structures that would bond voters to the political system. Then the focus shifts to the analysis of the effects of the promotion of democracy by the EU as an external anchor of the WB democracies, and its success is assessed in the light of the most recent EC Country Reports and the mediatorial role that the EU has assumed in the region. The concluding section summarises the findings of the article, indicating the lessons learned as well as the constraints on and opportunities available to the constrained democracies of the Western Balkans in the future.

II Theoretical Framework: Integrating Domestic and External Anchoring

Given the dubious status of democratic consolidation in Macedonia, Montenegro and Serbia, the state of democracy in these countries can be explained by looking into both factors that have hindered the process of consolidation of democracy therein and by identifying the deficient aspects of democratic qualities that characterise these countries. Not unlike Bieber (2012), I find that theoretical approaches need to be adjusted to the context of the area under scrutiny and not *vice versa*. This is also a lesson from the history of theories of democratisation – each newly explored region has given rise to new research concerns specific for it.⁸ Therefore, my straightforward claim is that democratisation in South-East Europe is a result of a particular combination of the political and economic legacies characteristic of Southern Europe and the salience of international democracy promotion that has characterised Eastern Europe.⁹ Moreover, for reasons that will become clear in the exposition of my arguments, I abandon here the practice accepted in the literature of looking at the consolidation and qualities of democracy separately. This choice is also motivated by a worrying lack of relevant, up-to-date empirical data about these countries. Cross-fertilisation of these often separated fields of study can yield more interesting conclusions for complicated cases. In short, I shall argue that (a) the stalemate in democratisation in Southeast Europe stems from the chronic absence of responsiveness among the local political elites to their citizens; and (b)

8 The first generation of democratisation researchers that focused on Latin America mostly ignored economic factors (cf. Morlino, 2011 for this conclusion); on the other hand, researchers focusing on Southern Europe studied the political and economic systems of these countries together (cf. Sotiropoulos, 2006 for this conclusion); the importance of external factors came into the equation with the unlocking of democratisation processes in the CEE region.

9 Successful examples of such an integrated approach to the study of democratisation in the region still assign much less weight and attention to external factors and focus on historical legacies (e.g. Bieber & Ristic, 2012; Dolenc, 2013 and 2016).

such a configuration is the result of particular internal and external factors, such as authoritarian legacies and the impact of the EU.

According to the current state of the art of at least a part of the literature on democratisation, democratic change (as well as the processes opposed to it) occurs on a continuum where several phases are discernible: *transition to democracy* (and democratic installation), followed by *democratic consolidation* (and crisis), after which it makes sense to deal with the *deepening* (or worsening) *of the qualities of democracy* (Morlino, 2011: 11). Once a democratic regime is consolidated, even weakly, according to Morlino, the main internal processes of regime continuity and change can only be crisis and reconsolidation – “there is no longer space for breakdown and authoritarian installation” (1998: 2). As consoling as this may be, the type of regime that comes out of the process of consolidation may vary vastly. In order to adequately grasp the achieved state, we need to understand the specificities with regards to the local sub-processes that comprise consolidation.

Democratic consolidation is comprised of two parallel processes. The first is the bottom-up process of *legitimation*, whereby democracy and its institutions acquire diffuse support among the population. The second is the top-down process of democratic *anchoring*, whereby the governing institutions and elites solidify their bonds with citizens. Since democracy is the only game in town as far as the diffuse support from citizens is concerned, we need to focus on the second process.¹⁰ The most notable democratic anchors are political parties, but they can also be certain governmental or other institutions such as unions, or even social movements and significant media. In short, they are new rules and ‘intermediary institutions’ able to provide alternative choices and, on some occasions, solutions to the actual problems people have. These institutions ‘anchor’ democracy because they politically bind citizens and associations in a stable relationship (2011: 113). In short, depending on what kind of anchors prevail and what kind of electoral and/or functional circuit they establish, a particular form of democracy will take shape as a result. Democratic anchoring is a process- and actor-oriented approach. Depending on the position of at least one of the driving actors of democratic consolidation, it can be domestic or external. Here, a particular kind of domestic anchor pertinent to the examined countries will be introduced first, after which the theoretical focus will move to preparing the ground for the analysis of EU-mediated external anchoring.

Firstly, if one domestic anchor had to be singled out as a *differentia specifica* of Southern Europe, it would be the gatekeeping and patronage role of the political parties in power and the converse clientelistic relations they forge with large sections of the citizenry (cf. Garziano, 1978; Ferrera, 1996; Morlino, 1998). Clientelism

10 The analytical need to focus on the patterns of linkages which regimes establish to the body of citizens in order to consolidate their rule rather than to focus on the societal basis of democratic politics is one reason why some perhaps more conventional tools, such as Rokkianian ‘cleavages’ were not chosen for the analysis. Another is that such tools were originally designed for the study of established, old Western democracies and would therefore have to ‘conceptually travel’ (Sartori) much more in order to be useful for the analysis of our cases than the categories employed for SE and CEE.

is one of the historical forms of interest representation. It is “a practical (although in many ways undesirable) solution to the problem of democratic representation” (Roniger, 2004: 360). “Clientelism”, writes Roniger, “involves asymmetrical, but mutually beneficial relationships of power and exchange, a non-universalistic *quid pro quo* between individuals or groups of unequal standing. It implies mediated and selective access to resources and markets which others are normally excluded. This access is conditioned on subordination, compliance or dependence on the goodwill of others.” (2004: 353–354). Clientelism works both ways – it “privatises politics”, giving segments of the society uneven access to political authority and it “colonises society”, establishing party control over previously autonomous parts of civil society (Graziano, 1978: 297). As such, clientelism was a way of procuring a functional circuit of representation for the people in the former Yugoslav republics at the time when the old party structures had crumbled with the fall of the communist *ancien régime*. At the same time, although half a century of socialism had brought the country unprecedented modernisation and urbanisation, it had not managed to eradicate the customary informal bonds that have characterised Balkan societies for centuries. These, by definition, pre-political horizontal relations are a fertile ground for the flourishing of patronage. Moreover, the communist rule had implanted in the institutional system of these states a sort of “legal nihilism” (Goati, 2008), a purposeful, instead of legally based, decision-making,¹¹ by virtue of which the subsequent hybrid regimes, existing in a state of gravely diminished legal and social certainty, encapsulated the observation that “parliaments that do not decide on anything, elections are reduced to mere voting and multiparty systems, in which all the decisions are made by a single party” (Ibid., own translation). Thus both the cultural and institutional conditions favour clientilistic practices in the region. But if common sense dictates that such a practice is better purged than cherished for democracy, can it be functional?

In his study about domestic anchoring in Southern Europe, Morlino (1998) provided an overview of the literature on and the mechanisms and effects of such anchoring practices mostly in Italy and Greece. Interestingly, his rather counterintuitive but important finding is that even such a malignant and endemic political phenomenon can be beneficial for democratic consolidation because it establishes a particularistic, if not universal, and a personalistic, if not public, responsibility and accountability among the bearers of political representation to their citizens.¹² As the example of Democrazia Christiana, in the south of Italy during the 1980s and before the political crisis that dismantled this system in the wake of the ensuing decade, shows, when a politically under-differentiated, patriarchal and rural society meets a catch-all party, clientelistic bonds appear. They are intermediated by “middle-level elites as ‘brokers’ of local and individual interests, being able to transfer central resources to the periphery in different ways, but always through state agencies or bureaucracy (Morlino, 1998: 220–221).

¹¹ A proverbial saying, credited to Josip Broz Tito, states that “one should not hold on to the law like a drunken man holds on to a fence”.

¹² These terms are used only in a relative sense. Associating accountability with clientelistic transactions is an overstretched and misleading use of the term.

The literature on the role of clientelism in the Balkans is plentiful (e.g. Kitschelt, 2001; Cvejic, 2016). Yet, to my knowledge, no one has explicitly formulated this kind of hypothesis for the WB region. While I am certain that it had a role to play in stabilising the societies in the acute absence of more organised, better channels of influence, my main concern here is to explore how this functional bond has affected the electoral circuit of representation and, particularly, electoral accountability and the overall responsiveness of those governing towards the governed. Claus Offe famously wrote that citizens are structurally related to state authority in three ways – as citizens, subjects and clients (1996: 147). What happens, then, in states that are not fully consolidated democracies, welfare or otherwise, when a clientelistic mentality takes precedence or when it proves to be the most cost-effective way to secure one's needs? As the case of Italy before the 1992 crisis shows, such situations are not politically sustainable, but a very long time can pass before a punctured equilibrium appears and democracy reconsolidates at a higher level of equilibrium. The analysis of this aspect in the next section should also offer an account of the chances of democratisation in an unchanged domestic anchoring situation.

Secondly, this article joins the literature on CEE and SEE that pays due attention not only to the domestic conditions, but also to the influence of the international milieu and the role of the European Union especially. The impact of the Union in post-communist democratisation has been operationalised: (a) within a rational-choice cost/benefit approach in terms of *political conditionality* (Vachudova, 2005; Schimmelfennig, 2005; Schimmelfennig & Sedelmeier, 2005; Schimmelfennig & Scholtz, 2008) or 'Western' *leverage* (Levitsky & Way, 2010; Vachudova, 2005), and (b) a more constructivist approach of *democratic socialisation* (Checkel, 2005).¹³

The theoretical expectation from the literature on conditionality is that the impact of the EU on candidates for membership should be stronger than its impact on non-candidate states: “[o]nly the highest international rewards – those associated with EU membership – can be expected to balance substantial domestic power costs” (Schimmelfennig & Scholtz, 2008: 191). It is true that, notwithstanding the dilemmas of national elites, EU political conditionality has exerted a significant influence on democratisation (Ibid.) in the Western Balkans. Why, then, do we detect stagnation in or a deterioration of these democracies in some instances and sectors – sometimes even while they are making progress towards EU accession? The approach chosen to help answer this puzzle here is the similar but wider notion of *external anchoring* of democracy (Morlino, 2011).¹⁴ It implies “a process of inducting individuals and states into the democratic norms and rules” of a wider community (2011: 146). Firstly, it is complementary to the domestic anchoring ex-

¹³ This incomplete classification is merely illustrative, since it does not encompass all the theoretical conceptualisations of international influence and since the approaches are not as neatly divided as it would seem to suggest.

¹⁴ External anchoring is a generic term that encompasses at least four different mechanisms of the influence of external democracy promoters on a target country – imposition; example; conditionality; and socialisation – each involving different modes of interaction with local systems and drawing on different theoretical traditions. The latter two are, however, unanimously accepted as the most influential.

plored at the beginning of this section. Neither the picture from just the national arena nor that from the international arena suffices for a comprehensive account of democratic consolidation in the former Yugoslav countries. Secondly, external anchoring is a tool for “conceptualising the interaction between external influence and the domestic change processes” (Ibid.: 144) which includes both the *logic of consequences*, wherein local actors and veto players calculate if compliance with the international actor’s influence is beneficial in terms of expected outcomes, and the *logic of appropriateness*, wherein the actors’ preferences are not fixed but can change as a result of their incremental socialisation into the normative community of the promoter of democracy (cf. March and Olsen, 1998).

What are the key phases of and mechanisms that allow the process of external anchoring to take place? Morlino and Magen (2008) and Morlino (2011) see the process of external democratic anchoring as being revealed through three phases of decision-making which they consider to be layers of anchoring – rule adoption, rule implementation and rule internalisation. It is quite useful, practical and commonsense to think of external influence in terms of these phases as the EU Country Reports 15 also use the distinction between adoption as a purely legislative act and implementation as an indication of genuine compliance.

Now that the two distinctive aspects of anchoring have been introduced, the following section will scrutinise the evidence of democratic stagnation in Serbia, Montenegro and Macedonia in the light of them.

III Evidence and Discussion

The most recent evaluations of the democratic record of our cases from 2016 are discouraging. In Montenegro, the government is under increasing pressure from the opposition, civil society and the EU to transparently reform the electoral system and dismantle the mechanisms of corruption and clientelism that are suspected of leading to election fraud in several previous cycles. Its FH ratings have thus fallen because of the “abuse of state funds for political party purposes” (EU Country Report, 2015: 15) and primarily because of the belief that the head of government “sanctioned harassment of independent media” (FH Overview Essay, 2016: 8) and

15 The 2015 EC Reports reflect the Commission’s new methodology that ought to provide a better and more objective operational framework by assessing the current state of play in all sectors, identifying shortcomings and offering a clear set of recommendations. Two innovations with respect to the previous reports are crucial: firstly, the change of the name from ‘Progress’ to ‘Country’ Report implies that the EC realises that its annual reporting has a significant and often undeserved domestic legitimising function for the regions’ governments, which tend to interpret them publicly as an external approval of progress made. From now on, the reports will be issued without any unintended distortion of reality and no progress will be a priori implied. Secondly and more importantly, newly introduced harmonised assessment scales are likely to increase comparability between countries or between different screening periods of a single country and improve the transparency of the accession process generally.

restricted the right to peaceful assembly “including clashes between police and opposition demonstrators and the repeated postponement of an LGBT pride parade” (Ibid.: 19). The resulting tarnished image of the incumbents as purveyors of good governance and democratic norms resulted in the beginning of parliamentary dialogue between the heads of political parties with the mediating presence of the head of the local EU delegation, aimed at restoring trust in the electoral process and discussing a transitory government that would ensure that the next elections would be free and fair. Macedonia’s ruling party since 2006, the nationalist VMRO-DPMNE, was exposed and implicated in scandals of electoral fraud and the extensive wire-tapping (FH Overview Essay, 2016: 18–19) of an unthinkable number of up to 20,000 people, exacerbating the culmination of a political crisis that ultimately required the EU to get involved as a mediator between the government and the opposition that had boycotted the Parliament, and to arrange a transition period leading up to snap elections scheduled for 2016 (Balkan Insight, 2015). Even though Serbia is the only EU candidate country in the region that has been considered ‘free’ without interruption since 2006, a slight fall in the ratings is largely due to diminishing media independence and professionalism due to economic duress, increased dominance of the ruling Serbian Progressive Party (SNS), increased self-censorship and political pressures (cf. FH Nations in Transit Report for Serbia, 2015: 579).¹⁶

Our expectation is that the language of anchoring can prove to be very useful in resolving the perplexing paradox of democratic stagnation amidst the candidate countries with the strong presence of influence from the EU. In this register, a democratic regime is defined by the predominant anchors used as intermediary structures to bind the governing structures and citizens together. We shall examine them in light of domestic anchoring (clientelism and patronage) and external anchoring (the EU) before we combine these two perspectives in the conclusion.

III.1. Domestic Anchoring in SEE: Hooking onto Clients?

There are no cross-country regional surveys or other research on clientelistic practices,¹⁷ but this is widely acknowledged as an endemically widespread phenomenon in the region. The lack of such evidence forces us to make inferences from other data. One logical way to test the risk of an overwhelming clientele on democracy in the Balkans is to consider the numbers of employees in the public sector. It is well known that in the former Yugoslavia, the state is the biggest employer. It is too often the case that no complete data on the number of people working in the public sector can be found. Still, indicative numbers suggest that the percentage of the employees who

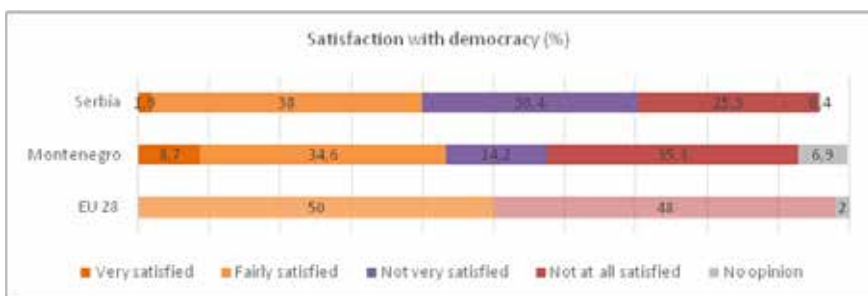
¹⁶ Similar to *Freedom in the World*, *Nations in Transit* in 2015 classifies Serbia and Montenegro as semi-consolidated democracies and Macedonia as a hybrid regime.

¹⁷ A notable exception is the Media Clientelism Index (MCI). Launched in 2015 in Croatia, Bosnia and Herzegovina, Montenegro, FYR Macedonia and Serbia, it measures the risks of clientelistic practices and the existence of such practices, as well as the potential of the society to deal with issues of media clientelism. The results show that among our three countries, Serbia fares the best and Macedonia the worst (See also Cvejic, 2016 for Serbia and Kosovo).

work in the public sector in the total number of registered employees is 35.2 % in Montenegro (Monitor, 2015), increasing to as much as 50% in Serbia (Danas, 2014) and is above 20% in Macedonia (OECD, 2013: 4). If the incumbent political elites in the region use the logic employed by one MP in Montenegro’s Parliament, who was secretly recorded saying at the ruling party’s meeting about the strategy for the 2012 elections that “one job [equals] four votes”, hinting at the grateful family members of the employed, the harmful link between politically-driven employment and a distortion of electoral accountability is evident. Electoral preferences should not be a manifestation of private interests or non-anonymous favouritism, but of Rawlsian public reason that impartially looks after the public good.

With this in mind, the available empirical data can be read in a new light. Responsiveness has been empirically operationalised as an index comprised of at least two variables – satisfaction with democracy (SWD), as a proxy for perceived legitimacy, and the level of public debt, as a proxy for objective constraints to responsiveness (Morlino, 2011: 258–260, Table in the Appendix). As for the SWD, Eurobarometer data shows that, currently, half of Europeans are dissatisfied with the way in which democracy works in their country, while 48% are satisfied and 2% expressed no opinion (2013: 99). Our three countries appear to be on a par with the EU, with dissatisfaction being slightly higher (**Figure 1**), even though all the facts stated at the beginning of this section point to the crisis of democracy being much deeper in these countries than in the EU. A possible explanation already hinted at above is that patronage, in the form of resource and favour redistribution, really has legitimised the incumbents and that the surveyed citizen-clients, without much experience in how a functioning democracy ought to function, falsely connect their satisfaction with democracy when in fact they are satisfied with the private privileges the incumbents provide or are grateful that they have not been denied them.

Figure 1. Satisfaction with democracy in Serbia and Montenegro.¹⁸

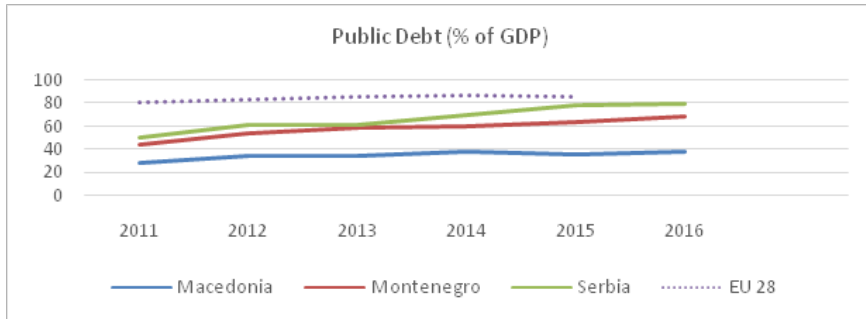


Secondly, the available data on the public debt expressed as a percentage of GDP shows a steady rise in all three cases (**Figure 2**). While this would indicate a relative decline in the objective ability to cater for citizens needs in Morlino’s account (2011: Chapters VII and VIII), it is possible to imagine a different and paradoxical situation not yet considered in this framework – that the SWD will continue to rise

¹⁸ The most recent available results for Macedonia are older. According to EVS, in 2008 42% were very satisfied or fairly satisfied with the way democracy works in their country.

together with public debt.¹⁹ This could imply that governments have an incentive to uncritically spend, so long as they secure public support from their clienteles. Staying in power can lead to irresponsible and unaccountable public spending with a supposedly democratic regime that maintains its net responsiveness.

Figure 2. Public debt in Serbia, Montenegro and Macedonia.



Source: World bank, data for observed years. EU 28 data from Eurostat.

Overall, the evidence points to the conclusion that in our three cases, the governments are legitimised by their ability to provide clientelistic services to the citizens. That would partly explain the absence of turnovers despite the deteriorating democratic performance of the incumbents. Finally, by mirroring the Italian example in the previous section, it explains a part of our puzzle: when client-patron relations are deeply rooted as anchors of the regime, to such an extent that they undermine the other anchors, the process of democratic consolidation slows down, while the core of the regime remains remarkably resilient to the democratic advances otherwise made. In such a context, the otherwise unreliable indicator of satisfaction with democracy acquires a very particular and telling meaning: the figure, in fact, reflects the people who are satisfied with the regime as clients rather than the people that are satisfied with democracy as citizens.²⁰

19 If we look at the pertinent case of Italy during the First Republic, we can see the existence of the same trend. Public debt exploded from around 60% of GDP in the late 1970s to around 120% in the early 1990s when the political crisis led to a system characterised by excessive growth of the public sector, party patronage and clientelism as fundamental resources of democratic anchoring. At the same time, the number of citizens not at all satisfied with democracy kept steadily falling from around 40% at the beginning of the 1980s to 25% at the end of the decade (Martini & Quaranta, 2013: Figure 1).

20 The fact that the satisfaction of the respondents does not really reflect a positive orientation among competent citizens toward the regime, but is more likely the attitude of contented clients is affirmed by the fact that citizens in Montenegro, Macedonia and Serbia are much more afraid to openly express their political views than their counterparts in Croatia, Albania and Kosovo (Gallup Balkan Monitor, 2010: 28).

III.2. External anchoring: What kind of lesson learning?

Which part of the ‘soil’ of the local political system does an external anchor need to take hold of in order to help consolidate democracy? The broadest answer when it comes to EU membership is undoubtedly the fulfilling of the political criteria laid down by the European Council in Copenhagen in June 1993.²¹ The reality of the past few years that has unfolded since the quoted literature was published clearly confirms the assumption that “anchoring involving external actors’ efforts to promote democratic change mainly implies the promotion of a democratic rule of law” (Morlino, 2011: 151). Though this focus on the rule of law stemming from in-depth qualitative analysis of the interaction of the selected countries with international actors, it is now an undisputable fact. Namely, since the launch of accession negotiations with Montenegro on 29 June 2012, the EU has adopted a new approach to negotiations which resulted from the lessons learned during the accession of Bulgaria and Romania prior to 2007 and of Croatia prior to 2013. Namely, while all other chapters of the *Acquis* will continue to be provisionally closed following the candidate country’s successful alignment with EU legislation (and its full implementation), Chapter 23 dealing with the Judiciary and Fundamental Rights and Chapter 24 dealing with Justice, Freedom & Security, are the first ones to be opened and the last ones to be closed. This new approach was reaffirmed and strengthened in the 2015 Enlargement Strategy which embraced this “fundamentals first” approach and identified the following core issues: the rule of law, fundamental rights, strengthening of institutions, public administration reform, economic criteria and regional cooperation (cf. EC Enlargement Strategy, 2015). Furthermore, the EC has reminded the Montenegrin government of the existence of an ‘overall balance’ clause in the negotiating frameworks (EC Progress Report, 2014), which implies the possibility of stopping negotiations on other chapters if progress on issues to do with the rule of law lags behind (EC Enlargement Strategy, 2014: 19). Thus the EU sees the rule of law as the rock upon which a functioning democratic political system is to be built, especially in this region.

Lastly, a methodological clarification: the requirement of brevity in the analysis necessitates the use of conceptual shortcuts to define and explain key phenomena of interest. Such will be the case with the relationship between the rule of law and corruption. Here, we are interested in corruption as a relational notion, a longstanding obstacle to establishing the rule of law. That corruption can serve as a litmus test for deficiencies in the rule of law is not just an intuitively sound idea, but has already been successfully implemented in relation to WB countries. According to Dolenc, “the problems of corruption and state capture may be understood as the the inverse measurement of the extent to which democratic polities have succeeded in establishing functioning rule of law systems to protect their citizens’ civil liberties” (2013: 17, 45).²² Now that the focus of the analysis is established, we can simply

21 The political criteria imply that the candidate country has achieved stability of the institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

22 The evidence on the anti-corruption track record as a proxy for the domestic dedication to the rule of law will be derived from the EC Progress Reports. The findings, however, correspond to the most

compare the state in this area at the beginning of the candidacy with its state now and assess the progress made.

The situation with Macedonia is unique with respect to the analytical framework. In 2015, the European Commission recommended for the seventh consecutive year that membership negotiations with Macedonia be launched, yet the situation has continued to linger because of the still-pending notorious name dispute with Greece. In this case, the strongest veto player that is paralysing not just one sector but the whole process is not a domestic stakeholder, but an EU member state. Thus the credibility of conditionality equates to zero and the domestic stakeholders are provided with a protracted excuse not to effectively adopt, implement and internalise rules that would democratise the country. The massive setbacks in democracy unveiled over the course of 2014 and 2015 did not prevent the EC from extending an invitation to start negotiations. One may hypothesise that this 'lifeline' thrown to Macedonia is motivated by the realist logic of the EC in that a positive assessment is needed in order to exert the necessary leverage required to keep things on track with the Przino political deal²³ (Ker-Lindsay, 2015). Finally, the stagnating situation in the region is certainly direst in Macedonia, where the EC finds that corruption, interference with judicial independence, media freedom and elections, as well as the politicisation of the administration, having already been signalled in previous Progress Reports, are persisting and deepening (EC Country Report, 2015: 4). Moreover, the report finds that those issues, together with "the breakdown of political dialogue and the difficulties in arriving at a consensus on issues have highlighted once again the divisive political culture in the country" (Ibid.). Thus, Macedonia presents itself as a somewhat outlying case, since the conditionality is becoming more *determinate* but is deemed not *credible* due to an external veto player from within its own ranks.

On the other hand, the same deteriorating dynamic exists in the other two cases. Montenegro's accession negotiations with the EU, which began in 2010, were conditioned on the fulfilment of the seven key priorities laid down in the European Commission's Opinion on Montenegro's EU membership application, in which the Commission recommended to the member states the granting of candidate status to Montenegro. This milestone moment was the most optimal time for effective conditionality from the EU. Indeed, conditionality at this point was strong both in terms of *determinacy*, because the steps to be taken were spelled out clearly, and in terms of *credibility*, since the reward for compliance was the beginning of negotiations. The Opinion demanded: improvement of the legislative framework for elections,

recent rankings of our three cases in the TI Corruption Perception Index – both in terms of the results (40–44/100 points) and decline with respect to the previous years. While progress reports present a valuable and rich source of relevant data, the author is not unaware of the potential double standards that the EU might have towards different states due to its own internal political interests – implying here, first and foremost, the disparity in the Union's reaction to the authoritarian tendencies and accusations of election fraud present in all three cases – and potentially of conflicting goals of democratisation and stability in the region. These concerns, falling outside the scope of the data source's considerations, will be revisited in the discussion and conclusion.

23 The deal refers to the settlement brokered with the mediation of the EU between Nikola Gruevski and the opposition regarding a transitional government that would bring about free and fair election.

public administration reform, strengthening of the rule of law, of the fight against corruption and of the fight against organised crime, enhancing media freedoms and implementation of anti-discrimination policy (EC, 2010: 10–12). The escalation of the ongoing political crisis, though, demonstrates that the initial successes in democracy promotion have not been continued consistently.

The unique characteristic in the case of Serbia is the existence of Chapter 35 in the negotiations, titled “Other issues”, which is nonexistent in the other cases, yet a *conditio sine qua non* for Serbia: relations with Kosovo. The Brussels Agreement, concluded by the governments of Serbia and Kosovo on the normalisation of their relations, was negotiated and concluded (although not signed by either party) in Brussels under the auspices of the European Union’s High Representative for Foreign Affairs & Security Policy, Baroness Catherine Ashton. The Agreement was an explicit condition for the beginning of the negotiations. Wrapped in Chapter 35, the normalisation of relations with Kosovo was opened first along with the chapter covering the rule of law and will remain key as the negotiations progress.²⁴

The EU and each member state that had since ratified candidate status took this initial zeal as a sign of domestic political will to fully tackle them. Yet the track record up until now proves Morlino’s conclusion that “the relation among rule adoption, implementation, and internalisation is a weak one” (2011: 173). Fast-forward to 2016 and most of these areas are still very much issues of political contention and domestic and EU concern. For example, while in Montenegro tangible steps have been made in the area of the fight against corruption and organised crime (although still without final convictions for high-level corruption, EC Country Report, 2015: 14), the institutional capacities for its prevention and even the legislative framework remain relatively poor, particularly with respect to financial investigations and prevention of corruption respectively (Ibid.). As for Serbia, in the statement quoted above, Commissioner Hahn added that the progress of Serbia would depend on the “continuation of reforms, especially in the area of justice, rule of law, fight against corruption, freedom of expression” (B92, 2015). The EC Progress/Country reports from 2013, 2014 and 2015 register some, but insufficient, results in the area of judicial reform. After recovering from the previous reform efforts that had gone wrong, the Serbian judiciary in 2014 was found susceptible to political pressures, particularly when taking on high-profile cases of corruption.²⁵ The incumbent government headed by Aleksandar Vučić from the Progressive Party won the elections, in part, on the promise of resolving the “24 controversial privatisations” that the EU had supposedly demanded be satisfactorily concluded in court proceedings as part of Serbia’s path towards EU integration (Euroactive, 2012). Yet the latest EU Country Report identifies some, but not sufficient, progress in this area:

24 Hahn: “Progress in the normalization of relations with Kosovo is crucial for the further progress of Serbia in the European integration process.” Available at: http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=12&dd=10&nav_id=96328

25 It is stated that: “Final convictions remained rare and high-profile cases remained at risk of political interference” (p.43).

Serbia has some level of preparation in preventing and fighting corruption, which remains widespread. The anti-corruption effort has yet to yield significant results. The institutional setup is not yet functioning as a credible deterrent. A track record of effective investigations, prosecutions and convictions in corruption cases is required, including at high levels (Serbia Country Report, 2015: 4).

To a careful follower observer of politics in the WB region (e.g. Kmezic, 2015), the deterioration of the freedom of the media in Serbia seems to be the most worrying. Media censorship in Serbia “is no longer news”.²⁶

Altogether, with respect to the rule of law in its broader sense, the three countries face common challenges and exhibit similar patterns of coping with the promotion and conditionality of EU norms. Judicial systems are still not sufficiently independent, efficient or accountable. Serious efforts are still needed to tackle organised crime and corruption, in particular to establish track records of investigations, prosecutions and final convictions. While fundamental rights are often largely enshrined in law, there are persistent shortcomings in practice. Ensuring freedom of expression is a particular challenge, with negative developments in all three cases. Public administration reform needs to be pursued with vigour, to ensure the necessary administrative capacity, as well as to tackle high politicisation and a lack of transparency. The functioning of democratic institutions also requires attention. There is a need to work even more closely with local civil society actors in order to anchor reforms across society (cf. EC Press Release, 2015). At this stage, compliance is to a degree assured with rule adoption, but rule implementation (including institutional capacities) is uneven, while rule internalisation remains little more than wishful thinking for any measure that seems to touch on politically sensitive matters of power, the reform of which would involve significant political costs to the incumbents. While the limited space does not allow for a more detailed analysis than the one already provided here, the overview of the state of play in the area of the rule of law in all three post-communist countries would seem to confirm Morlino’s finding that the political elites, formal institutions and socio-economic networks, coupled with the political culture constructed under the previous non-democratic regimes, have turned into the most stubborn, reform-recalcitrant veto players (2011: 163, cf. Dolenc, 2013 for the same finding). At the same time, the progress made over the last few years, mainly in legislation, but less so in implementation, points to the conclusion that the

26 Serbia is ranked 74th on Freedom House’s annual index on Freedom of the Press in the latest 2015 report, with the Serbian media considered only ‘partly free’. It is interesting to observe that Serbian media freedom has, according to Freedom House, been declining for six years in a row, with setbacks registered in the legal, political and economic environment. In its previous Progress Reports, the European Commission had been restating that threats or violence against journalists or the more covert avenues of political influence on the media continue to be a significant factor affecting the existence of self-censorship, which must be addressed during Serbia’s accession talks (cf. Freedom of the Press, 2015). In the most recent report, however, the Commission concluded that, overall, “no progress” has been made in the last year (EC Country Report, 2015: 17). The FH Freedom of the Press report finds that Montenegro is also firmly entrenched in the ‘partly free’ status, while the most alarming trend exists in Macedonia which has deteriorated from ‘partly free’ to ‘not free’ mainly due to massive “illegal government wiretapping of journalists, corrupt ties between officials and media owners, and an increase in threats and attacks on media workers” (Freedom of the Press, 2016).

local elites have perfected the craft of partial or even fake compliance. On the one hand, the incumbents demonstrate the ability to be responsive to the EU demands to a degree necessary for keeping the process of integration going and the possibility of reaping the benefits from it in terms of domestic and international support. On the other hand, this ‘institutional hypocrisy’ (Iankova & Katzenstein, 2003) means that no reform steps that would severely hamper the grip that the local elites have on political power will be genuinely taken. This remains the case even when the political alternatives to the EU have disappeared domestically.

This section cannot be concluded without two points of caution: firstly, the success of external democratic anchoring cannot be comprehensively assessed without insight into the crucial aspect of the three countries’ declining democratic standing – which is the most singularly important requirement of a minimalist definition of democracy – free and fair elections. This is the point where external and domestic anchoring overlap, and it is important to look deeper into this issue before we examine and compare the two types of anchoring in the conclusion. Yes, the EU has duly noted the opposition and civil societies’ complaints about the continuous irregularities of elections in the region, but has nevertheless sided with the results of international monitoring missions which have routinely concluded that the elections meet democratic standards in spite of ‘minor’ irregularities. Yet, it is precisely the elections in Montenegro in 2012, before which the Organisation for Security and Cooperation in Europe’s (OSCE) election monitoring mission decided that it no longer needed to observe the regularity of elections, in which the alleged institutionalised “abuse of state funds for political party purposes” took place. The affair was discovered in 2013 and has since plagued the political scene as the main cause of the widespread distrust in electoral democracy. Similarly, the Macedonian opposition has been loud and clear about state capture by the dominant party in that country and allegations of electoral fraud. The difference between them politically is that, in Macedonia the political opposition is less fragmented and has presented a united front against the incumbents in boycotting the Parliament, protesting and, most recently, in negotiations about a transitional government. In Montenegro, the process is slower, more contested and with a narrower consensus, even though the dominant party there, headed by the prime minister, Milo Djukanovic, has been in power for 25 years, whereas the dominant party in Macedonia with prime minister, Nikola Gruevski, has held office since 2006. Differences aside, the metastasising issue of election regularity in both countries has retroactively raised questions over the level of democratic consolidation that the international political and academic community believed they had reached. It also cast doubt on the accuracy of the assessments by international election watchdogs and the effectiveness of such mechanisms of democratic socialisation. Now the EU seems politically constrained to present a balanced case to the opposing parties and not to put any of them in the position of suffering too great a cost, if its explicitly asked-for mediating role is to bear fruit.

However, in a situation where the dominant party with its authoritarian legacies as a veto player faces systemically weakened change-agents in the opposition, I argue

that the last few years testify to the fact that “protracted action by an external actor, such as the EU” (Morlino 2011:173) is not enough. This situation in Montenegro and Macedonia has potentially transformative features of a ‘constitutional moment’ (Ackerman). Indeed, it corresponds to the definition of ‘domestic fluidity’ (Morlino & Magen, 2008; Morlino, 2011) wherein external anchoring is likely to be more efficient. It may prove to be a critical juncture at which the process of democratic consolidation can be unlocked and set at a higher level of equilibrium. That is why the external anchor needs to be substantially more effective – both determinate and credible. Unless the EU takes a more active and clear role in the domestic processes which have opened the door to its influence, it may lose the chance to rectify the mistakes it made in the cases of Bulgaria and Romania. Finally, although Serbia is stable and more democratically advanced than the other two, the institutional features and failures in compliance alert us to the possibility that the new dominant party in that country may lead to the same situation. Beyond just the institutions that the incumbents occupy, the societal indicators in Serbia now resemble those of the other two before the current crises, since a dwindling zeal for activism and participation in political activities is being detected and the majority of citizens are expecting change to come from the outside (Matic, 2012). The defective system for ensuring the rule of law lacks checks and balances, while the prominent role of the executive branch threatens to undermine the entire democratic system. In the long term, this deficiency may even discredit attempts to hold fair elections as part of a meaningful democratic process (cf. Kmezic, 2015).

Secondly, the EU has not been engaged only in the business of democratic anchoring in the region. Its mission has had, and still has, significant stability-anchoring features. I believe that it is important to stress that the two sometimes can be at odds with each other. In Montenegro, the EU has never had a chance to see how the opposition would behave in power, while it is familiar with the *modus operandi* of the incumbents who maintain a discourse that a turnover would bring about political instability. In Macedonia’s case, the security interest of the EU has mainly consisted of avoiding conflict between ethnic Albanians and ethnic Macedonians. For many years the priority of implementation of the Ohrid Framework Agreement has somewhat marginalised the Union’s interest in securing a functioning democracy. This ‘democratic security dilemma’ will be most obvious in the case of Serbia, where it is possible that if the incumbents there continue to deliver on Chapter 35, some transgressions in the sphere of the rule of law and democracy may not look so gloomy from the perspective of the Union.

IV Conclusion

In this article, I have attempted to succinctly single out the specificities of the process of consolidation and qualities of democracy in South-East Europe. Using the theoretical toolkit of domestic democratic anchoring in Section III.1. and external

democratic anchoring in Section III.2., I have tried to locate the real addressees of local elites' responsiveness in the ostensibly democratic countries of Macedonia, Montenegro and Serbia.

With regards to domestic anchoring, the key conclusion to be drawn from the discussion is that in societies where the patron–client relationship is the strongest anchor of the political system for the citizens, responsiveness and electoral accountability are misplaced. The democratic regime is not predominantly responsive nor is it accountable to the voters as citizens, but to the voters as clients. Such a misplacement can have grave consequences for the procedural qualities and democracy in terms of results.

'Particracy' – a notion ubiquitously lamented in the civil societies of the deteriorating democracies in Macedonia, Montenegro and Serbia – is in fact no more than the monopolisation of the gatekeeping of resources by the governing parties. Gatekeeping has allowed them to stay in power by securing political obedience during elections. Following a fulfilled promised favour or targeted allocation of resources, it also provided legitimisation by means of patronage. Yet the fate of the First Republic in Italy warns us that anchoring democracy via clientelism leads to a political crisis, because segments of the citizenry are excluded from the client–patron bond and catering for the needs of clients, with the simultaneous macro-economic deterioration, is economically unsustainable in the long term.

Finally, when present to such an extent, clientelism also undermines the rule of law as the principle of the supremacy and universality of law, and the guarantee of a functioning democracy. Therefore, in summary, the anchoring mechanism employed predominantly in the region is, in fact, anti-political, since it negates the cardinal dynamic relationship between the citizens and government. If citizens are in retreat because of the tide of clients, then responsiveness, defined as the capacity of the government to satisfy the governed by executing its policies in a way that corresponds to their demands (Morlino, 2011:208), is wrongly positioned. Responsiveness is found within a feudal relationship and not in relation to politically mature and responsible citizens. Thus, when not counterbalanced sufficiently by other anchors, patronage "hollows" democracy out (Mair, 2013) from the inside. Nonetheless, being unsustainable, it is bound to eventually lead to a political crisis. Whether the crisis will result in a reconsolidation of democracy at a higher level of equilibrium does not, however, depend solely on domestic factors.

With regards to external anchoring, the key finding is that the governments in the three countries are partially compliant to the conditionality to the EU, whilst at the same time the governments represent an obstacle to the full implementation and internalisation of the democratic norms promoted by the EU, since they stand to lose a lot should the diffusion of norms be complete. On the other side of the issue of conditionality, the EU has been gradually recalibrating its approach to enlargement for these countries and has recently succeeded in gathering leverage for more effective conditionality. Notwithstanding all this, there are two important caveats:

(a) the EU needs to be more determinate in its requests and has to empower the actors of change; and (b) the political strategies aimed at restoring and maintaining stability are not necessarily compatible with democracy promotion. But what are the unintended consequences of only partially successful external anchoring? The governments are more accountable and responsive externally to their EU counterparts than to their own citizens. The policy cycles seem to be more attuned to the issuing of EU's annual reports than the elections.

The explanatory factors sketched here do not function independently of each other. Indeed, domestic and external anchoring have fed into each other and have unintentionally created frozen and irresponsible democracies wherein the clienteles at home and the EU abroad have replaced the citizens in their function of keeping the government responsible. Finally, the firm grip of clientilistic domestic anchoring seems to be exactly the core which the local elites are least willing to sacrifice in the process of EU accession, as their power depends on it. Therefore, democratic stagnation is the dual effect of the demise of the role of citizens in relation to responsiveness and the mutually neutralising effects of domestic and external anchors.

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POLITICAL PARTIES AS GENERATORS OF SOCIAL AND ETHNIC CONFLICTS IN BOSNIA AND HERZEGOVINA

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POLITICAL PARTIES AS GENERATORS OF SOCIAL AND ETHNIC CONFLICTS IN BOSNIA AND HERZEGOVINA

Abstract

Political parties in Bosnia and Herzegovina are parties that generally fail to meet the criteria of political parties in modern political theory. We usually expect them to take social responsibility. In Bosnia and Herzegovina, the dominant ethnic political parties do not have the democratic capacity to strengthen the political democratic institutions and processes that are vital for Bosnia and Herzegovina's economic, political and cultural development and, thereby, its path towards European integration.

In this text our aim is to explore why political parties produce social and ethnic conflict, collective fear, mass mobilisation, hysteria, hatred and civic apathy in Bosnia and Herzegovina.

In their roles as protectors of the "national or ethnic good", the dominant political parties in Bosnia and Herzegovina appear as "the weakest party of the political practice scope."

Therefore, it seems important to open up a debate on issues such as the limits of tolerance towards the enemies of democracy. If parties show that their actions are against democracy, they use the democratic framework of the system, which is bonded with their own demagoguery. But it is clear that they do not contribute to the general democratisation of the society. They are an obstacle to the progress and modernisation of the society. In the democratic transition in Bosnia and Herzegovina, there were a lot of previously recognised powers of party groups. The citizens were left without adequate institutional protection from the promotion of violence, which came from party organisations. Consequently, it seems important to raise the issue of "civilising political parties" and to define the limits of tolerance towards the other position, politically speaking. Although the answer to this question is difficult, and it is one for more mature and more stable democracies than the Bosnian one, the rise of right-wing political parties in developed European countries indicates the significance of this issue.

Keywords: Bosnia and Herzegovina, political parties, democratisation, tolerance, ethnic conflicts

There are two reasons why research into political parties is very provocative: their history is predominantly associated with **crises**, and their content with **conflicts**. French political theorist Daniel-Louis Seiler illustrated 'the discontent' with political parties by a prominent statement, in which political parties are likened to "the unloved children of democracy". Maybe it is due to the fact that the term 'party' "consists of something politically unnatural – *party* is a synonym for *division*", and wisdom has taught us since Plato that "there is nothing worse for the state than that which divides" (Pierre Avril, in Seiler, 1999: 23). As soon as a party is established, Pierre

Avril says “it is an opponent”. In French, *partir* means – to part, to divide, to separate. At one time, political parties were synonyms for something rebellious, but today, according to Robert Michels, they are increasingly “combat organisations” (Michels, 1990: 31). Michels’ assertion can assist us in the description and explanation of the phenomenon of the upswing of the large nationalist parties in Bosnia and Herzegovina which won the first multiparty elections.

According to Michels, political parties are organisations that obey tactical rules, which have an apparatus, a centralised one, which implies a hierarchical structure. “The martial character of the party and its hierarchical arrangement with centralistic methods and the types of the decision-making process within very narrow circles in the party, bring the principles of organisation and democracy into contradiction (Milardović, 2006: 19). The organisation is like an oligarchy because the party’s authority is mostly oligarchical, and the party ends up under the rule of a democratic or anti-democratic leader. If we remind ourselves about the leaders of national and ethnic reestablishments in Bosnia and Herzegovina and their extreme influence on the masses (in the frame ethnically predisposition), it is noticeable that that took place at the very time that people in Bosnia and Herzegovina needed someone to “take them” through the so-called democratisation process. The newly formed political parties were actually military factions.

Nevertheless, the compulsion to transfer part of our own responsibility onto the leaders was actually disastrous for the whole of Bosnia and Herzegovina. The masses began to worship those leaders, and unfortunately, that kind of worship formed even their everyday life.

As much as *nationalist parties* were unattractive due to their connection with the painful and bloody experiences of multiparty democracy, they were ‘capable’, as Weber would say, of imposing themselves as corporations which ensured their leaders the power to achieve particular and general interests, with ethnic/national interests as the main and general ones during the tripartite system in Bosnia and Herzegovina.

Yet, it seemed that those three corporations could only be *temporary* ones because they arose out of circumstances – hence the break up of one ideological system, which occurred in many socialist and communist societies, especially after the fall of the Berlin Wall in 1989. Time showed and still shows that the parties in Bosnia and Herzegovina are more than *temporary*. In addition to this theoretical reflection, we are able to notice that these political parties were for a long time a synonym for the “new democracy” in Bosnia and Herzegovina, regardless of the fact that their largest expansion was related to the deaths and killings of the ethnic groups that they represent. Their aim was not only to create a new form of political rule, but to reshape the existing self-management socialist governance into a pro-capitalist system of ethnic self-governance that implied the redistribution of territories and resources on a virtually ethnic basis.

The political parties in Bosnia and Herzegovina are not the political subjects usually

recognised in modern political theory. Hence, a political party, which in its programme and actions is directed towards the development of democratic institutions, procedures and values, should constantly provide firm contributions towards these particular goals.

Due to the fact that that political democracy is a product of interactions between parties as organisations, we could state that political parties directly and indirectly participate in the manufacturing of social conflicts, mass mobilisation and civic apathy in our country. Sometimes it is obvious that political realities, political parties in post-socialist and post-war Bosnia and Herzegovina are “the weakest fragment of political practice”, which reminds us of Lefor’s thought that “power in democracy is not in the people’s hands – it is an empty space” and demagoguism and lies very easily fill that empty space (according to F. Cunningham, 2003). This is the reason why political parties, particularly nationalist ones, present themselves as “state creators”, as parties with the support of all the national corpuses and electoral bodies and as the only protectors of “all national benefits and interests”.

According to Blondel and Cotta, at the root of every political party there is the “presence of deep social conflict” (Blondel & Cotta, 2000: 17), they are the “expression of certain social conflict”, but at the same time, they can be instruments of integration within the same society. The failure of the political parties in Bosnia and Herzegovina to be an integrating factor reveals one important fact about the political parties’ democracy and their relationship towards conflicts and issues of conflict in general, in agreement with Milardovic’s statement that “conflicts (negative energy) and all the polarities within the structure of a particular society are the energy source that is used by all political parties” (Milardović, 2006: 23). That is why these political parties are not capable of updating themselves, changing into parties of a different democracy.

Lipset and Rokkan wrote that political parties form along lines of conflict (Lipset & Rokkan, 1967). Territorial and cultural reshaping is conditioned by the creation of a nation, and in the context of functionality, it is a “consolidation of national territories”. The creation of nations in Bosnia and Herzegovina unfortunately resulted in a bloody war and our ethnic parties still have disputes and conflicts over the territorial arrangement of Bosnia and Herzegovina.

Taking into account that the political and social structure of Bosnia and Herzegovina’s society is not liberal – it limits individual rights, human freedoms, justice and equality; the state constitution/structure is actually a basic link between parties, but also between political researchers and analysts. Political opinions and views on the Dayton Peace Agreement and the state structure are quite diametrically opposed, therefore the Constitutional Law – Annex IV of the Dayton Peace Agreement – is the most used political narrative within discussions of various issues. Other relevant political topics, which would profile political parties as right, left or centre, are excluded from the public sphere, because the “vital national interest” is, according to them, the only interest for the country. The term “vital national interest” is used

in rhetoric more or less equally by the SDA and HDZ BiH, SDS, Party for BiH, SNSD and even the SDP – because the rules and regulations of the state’s electoral system also place ‘left-wing political parties’ within the ethno-national political framework. This ethno-national design very often works as an ‘invisible force’ which gathers together citizens. This kind of design leaves no space for political freedoms, because all freedoms and rights are connected exclusively to ethnic, private, and familial interests, political parties’s links, bonds and mutual interests.

Political parties with a mostly Bosniak electorate claim that the Dayton Peace Agreement is the product of pressure from the international community to force the citizens of Bosnia and Herzegovina into ethnic divisions, and therefore that kind of state structure has no historical or economic justification. The only bases for this kind of Bosnia and Herzegovina are aggression and genocide.

Political parties with a majority Croatian electorate consider that the Dayton Peace Agreement opened up the question of the Croatian nation but to Croatia’s disadvantage. Accumulated discontent is strengthening requests for a third entity.

Political parties with Serbs as their electorate consider the entity of Republika Srpska as a territorial and legal continuity existing since 1992 right up until the present day, which did not come into existence with the Dayton Peace Agreement, as the Bosniaks and Croats claim, but was merely verified by that agreement, so its existence cannot be questioned.

In addition to this, ‘vital national interests’ prevented implementation of an important issue in Bosnia and Herzegovina’s society, the judgment of the European Court of Human Rights on the application by Dervo Sejdić and Jakob Finci (representatives of non-constitutional people in Bosnia and Herzegovina – Roma and Jews), issued on 22 December 2009. The implementation of the Sejdic–Finci judgment forms part of the reform packages which would have guaranteed substantive progress towards Bosnia and Herzegovina’s EU membership. None of the political parties in Bosnia and Herzegovina showed any interest in this case, ignoring completely the importance of this specific and significant matter.

Therefore, when researching political parties in various contexts, attention should be predominantly devoted towards the *forms* of conflict regulations and conflict content. Through this, we are able to gain an accurate answer as to whether these parties are liberal or totalitarian.

Anđelko Milardović states: “identification with a particular political group, field of conflict, lines of conflicts and distinctions are the source of existence and survival of political parties” (Milardović, 2006: 16). The kind of topics that are of interest to political parties (right, left, elite, mass, populist, etc.) and the character of the discussions related to these conflicts are the key factors in their position and survival. However, although some political theorists have advocated for the end of political parties, this is a false notion – power is a natural phenomenon. As Weber stated,

they are “the children of democracy and of the general right to vote” (Weber, 1999: 159) and consequently it is not possible to deny their existence. But, the manner in which they function in society – their *policy content* – should be the focus of researchers in order to prevent a waning in confidence and belief in multiparty and parliamentary democracy among political parties.

The political culture and the political and parliamentary life in Bosnia and Herzegovina are far from developed, according to contemporary political theory. From their beginning up until the present day there has been no major step forward in the organisation of political parties. It seems that political pluralism does not actually exist in Bosnia and Herzegovina because political parties are formed mostly along ethnic and religious lines (Šačić, 2006). In the ethno-national spectrum of the political parties, in a country without a tradition of true political pluralism, it is difficult to talk about any kind of typology – which is not really a good position. But it is something that we share with the rest of the world. Experience constantly shows that both right-wing and left-wing political parties can become totalitarian by virtue of transformations of the parties from within. Consequently, there are examples where right-wing political parties are often advocating for solidarity and social equality, which were previously ‘reserved’ only for left-wing political parties. French theorist Jean Lapoultre showed in research that this right-left dimension has its roots purely in cultural heritage. Also, theory shows that political parties are de-ideologised (Orlović, 2007), so according to their structure and function they are more like corporations. That is why in the field of political science in Bosnia and Herzegovina, most research deals with the subject of party representation in the media and what parties’ relationships towards the public are like. The power of “political gladiators” is growing with the increased role of the internet. At the same time, intellect and capacity are becoming less important, because things like verbal duels that are intolerant and primitive, and aggression and noise by the media count for more in the media-dominated world of politics. There is very little scientific research that deals with the source of the problem.

The experience of Bosnia and Herzegovina shows out that a large number of political parties are a complete farce. The *new democracy* of Bosnia and Herzegovina is not a liberal one according to many criteria. According to Šarčević, there is a constitutional ethnicisation of the society, an internationalisation of the state law, temporality, the legalisation of war crimes and war aims, ethnic-consensus democracy, ethnic determination of political decisions, assistance from abroad, loss of state sovereignty, constant violation of human rights and legal contradictions of constitutional solutions” (Šarčević, 2010. p. 427).

To remind readers about multiparty democracy in Bosnia and Herzegovina in the 1990s: the victorious political parties at the first multiparty elections – the SDA BiH, HDZ BiH and SDS BiH – truly appeared as opponents of the Yugoslav regime at that time, whose paradigm was the Communist Party. Some other parties also appeared at that elections, but the major victory was attained by three nationalist parties presented in the public sphere as the representatives of the three main national

groups living in Bosnia and Herzegovina. The SDA represented the Bosniaks, the SDS represented the Bosnian Serbs and the HDZ represented the Bosnian Croats. In the second decade of the tripartite system of governance, there was a fragmentation in our political parties, so the establishment of new parties such as Stranka za BiH, HDZ 90 and SNSD, which were at one time 'opposing' parties too, is noticeable. Today analysts mostly agree that these new political parties are branches of the three previously mentioned parties, but still in certain crisis situations, the dominant ethnic political parties have been more interested in arguing their own personal pretensions to represent "our people" than in opposing other political parties. In the third phase there was an influence from the SDP BiH (superseded by the Union of Communists of BiH), but political reality has convinced us that even this political party is not ready to change the procedures and mechanisms of ethno-national parties that this left-wing party was very much against in the election campaigns. Furthermore, compromises made with nationalist parties have definitely eroded the credibility of this left-wing political party in the public sphere. The citizens of Bosnia and Herzegovina trusted that the SDP BiH would implement vital reforms for the country, but they lost their moral and ethical compass, performing their activities mostly in the manner of a corporation: from the aspect of its own interests.

In the area of the ethno-territorial fragmentations of the populus, none of the parties in the context of the whole electoral body is able to count on a monocacy. Therefore, the requirement for coalitions exists in order to maintain the regime's dominant position. This kind of coalition serves no other purpose than to sustain and reproduce the ethno-political regime without any arguments being raised. The different identity-based politics of multiethnic and monoethnic political parties should be an obstacle to the politics of coalitions, but practice constantly shows that power is stronger and sweeter than all the differences in their identity profiles. This kind of politics is destined for failure, because it is not able to effectively influence the real association in the society and the acceptance of reality in the context of pro-liberal and social democracy.

John Keane, in his book *The Life and Death of Democracy*, describes what actually happened to the political parties in the USA during the period of their revival and prosperity. According to the main thesis of this author, the 'system of political party patronage' explains why the level of participation by the American public in the 19th century was very high. "Parties were mainly the major tool for an influence, and sometimes they were like a state of prosperity and welfare within the state itself" (Keane, 2009: 331). An election victory was a synonym for employment, the awarding of public contracts, the gaining of licences – in one word, it was all about loyalty, just as it is today in Bosnia and Herzegovina. People become members of political parties in order to achieve various kinds of personal gain: in order to get a job, to have a better status with medical services, education, to earn money, to have an advantage in public tenders, etc. Unfortunately, the best way to attain civic rights in Bosnia and Herzegovina is within political parties, not through state institutions. In the context of political science, our political parties are "splintering the state" without any particular "ideological content" taking over their primary functions.

After each election when those parties win comprehensively, we always wonder what the secret of their success is; particularly of those political parties that are a direct threat to democracy. Why does contemporary democracy not abrogate those political parties that are actually a threat to the state and its structures? Germany's experience shows that the state has the right to supervise or control radical political parties or groups, especially if their activities jeopardise the stability of democracy, or the legal or democratic system. In that case, the Constitutional Court can prohibit their activities.

Very often, in public debates, especially with topics regarding the social and political crisis in Bosnia and Herzegovina, discussion usually ends up going in one of two directions: eradication of the political parties, or the formation of a completely new party to change the situation in the country, which is constantly rising according to numerous indicators. With our political parties, the society of Bosnia and Herzegovina is in the crisis of "national state development". By this term we are referring to the process that started after the fall of the Berlin Wall in 1989 when many communist countries had to reorganise their own classical models of national state building and development that dated back to the 19th century. Due to several important historical moments, such as: the territorial pretensions of Serbia and Croatia towards Bosnia and Herzegovina, the aggression and war in Bosnia and Herzegovina in 1992-1995, the stratified ethnic structure, an insufficiently developed civil society, the incoherency of the international community, etc., Bosnia and Herzegovina has had and still has the issue of how to develop a Bosnian identity (Šačić, 2006).

In the context of what has been said, it is important to stress the fact that Bosnia and Herzegovina, with today's political parties in power and their huge war trophies and enormous responsibility, is constantly failing to disentangle itself from the "crisis of national state development" – in other words national and state integration – which imply a functional state and civic society with the rule of law and not the law of rule. It also implies individual rights before collective ones, the creation of satisfactory and suitable social policies towards equality and justice in Bosnia and Herzegovina.

In conclusion, the political parties in Bosnia and Herzegovina still remain chained to conflicts and disagreements. They are ends in themselves. In the case of national integration, these political parties have to be made functional. That would lead to their removal due to their massive accountability and responsibility for the general condition in Bosnia and Herzegovina's society and the unstable democracy produced by their leaders as those most responsible.

Naturally, there is no parliamentary democracy in the world without political parties, so their withdrawal and abandonment is not a serious or common sense approach. In theory, their existence is unavoidable and inevitable. They are the "*conditio sine qua non* of the functioning of a representative system" (Seiler, 1999: 2).

Moreover, according to many political theorists, these political parties are born with discontinuity through the totalitarianism or dictatorships. But, political parties appear

when respect towards citizens is absent, so their leaders rush to create imitations of pluralism. That is the moment when **pseudo-modern political parties or movements appear, which are actually part of the system, and not the carriers of reform ideas.**

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Perspectives for Development of Intra-Party Democracy in Montenegro

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Perspectives for Development of Intra-Party Democracy in Montenegro

Abstract

Intra-party democracy represents neglected area of research, especially in countries that are in process of democratic consolidation or on start of Europeanization process. Parties represent closed systems which are not allowing those outside to follow and analyses process within them. Thanks to the CCS research we can have insight analyzing experience and attitudes of candidates for MP positions in some countries including as well as Montenegro. In this article which represents part of wider research are analyzed statues of key political parties in Montenegro, following methodology used in analyzing same process in Croatia before. Comparison of key Montenegrin parties is showing that they represent organization with lack of internal democracy, or following classification they fit in low democracy type (3) and in individual elitist type (3). Neither one of analyzed parties gains score allowing it to be set in democratic centralism, or full democracy type. Further development of internal - party democracy is depending from institutional incentives (legal changes) as well as those coming from international associations to which Montenegrin parties belong.

1. Introduction

Montenegro represents a very interesting example of a party system, at least in Europe. This is the only country in Europe ruled in continuity, (since introduction of multiparty system in 1990), by the same political party – transformed League of Communists of Montenegro, now under a new name Democratic Party of Socialists (DPS), with a charismatic leader Milo Djukanovic. Exactly this fact makes the party system analysis somewhat flawed because, at least at the first glance, it is distinctive for the lack of the full competitiveness. One party, mostly due to abuse of the state resources, rules for such a long time. However, it is not the only cause of its success. DPS successfully “plays” the card of the divergence of the opposition, major part of which is even today mostly dominated by former supporters of Slobodan Milosevic, searching for the new patron in current leader of Russia Vladimir Putin. Exactly these discrepancies, previously independence/union with Serbia (SRJ), or now NATO and EU vs. close cooperation with Russia, are blocking the change of the government. Ruling DPS enjoys support of the EU and US, despite numerous corruption affairs, because it represents the strongest and the most reliable partner in Montenegro, when it comes to NATO and EU accession. Thus, its domination over opposition is not surprising, despite numerous harsh critics coming from official Brussels and Washington on the account of the level of achieved freedoms and rule of law in Montenegro. When it comes to classification, we will use Sartori’s (2002) typology.

If we apply this typology, Montenegrin party system today can be characterized as a “predominant-party system”¹ (read more: Vujović 2015: 50).

2. Theoretical framework

The issue of the intraparty relations and intraparty democracy is still almost unexamined, both in old democratic states and in countries of so-called new democracy. There are very few academic works which define adequate criteria and standards for classification of the intra-party relations and for defining the level of the internal democracy in political parties themselves. Even when it comes to the term of intraparty democracy itself, there is no unified and universally accepted definition among authors on what makes the intraparty democracy and what are the standards which parties should fulfill in its internal functioning. In such way, there are different approaches to defining of the term of intraparty democracy. Most certainly, the term of intra-party democracy should be researched as one of the main elements of democratic society, i.e. a very important indicator of respect for the democratic procedures of decision-making in public interest at the national level. When it comes to defining of the intra-party democracy, Susan Scarrow considers that intraparty democracy is a “broad term describing a big scope of methods for inclusion of members into the intraparty process of deliberation and decision-making” (Scarrow 2005: 3). At the same time Scarrow considers that political parties, characterized by intra-party democracy, have more possibilities for achievement of better election results.

On the other hand, there are authors advocating for the view that distinct elements of intra-party democracy imply higher participation of party membership in the process of decision-making, which influences to the weakening of the cohesion of parliamentary parties, loss of power of the party leadership and selection of unreliable person to the position of the party leader, which can result in distancing of the party from its electorate (Vujović, Tomović 2015:155).

When it comes to definition of criteria on basis of which it is possible to classify intra-party relations, Susan Scarrow defines three dimensions on the basis of which the political parties can be compared. Those three dimensions are: inclusiveness, centralization and institutionalization (Scarrow 2005: 6). Inclusiveness implies level of inclusion of party members into the decision-making processes, centralization is referring to level of powers distribution among party bodies in the decision-making processes, while institutionalization implies party autonomy from other stakeholders, level of internal organizational development, level to which voters are identified

¹ „Party system in Montenegro should be considered as a multiparty system with a dominant party, even though numerous allegations for abuses during electoral process are opening space for introduction of characteristics of hegemonic party” This is above all characteristic of the system with a hegemonic party, in which “not only does alternation occur in fact; it cannot occur” (Sartori, 2002: 204)” (Vujović, 2015:50).

with the party and level to which electorate perceives the party as the important social player (Scarrow 2005: 6). Based on these three dimensions Scarrow differs between parties which have given the power of decision-making to the party leader and parties characterized by the large number of structures which have the right to adopt decisions; furthermore, she differs between centralized, decentralized and stratarthic parties (Vujović, Tomović: 160), and in the end between parties with high level of institutionalization and parties with low level of institutionalization.

Except of Susan Scarrow, the dimensions and criteria of intra-party democracy were defined by Goran Čular too. His model is bi-dimensional and implies difference between the dimension of autonomy and the dimension of inclusion. The dimension of inclusion refers to horizontal aspects of the political party, and it indicates number of members of political party included in the decision-making process and implies difference in the scope of powers given to wider party bodies in comparison with scope of powers enjoyed by inner circle of the party management (Čular, 2004: 35). Dimension of autonomy refers to vertical distribution of power, i.e. it deals with the issue of autonomy of parts of the party at different levels and, as stated by Čular, in which way the “party in the field” can influence decisions-making processes at the different levels within the party.

For both dimensions, Čular defines series of indicators in the following manner:

DIMENSION OF AUTONOMY: Within the dimension of autonomy we can differ between three sub-dimensions: the rights and the protection of party members, autonomy of the local party level and direct influence of the local bodies to the decision making process at the national party level.

Indicators for the dimension of autonomy:

- a) Members’ rights - indicators: general rights, rights to form factions, protection of members against disciplinary measures.
- b) Autonomy of the local level: autonomy in decision-making (about local structure, in disciplinary procedures, in selection procedures for local election and about local coalitions), prerogatives of higher level in local affairs (in the procedure of disclosure of local organizations, in election and replacing local leadership, in calling local conventions, in local decision-making, in the coordination of local activities, party officials from higher levels, ex officio members of local bodies).
- c) Influence of the local level on the central party - indicators: through the election of representatives for party conventions, through the election of members of the central political and executive bodies, through the role in the selection procedure for national elections, through initiatives in calling national conventions and amending the statute.

DIMENSION OF INCLUSION: Within this dimension we can find three sub-dimensions:

the direct role of members in the decision-making process, the prerogatives of the conventions of members or delegates vs. the executive bodies and the concentration of power in the hands of the party president. If we observe intra-party democracies through the lenses of these sub-dimensions on the one end of the scale there would be parties with the most decisions passed by the membership assemblies, the direct elections and the constrained party president, while on the opposite end there would be parties with power mostly concentrated within the narrow circles of executives, the indirect system of representation and the president with strong powers and privileges (Čular, 2004: 36).

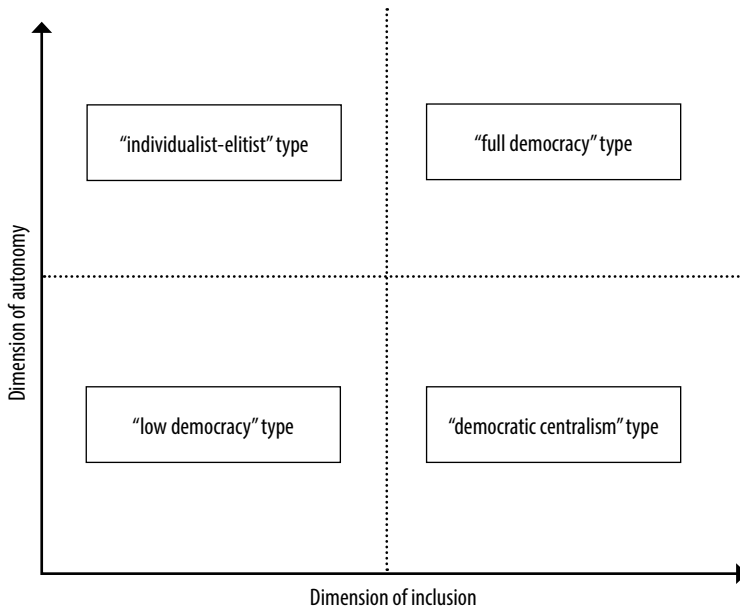
Indicators for the dimension of inclusion:

- a) Direct participation of members – indicators: in direct decision-making and elections, in the selection procedures, in initiatives towards the central level.
- b) Prerogatives of conventions vs. executive bodies -indicators: at the central level: in passing statute and political programs, in the election of members of the central political and executive bodies, in the selection procedures; at the local level: in the election of members of local executive bodies, in the election of representatives for conventions at a higher level, in the selection procedures.
- c) Power of the President – indicators: in personal matters: the right to propose/appoint a vice-president, the right to propose/appoint other members of the central bodies, the right to suspend/replace/exclude a member; in the selection procedure: at the central level, at the local level; other prerogatives.

In accordance to this three-dimensional structure, on one side are the parties with members of representative bodies that have powers of decision-making on all key issues, implementation of direct elections, and president of which has limited powers and possibilities of the independent actions, while on the other hand there are parties in which inner management circle, or executive bodies adopt all key decisions, apply indirect system of representation and president of which has significant powers and privileges (Čular, 2004: 36). In accordance with dimensions and indicators Čular differs between four types of political parties, dependent on the level of intra-party democracy which characterizes them:

1. “Low democracy” type (low level of autonomy and low level of inclusion);
2. “Democratic centralism” type (low level of autonomy and high level of inclusion).
3. “Individualist-elitist” type of party (high level of autonomy and low level of inclusion);
4. “Full democracy” type and (high level of autonomy and high level of inclusion).

Graph 1: Two dimensions and types of intra-party democracy



(Čular, 2004:35)

In order to obtain clearer picture on situation regarding intra-party relations in Montenegro, and also compare this situation with Croatia, Serbia and other ex-YU countries, Čular's model, dimensions and indicators will be used in order to characterize intra-party relations in Montenegro.

Besides the analysis of the party regulation, this essay will also treat the issue of influence of the electoral system in Montenegro to position of representatives inside of the parties, i.e. how stimulating it is for development of intra-party democracy.

In fourth part, we will use findings of CSS in order to get acquainted with attitudes of MP candidates (in 2012 elections) in issue of intra-party democracy in their parties.

3. Impact of party laws on intra-party democracy

This part of essay is dedicated to analysis of party regulations, i.e. statutes. Through the analysis of statutory competencies of key party bodies of Montenegrin parties, we will define the key elements of intra-party relations and rank Montenegrin parties in relation to the degree of the intra-party democracy which characterizes them. It is important to point out that Montenegro is not part of the small number of

countries, which regulate some intra-party relations (e.g. selection of candidates) by the law (Finland, Norway, Germany or USA). The parties have full autonomy to regulate processes of selection of candidates, election of the party management or defining of party politics. Or, vice-versa parties have full freedom to regulate these processes in inadequate way. Thus, the high importance of the party regulations for intra-party democracy in Montenegro is not surprising.

The party system enriched with numerous political parties, however it can't be labeled as institutionalized². Exactly for this reason we decided to analyze statutes of just one part of political parties. In selection we used only two criteria: (1) that the party has parliamentary status in the last three election cycles (2) that the party has more than two representatives in national parliament. In such way we selected six parties for analysis, avoiding parties which use type of reserved seats: DPS, SDP, NOVA, SNP, PzP i BS. Out of these parties, 3 were part of governing coalition³ (DPS, SDP i BS), and three are from opposition (NOVA, SNP, PzP). Also, two parties are representing "pro-Serbian" electorate (NOVA i SNP), and one party represents the national minority (BS), which didn't obtain parliamentary status through institute of the "reserved seat", but by the fact that its results exceeded legal threshold of 3% applicable to parties which do not represent a national minority.

Using already presented Čular's model, we have firstly examined the dimension of autonomy in respect to defined sub-dimensions and set criteria.

Namely, when we speak about sub-dimension of rights of the party members, by analysis of statutory provisions of Montenegrin parties, it can be noted that all parties define similar conditions which regulate both the procedure of enrollment and rights and duties of party members. Statutes are stipulating that members have the right to participate in implementation of program and goals of the party, to participate in creation and implementation of policies, to elect and to be elected into party bodies and to equally participate in party activities. On the other hand,

- 2 „As we can see, for Montenegrin party system we can't claim that it has been fully institutionalized. On one hand we have the stable position of the ruling coalition, where DPS rules since introduction of the multipartism and SDP since its entrance into the coalition in 1998. On the other hand, the opposition is constantly in the run for electoralat format which would provide it the possibility for electoral victory. Due to continuous failures and political experiments, some of the key oppositional parties have disappeared from the political scene (LSCG i NS). Thus, we can conclude that political parties have many problems in structuring, while voters (especially from pro-Serbian electorate) have the problem to identify with a concrete party. In such a way it can be explained that SNP in one elections gets 29 seats in the Parliament, 8 on the next ones, 16 at the elections after that and then again nine“ (Vujović, 2015:54).
- 3 During 2015, Montenegro passed a difficult political crisis, marked with the lack of public trust into electoral process, as well as with accusations that elections for the President (2013) were falsified by the ruling DPS. In order to overcome the crisis, a parliamentary dialogue between the government and part of the opposition was established. This dialogue resulted in the formation of the Government of electoral trust which included the ruling party and a number of parties from current opposition (URA, DEMOS and SDP). The opposition has been given following positions: Deputy Prime Minister, Minister of Interior, Agriculture, Labor and Social Welfare, but also many positions on the lower level in the executive or the government at the local level, the key public enterprises and public institutions. Regular parliamentary elections, implemented by the government of electoral trust will be held on 16/10/2016.

statutes are defining duties of party members, and in such manner party members are obliged to implement programmatic goals of the party, that they will accept program and statute of the party, that they will advocate and actively implement party's policies and all decisions of its bodies, that they will work on the increase of the membership and achievement of electoral successes, that they will preserve reputation of the party etc. Even though none of the parties stipulates formation of fractions with the party, parties are granting full freedom of expression to their members as well as the possibility of review of the majority's decisions, or the decisions of the party bodies.⁴ In case of violation of member duties, defined by the statutes, parties are foreseeing different measures against their members such as self-initiated withdrawal, exclusion (DPS, Bosniac Party) or erasing from the registry (SDP, PZP, New Serbian democracy).

In relation to sub-dimension of autonomy of party's local level, which is being assessed with respect to autonomy in the decision-making process and scope of powers of higher levels of party management in decision-making on local issues, we can notice that decision-making power in Montenegrin parties is concentrated within the central party bodies, which is mostly reflected in the process of dissolution of local, i.e. municipal boards. This is also the case when we look into the influence of local party bodies to decision-making processes at the national level, especially when it comes to the election of the party president. Namely, possibilities of direct election of the candidate for certain positions are almost inexistent, while the procedure of candidacy itself is under strict control of central party bodies. In most of the cases (DPS, SDP, PzP) key role is played by the main boards in determination of the list of the candidates for the president, as well as in the election of the main party bodies, determination of criteria and proportions in appointment of members.

Looking into key criteria of the dimension of inclusiveness, and in analysis of the direct participation of members of the political party in decision-making processes, we analyzed representative bodies which belong to lower (local) levels of the party, i.e. their size, delegated powers and privileges, as well as frequency of their sessions, taking in consideration that all other party bodies are elected by the indirect model of representation. Representative bodies at the lower level of organization are most frequently electoral conferences constituted out of the elected representatives of the local organizations, while criteria, size and manner of election of their members are determined by the municipal boards.

In DPS and SNP only direct activities of members are election of local i.e. municipal electoral conferences. In the local structure of the New Serbian Democracy, the situation is similar. Representatives of the municipal organizations are determined by the executive board, which indicates inexistence of the direct participation of the membership. Direct participation of the members of SDP depends on the size of the local i.e. municipal organizations of the party, because municipal organizations of SDP counting less than 100 members the Convention of the given municipality is constituted out of all members of SDP. In bigger municipal organizations, municipal

⁴ Statutes and founding acts of DPS, SDP, Nove, SNP, PzP, BS were analyzed

conventions are composed out of delegates determined by the municipal boards. Similar situation is encountered in Movement for Changes (PzP) where all members participate in election of the municipal board of smaller municipal organizations. In bigger municipal organizations, their representative bodies are functioning on the principle of delegates. Similarly in Bosniak Party, assembly of communal organizations are all party members in given community, while municipal bodies are formed on the principle of representatives.

In our analysis of the sub-dimension criteria we have examined scope of power entrusted with representative bodies versus executive bodies of Montenegrin parties, we have looked in the powers of the representative bodies in election of members of political and executive bodies, possibilities of initiation of the Statute adoption, political program of the party, as well as powers entrusted to members when it comes to selection of candidates. In all analyzed Montenegrin parties, (DPS, SDP, SNP, PzP, Nova, Bosniak Party), national representative body adopts programmatic documents and statute of the party and then it elects majority of political and executive bodies. In election of the vice-president congresses DPS, PzP and Nova are electing the president and vice-presidents, while congresses of SDP, SNP and Bosniak Party are electing the president of the party, while its vice-president is elected by the Main Board. However, members of the management bodies of the DPS, SDP, and Bosniak Party are elected by their main boards, not by their congresses. Only in the case of PzP, the representative body elects members of the management.

Regarding powers in the process of selection of the candidates for the party members, adoption of the party lists and verification of candidates for the local i.e. parliamentary elections, they are more entrusted with the executive party bodies, and not representative ones. The strong position of executive bodies is feature of almost all parties. Namely, main boards are calling for the elections for members of the party, determining criteria and procedures for election of members of the party bodies, determining party candidate for the president of Montenegro, determining criteria and method of nomination of the candidates for councilors and representatives, verifying representatives' and councilors' list, verifying candidate of the party for the president and vice-president of the Parliament and party candidates for the Prime Minister and members of the Government. The same procedure is applied on the local level regarding councilors' lists of parties, determined by municipal boards.

When it comes to scope of powers of representative bodies on the local level in domain of election of members of the local executive bodies, election of members of the nation representative body of the party, as well as in the process of selection of candidates, we can conclude that local representative bodies are entrusted with very limited powers. In most of the cases (DPS, SDP, SNP, BS, Nova), municipal boards are elected and controlled by the municipal electoral bodies, while remaining powers of this sub-dimension are kept by executive bodies of the local organizational party structures.

In the end we analyzed powers of the party presidents, when it comes to nomination

of vice-presidents, nomination of members of the central party bodies, possibilities of exclusion, or suspension of members, influence to selection procedures on the local and central level and remaining powers. Presidents of political parties in Montenegro, have very distinctive concentration of powers. They almost in all cases symbolize the party, so almost all parties are recognized by their presidents (Vujović, Tomović: 174). They are elected by the highest representative bodies of the party (Congress, i.e. Assembly). In earlier research, in respect to the scope of statutory jurisdictions of president we made categorization of Montenegrin parties. In such way we defined which are the “presidential” parties in Montenegro which grant significant powers to their presidents, who upon their appointment by the Congress are electing remaining executive bodies of the party, in order to implement the program defined by the congress (Vujović, Tomović: 175). In such way we concluded that milder versions of presidentialism are present in DPS, SDP and SNP, where president of SDP possesses much higher powers, especially in the procedure of election of executive bodies’ members, but also in the procedures of candidate selection. In relation to the powers of president to elect members of the executive bodies, the highest powers are entrusted to presidents of SNP and SDP. These parties are giving significant powers to president to convene and preside over other executive bodies at the national or local level, as well as to appoint members of some executive bodies and to be members of these bodies ex officio at the same time. This creates a situation in which presidents in significant measure control decision-making processes in all central party bodies (Vujović, Tomović: 175).

Presidents with fewer powers stipulated by the statutory provisions are presidents of PzP, Bosniak Party, and New Serbian Democracy. Their presidents can’t control election of members and constitution of the key bodies of executive bodies, and their powers in selection of candidates are very limited. Their small statutory powers are reflected in the fact that presidents of these parties even don’t have the power to initiate disciplinary procedures or suspension of party members (Vujović, Tomović: 176).

Through analysis of their statutory provisions against defined indicators of intra-party democracy, Montenegrin parties can be classified as parties with very low level of intra part-democracy, despite the fact that current practices of Montenegrin parties are frequently showing a different picture (Vujović, Tomović: 176). Namely, Montenegrin parties are characterized by the low level of inclusiveness (highest level of inclusion has SDP, while the least level of inclusiveness is noted in PzP) and high level of centralization (especially in following parties: NOVA, DPS, SDP, PzP, BS). In relation to the Cular’s categorization of parties to parties of low democracy, democratic centralism parties, and individualist- elitist parties, Montenegrin parties can be divided into parties of the low democracy (SDP, SNP, NOVA), i.e. individualist- elitist parties (DPS, BS i PzP).

Table 1: Dimension of inclusion and dimension of autonomy: Political parties in Montenegro

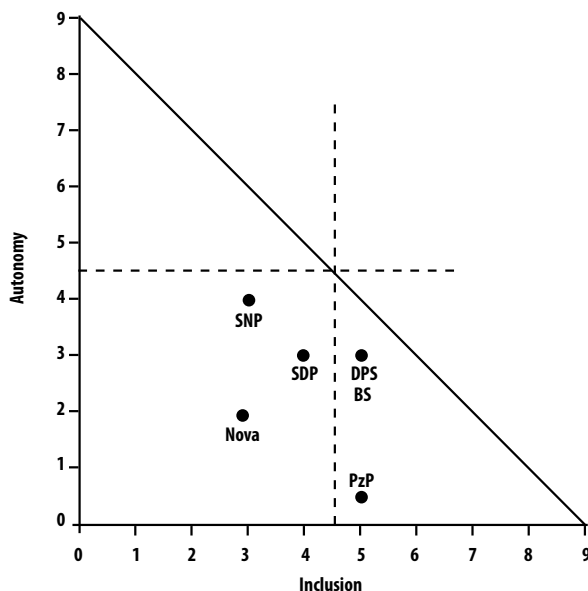
	DPS	SDP	BS	SNP	NOVA	PzP
Dimension of inclusion						
Members' rights	1	1	1	1	0	0
Autonomy of local level	1	2	1	1	0	0
Local level influence on central party	1	1	1	1	2	1
Total	3	4	3	3	2	1
Dimension of autonomy						
Direct participation of members	2	1	2	2	0	1
Conventions vs. executives	1	1	1	1	1	2
Power of the president	2	1	2	1	2	2
Total	5	3	5	4	3	5

Vujović, Tomović: (2016: 175)

Having in mind very low level of intra-party democracy, it is very important to provide conditions for higher degree of activism of party members in Montenegro in selection of candidates, election of the party management and defining of party's decisions. However, looking into the history of Montenegrin parliamentarism, and having in mind obvious independence of parties from donors, even from its electorate, due to significant financing of political parties from budgetary funds, democratization of political parties will be a very long and complex procedure. Current Law on Political Parties doesn't recognize provisions which would make the procedures of intra-party democracy obligatory for the parties, and political will for such amendments in the Law is inexistent. Thus both legal obligations for parties' managements to democratize internal procedures of functioning and decision-making, as well as political will to do so, are lacking.

In the graph below, one can see that all political parties are situated within left/lower half of the space, dominantly in the quadrant reserved for the party with low intra-party democracy.

Graphic 1: Dimension of inclusion and dimension of autonomy:
Political parties in Montenegro, Vujović, Tomović: 175



4. Impact of electoral system on internal party process

Montenegro has remained faithful to proportional electoral system, which has been introduced during renewal of multi-partism in 1990. If we apply IDEA's typology (IDEA's Handbook Of Electoral System Design, 2005 issue), we can say that Montenegro fit in the category of PR list system. During observed period the same electoral system was used in Montenegro, although some changes⁵ have been introduced through its evolution ((Pavićević, 2005:59).

In order to present in one place key structural changes of electoral system, we will use the table 1 where main structural elements are presented, organized in accordance with election cycles.

5 Since introduction of multipartism in Montenegro, the lawmaker was loyal to proportional system, however some legislative changes that were always leaning towards favoring of the governing party, took place. Thus, V.Pavićević considers that electoral system in Montenegro should be „Identified as transit from „majorly proportional“ V.Pavićević, through combined methods of proportional and majoritarian (1992.), and then „clean proportional“ (1992.), towards unique „ mixed system“ (1996.), i.e. compilation of positive elements of the majoritarian and negative effects of the proportional system and finally return to the „ full proportionality“ with one-time introduction of the institute of positive discrimination for one of the minority nations in Montenegro (1996., 1998. i 2002.)”

Closed and blocked candidates' lists were exclusively used in Montenegrin electoral system. However, in one period, the Law allowed to parties to determine representatives of the party in the Parliament, after elections and without any consent from the candidates from the party list – regardless of the position they were in. V Goati labeled this system as indirect proportional system⁶ (Goati 2004:252). Even though this solution was revoked in Montenegro, it clearly reflects the intention of the lawmaker to provide dominant position to the party leadership, i.e. to render meaningless citizens' will, due to the fact that order on the list is not obligatory and change is not based on the preferential votes, but on the subsequently demonstrated will of the party.

Table 2: Overview of main structural elements of electoral system in Montenegro

Elections	Assembly size	Electoral system	Number of constituencies	Magnitude	Threshold	Type of electoral list	Preferential vote	Electoral formula
1990	125	List PR	20	1 - 29	4%	Closed blocked	No	D'Hondt
1992	85	List PR	1	85	4%	Closed blocked	No	D'Hondt
1996	71	List PR	14	1 - 17	4%	Modified closed blocked list	No	D'Hondt
1998	73	List PR	1	73 (5)	3%	Modified closed blocked list	No	D'Hondt
2001	77	List PR	1	77 (5)	3%	Modified closed blocked list	No	D'Hondt
2002	75	List PR	1	81 (4)	3%	Modified closed blocked list	No	D'Hondt
2006	81	List PR	1	81 (5)	3%	Modified closed blocked list	No	D'Hondt

6 »We have classified such system in the indirect proportional systems, basing this mark on one decision of the Federal Constitutional Court of Germany brought in mid XX century. Aforementioned court gave answer to the question whether proportional electoral system for representative bodies is actually direct election demanded by the Basic Law (1949), i.e. the Constitution of Germany? The Court explained that proportional elections are direct, under condition that the "third person" is not involved between voting of voters and obtaining of seats (Birke, 1961, 19). In case of Serbia and Montenegro, the "third person" are party leaderships which are electing representatives in the name of voters, which constitutes rough violation of fundamental democratic principles and values" (Goati, 2007:)

2009	81	List PR	1	81 (5)	3%	Modified closed blocked list	No	D'Hondt
2012	81	List PR	1	81	3% 0.7 for minority list, i.e. 0.35% for minority list of Croatian minority	Closed blocked list	No	D'Hondt
2016	81	List PR	1	81	3% 0.7 for minority list, i.e. 0.35% for minority list of Croatian minority	Closed blocked list	No	D'Hondt

Besides this example, it is important to point out that the mandate in the Montenegrin political system was imperative until 2004 – i.e. that exclusion of an MP from the party would also mean end of his mandate. In such way the party had directly the capacity to deprive disobedient MP of his mandate.

From all above listed, it is clear that party management in the first 14 years if multi-partism: (1) has controlled process of the candidate selection for MP's (2) has determined who will become an MP from the candidate's list regardless of order on the list (3) has indirectly deprived MP's of their seat by their exclusion from the party. In such way party leadership has controlled completely the process of candidate selection, but also actions of MP's including some kind of impeachment, MP had no political importance in this period. Under such a "firm hand" only solution for those disagreeing with party leadership was departure from the party and sometimes in creation of new parties. However, departure of MP from the party, would signify end of his mandate.

5. Comparative candidates study - (CCS)

In the months May - Jun 2015, CeMI conducted survey on the attitudes of candidates regarding MP's in the last parliamentary elections in 2012. The study included 136 candidates, representing approximately 16.25% of the total number of candidates for MP's in the parliamentary elections held in 2012, with the participation of candidates of the parliamentary parties of 25 - 40%. During the testing CeMI used a questionnaire that is used in the same form in over 40 countries around the world, and which consists of questions related to the four segments of political engagement

of candidates for MP's : (1) political views and activities, (2) political campaigns, (3) problems and policies, and (4) democracy and representation.

In this essay we used findings of the CCS in order to get acquainted with attitudes of the MP candidates, towards party relations (selection of the candidate procedures, election of party leadership, i.e. policy making) and towards the electoral system.

5.1 Candidates and Party Laws

Procedure of selection of MP candidates in Montenegro, is exclusively under competence of the party bodies, i.e. it is governed by the party regulations. Law on Political Parties, adopted in 2004, is not dealing with the regulation of candidate selection procedures or with democratic procedures of the party leadership election. Statutes of political parties are often dealing with this issue in a similar or the same way, In Montenegro there was never registered a case of direct election of party leadership by registered voters. Also there is no regulation regarding registration of voters.

Table 3: Do you agree that law should regulate ...?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Procedures for nomination of the MP candidates	38.2	28	44
Elections of the governing structure of the political party	27.2	20	31
Decision-making procedures in political parties	27.2	18	33

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

From the table above we can see that a surprisingly high percent of candidates in elections considers that procedures of the selection of candidates should be regulated by the law. However, significantly lower percent considers that the law should regulate procedures of election of the party management (27.2%), and the same percent considers that the law should regulate decision-making processes in parties (27.2%). Answer to the question on the most influential stakeholders in the appointment of candidates, was mainly party leadership (central). Incentives for candidacy mainly run from above (43%) and not from the lower levels.

Table 4: Who had the strongest influence on your decision to run for the parliament?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governin coalition	Opposition
N	136	50	86
Sig		0.91	
National party leadership	43.4	44	43
Party members in my constituency/ place where I live	22.1	24	21
Party leadership in my constituency/ place where I live	10.3	14	08
Supporters of my party (primary election)	10.3	10	10
Party delegates in my constituency/ place where I live	05.1	04	06
Open primary election	02.2	02	02
No answer	06.6	02	09
Total		100%	

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Candidacy is rarely disputed, and in 88% of cases it has been induced by the party. From the small number of those who had their candidacy disputed (4%), 80% stated that their candidacy was disputed by the party leadership, while 20% claimed that their candidacy was disputed on the local level. Interesting fact is that these two levels are still at play. It is possible to search the influence of the local and national level exactly in this proportion.

Table 5: Who makes the decision on nominations in your party?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Sig		0.93	
Main board	71.3	72	71
Presidential board	16.9	20	15
President	06.6	02	09
Local board	03.7	04	03

Member/members	00.7	02	
No answer	00.7		01
Total	100%		

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

5.2 Candidates and Electoral System

However, in the last decade, things are changing, despite the fact that changes are very slow. In 2004, the Constitutional Court declared unconstitutional the provision of the law which stipulates that MP loses his mandate with exit of the party⁷. Also, so-called closed and modified blocked list has been used at the national elections in 2009 for the last time and next elections were held with closed and blocked party lists. The party has no longer right to determine who will become an MP after elections. Numerous transfers among parties came as the consequence of institutionalization of the “free mandate”. In one period, during current mandate of Montenegrin parliament (2012-2016), 15 MP’s changed the colors of the party, i.e. a bit more than 18.5% out of the total number of MP’s in Montenegrin parliament (81). It should be pointed out that these transfers took place within boundaries of division between government and opposition, i.e. deputies which were elected as the part of opposition transferred to another, also oppositional party, thus they didn’t influence to balance of powers between the government and opposition. However, there is one exception which can be hardly defined. Namely, ruling SDP⁸ has split, while it was part of the ruling coalition. Part of the SDP has formed another party of similar name – Social-Democrats. Shortly after the split SDP left the ruling coalition, but former members of SDP, and now members of SD, remained in the ruling coalition supporting the government. In the table below, which represents a part of the answer of candidates for MP’s during conducted CCS⁹ survey in Montenegro¹⁰, the confirmation of this thesis can be noticed, because all candidates that have stated that they were running for elections for another party were from the opposition and none of them was from the ruling coalition.

7 Anachronous imperative party mandate was in force in Montenegro until 2004, when it was nullified by the decision of the Constitutional Court, according to which an individual keeps the role of an MP even after termination of his party membership. In such manner, Montenegro has joined to vast majority of democratic countries which are enforcing free mandate. (Goati, 2007:)

8 DPS and SDP have ran for elections in 2012 with the common candidate’s list, which had name of the charismatic leader of DPS in its title „European Montenegro – Milo Đukanović“.

9 More on the project and CCS survey conducted, can be found at: <http://balkanelectoralstudies.org/>

10 In period May June 2015, CeMI conducted survey on attitudes of candidates for MP’s at the last parliamentary elections in 2012. The survey encompassed 136 candidates, which makes around 16,25% of total number of candidates in elections in 2012, with participation of parliamentary parties’ candidates of 25 – 40%. During the survey, CeMI used questionnaire which was used in the same form in over 40 countries of the world, and it is constituted out of questions related to four segments of the political engagement of the candidate for representatives: (1) political attitudes and activities, (2) political campaign, (3) problems and policies and (4) democracy and representation.

Table 6: Did you stand for other parties in previous elections?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Sig		0.18	
No answer	00.7	02	
Yes	09.6		15
No	89.7	98	85
Total		100%	

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Selection of candidates and democratic election of the party leadership remains as the open issue. Thus, we can state that conditions for activism of MP's are somewhat improved, but the problem of the lack of personalization of the electoral system remains. This system is not established neither through any form of preferential voting, nor through procedures of the selection of candidates, and there are no examples of direct elections for the party leadership.

Such electoral system by default discourages the role of an individual, both in the position of the member and in positions of the MP candidate or MP.

MP candidates themselves are, in large number, considering that voter should be allowed to vote only for parties, i.e. for closed and blocked party lists, in the conditions of the current proportional electoral system. There is a significant difference between candidates for MP's from the government and from the opposition. Namely, oppositional candidates are more inclined towards the strong party position. Still, the fact that large percent of candidates consider that voter should be allowed to vote only for candidates (39%) or for candidates and parties 15.4%, is encouraging.

Table 7: How much do you agree with following statements?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Voter should be able to vote only for parties	61.8	46	71
Voter should be able to vote only for candidates	39.7	38	41
Electoral system should be consisted of elements that provide stable majority of party list	22.1	16	26

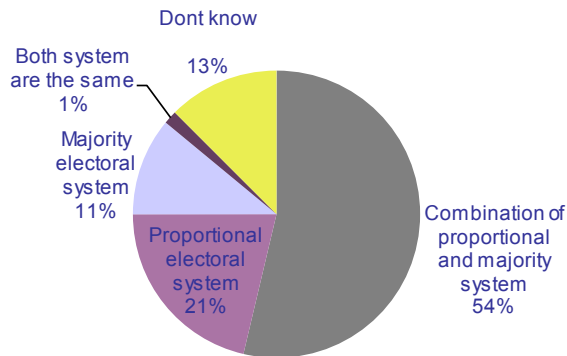
Voter should be able to vote for both parties and candidates	15.4	12	17
Electoral system should be able to provide high level of proportionality between votes and mandates	2.9		5

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

When directly asked whether majoritarian or proportional systems are better for the development of democracy, surprisingly large percent (54%) of candidates is supporting combined model of the electoral system (majoritarian-proportional), with also surprisingly high number of candidates supporting majoritarian and quite small number of those who chose only proportional system (21%). In these results, it can be noticed that candidates are preferring electoral systems with some kind of personalization.

Basically, there are two types of electoral systems, majority and proportional system. Which system do you find better for democracy development?

Graph 3: Which system do you find better for democracy development?



Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Table 8: Which system do you find better for democracy development?

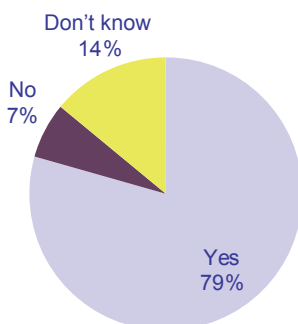
	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Sig		0.83	
Combination of proportional and majority system	53.7	48	57

Proportional electoral system	21.3	26	19
Majority electoral system	11.0	12	10
Both systems are the same	01.5		02
Don't know	12.5	14	12
Total		100%	

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Clear determination for personalization of the electoral system is visible in the answer to the question whether possibility of preferential voting should be introduced into existing system. Up to 79% of respondents opted for introduction of preferential voting into currently existing proportional system of party lists, while only 7% opted against introduction of preferential voting.

Graph 4: Do you consider that the current electoral system should keep / be added preferential voting (so that voter would be able to circle one or more specific candidates from party list)?



Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Table 9: Do you consider that the current electoral system should keep / be added preferential voting (so that voter would be able to circle one or more specific candidates from party list)?

	Total	Last parliamentary elections in Montenegro, 2012	
		Governing coalition	Opposition
N	136	50	86
Sig		0.07	
Yes	79.4	68	86
No	06.6	10	05
Don't know	14.0	22	09
Total		100%	

Source: *Comparative Candidate Study Montenegro (2015)*, CeMI.

Such responses could be interpreted in several ways. This time, we will use two interpretations:

- (1) Self-confidence, i.e. belief in own qualities, (2) insecurity with the current position, i.e. dissatisfaction with the weak position in the party. The insecurity of MP's is noticeable, their complete dependence on the party leadership, thus it is understandable that they are seeking for security i.e. the chance to earn their seat in the Parliament by themselves. Through last changes in the salaries for public officials, MP's became one of the highest paid state functionaries. Monthly salary of an MP in Montenegrin Parliament is net worth close to 2000 EUR, or more than 4 average net salaries at the level of Montenegro, which shows that the seat in the Parliament brings many privileges and financial security.

Concluding remarks

On the basis of presented findings we can conclude following:

1. Existing PR list system with closed blocked lists strengthens the position of the party leadership because the role of the voter is minimal. Voter can't vote for the candidate, not even for an independent candidate, out of the list, because electoral system foresees only voting for party lists
2. Inexistence of the legal regulations which would set minimal procedures for selection of the candidates, i.e. election of the party management, has created the situation in which central party managements are conducting full control over selection of candidates for the public functions and making uncompetitive the election of the central party leadership.
3. Central party managements are completely controlling the process of creation of party policies.
4. The degree of intra-party democracy is at the very low level, and when we apply Čular's model, none of the political parties from those we analyzed, can be classified as the full democracy type, and we can only divide them into groups of low democracy parties (SDP, SNP, NOVA), and individualist-elitist parties (DPS, BS and PzP).
5. In order to provide conditions for development of intra-party democracy in Montenegro it is necessary to:
 - a. Regulate following procedures by the Law on Political Parties: (1) selection of candidates for MP's (2) adoption of decisions in parties and (3) direct election of the party leadership
 - b. Law on Election of Councilors and Representatives should be amended so as to introduce preferential voting within existing List PR system, in accordance with Finnish experience.

6. Adoption of such changes is not realistic in the short period.
 - a. It can be expected that the accession to the EU after 2020, induces introduction of preferential voting in national elections, similar to Croatia¹¹, but this process will be conducted with a lot of resilience.
 - b. When it comes to amendments of the Law on political Parties, i.e. legal regulation of the process of selection of candidates and election of the party management, it will be slower even from the changes in the electoral system. Changes will take place only at the level of individual parties, which will partially change their party regulations, under influence of their European counterparts.

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Statute of Bosniak Party

Statute of Democratic Party of Socialists

Statute of NOVA

Statute of Movement for Changes

Statute of Social-Democratic Party

Statute of Socialist People's Party

¹¹ After entrance to the EU, the elections for the EU Parliament will be inevitably proportional with preferential voting, so Montenegro will have to introduce preferential voting for their representative in the EU Parliament.

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Used abbreviations:

BS – Bosniak Party

DPS – Democratic Party of Socialists

NOVA – Nova srpska demokratija

PzP – Movement for Changes

SDP – Social-Democratic Party

SNP – Socialist People's Party

Criminal Law Protection of Electoral Rights in Criminal legislation of Montenegro¹

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Criminal Law Protection of Electoral Rights in Criminal legislation of Montenegro

Summary:

Criminal offenses against electoral rights are an independent Chapter of criminal offenses in the Criminal Code of Montenegro. Protective object of this chapter are the electoral rights. Criminal Law protection of these rights and fragmentary character, which means that the same provides only major electoral rights of the most serious attack on them. In this sense, Chapter of criminal offenses against the electoral rights and represented by the solution of the Criminal Code of Montenegro belong to the following crimes: Infringement of the Right to be Elected (Article 184), Infringement of the Voting Right (Article 185), Infringement of Freedom of Choice in Voting (Article 186), Abuse of the Right to Vote (Article 187), Composing Inaccurate Voters Registers (Article 188), Obstructing Elections (Article 189), Preventing of Monitoring of Voting (Article 190), Infringement of the Secrecy of Voting (Article 191), Falsifying the Results of Voting (Article 192) and Destroying Documentation of Voting (Article 193 and 193a).

Due to the partially blanket character of the substance of certain criminal offences which belong to the chapter of the criminal offences against the electoral rights, in determining the existence of the criminal offences it is necessary to take into consideration the legislations that treats the issues of the electoral rights, i.e. the area of the electoral legislation like especially: Law on Election of Councilors and Members of Parliament, Law on Election of the President of Montenegro, Law on Referendum, Law on Election of Mayors, Law on Electoral Lists, Law on Political Parties and Law on Financing of Political Parties.

Keywords: Criminal Law protection, criminal offenses against electoral rights

Introduction

Criminal legislation of Montenegro, like many modern democratic societies, recognizes electoral right as an independent group object of protection. Therefore, the criminal offences against electoral rights within the Criminal Code of Montenegro represent an independent chapter of criminal offences. Electoral rights certainly represent especially important citizens' rights and it can be said for the same that they have wider significance for the whole society since the legitimacy of the state

and society is based on free elections.² Free elections imply free exercise of the right to vote and the right to be elected, i.e. the enjoyment of these rights without the use of compulsion and therefore the voters cannot be exposed to any type of pressure like forcing them to vote for certain candidate or certain party. Furthermore, no one has the right to disclose how some person voted.³ In accordance with the stated, the criminal law protection is offered in terms of both the right to vote and the right to be elected as well as the regularity of the voting from the abuse of the right to vote, use of force, threat, fraud, falsifying of the results and the voting process itself.

The criminal law protection of electoral rights as well as the protection of all rights covered by the criminal law, is of fragmentary character which means that the same is provided only to important rights from the most difficult cases of their infringement or, as in criminal law generally, the legal protection is provided only in respect of the protection of the most important social values and goods from, as a rule, the most serious forms of their infringement. In the context of the analyzed themes, i.e. the matter of the legal protection of the electoral rights and its fragmentary nature, it is important to emphasize that the constitutional norms guarantee, in accordance with the Article 45, the right to vote and the right to be elected to every citizen of Montenegro who is 18 years old and has at least two years of residence in Montenegro. The electoral right is exercised at elections, the same is general and equal, the elections are free and immediate and the voting is secret⁴. The Article 3 I of the Protocol guarantees to every person the right to vote and the right to be elected which is limited to local citizens and even the European Court for Human Rights recognizes this restriction in the exercise of the right to vote and the right to be elected which is provided by the national legislation.⁵ Therefore the Article 3 refers only to positive liabilities of the state to provide the conditions for the free and secret elections. On the other hand, these provisions leave to the Member States extremely wide discretionary powers and therefore, unlike other norms of the European Convention on Human Rights, the right to free elections is covered with colours of national right and subject to inherent limitations.⁶

I General characteristics of criminal offences against electoral rights

In terms of the role of the criminal law in the protection of the electoral rights we have to be aware of its limited possibilities. Thus the most serious violations and abuses as a rule are not accessible to the criminal law reaction.⁷ Beside this, certain

2 Stojanović, Z., *Krivično pravo*, Podgorica 2008, 430.

3 Jakšić, A., *Evropska konvencija o ljudskim pravima – komentar*, Beograd 2006, 391.

4 Ustav CG, *Službeni list CG*, br. 1/07

5 Jakšić, A., 390.

6 Herndl, str. 52. i 92; van Dijk/van Hoof, str. 612; Cit. prema: Jakšić, A. (2006), 390.

7 Stojanović, Z., *Komentar Krivičnog zakonika*, Beograd 2012, 416.

political manipulations which violate citizens' electoral rights are not suitable to be the subject matter of the regulation of the criminal law norms because it is usually the case of some refined procedures which give the illusion of legitimacy. In this sense the criminal law should be expected to suppress the individual incidents and the individual cases of the violations of the citizens' electoral rights.⁸

Other branches of law regulate numerous matters from the area of the electoral rights whereas the criminal law protection, which in this sense represents the last instrument at the disposal of the state in terms of the protection of these rights, offers protection just to the most important rights against, by the rule, the most serious attacks on them.

The extremely important characteristic of the majority of the criminal offences against the electoral rights is the partially blanket substance, i.e. blanket disposition of the criminal offences, which implies that their substance cannot be ascertained without consulting the relevant legal norms which regulate the area of the electoral rights.⁹ Therefore, certain regulations from the area of electoral legislation have to be considered with the immediate application of the relevant criminal law provisions. In this sense, due to the partially blanket character of the substance of certain criminal offences which belong to the chapter of the criminal offences against the electoral rights, in determining the existence of the criminal offences it is necessary to take into consideration the legislations that treats the issues of the electoral rights, i.e. the area of the electoral legislation like especially: Law on Election of Councilors and Members of Parliament, Law on Election of the President of Montenegro, Law on Referendum, Law on Election of Mayors, Law on Electoral Lists, Law on Political Parties and Law on Financing of Political Parties.

In the context of the contemplation of the matter of the criminal law protection of the electoral rights in Montenegro we will briefly bellow state the main characteristics and features of the criminal offences which constitute the majority of the criminal offences against the electoral right and to which belong the following in accordance with the Criminal Code of Montenegro:¹⁰ Infringement of Right to be Elected (Article 184), Infringement of Voting Right (Article 185), Infringement of Freedom of Choice in Voting (Article 186), Abuse of the Right to Vote (Article 187), Composing Inaccurate Voters Registers (Article 188), Obstructing Elections (Article 189) , Preventing of Monitoring of Voting (Article 190), Infringement of Secrecy of Voting (Article 191), Falsifying the Results of Voting (Article 192) Destroying Documentation of Voting (Article 193) and Serious Offences against Electoral Rights (Article 194).

8 *Ibid.*

9 *Ibid.*, 434.

10 Krivični zakonik CG, *Službeni list CG*, br. 70/03, 13/04, 47/06, 40/08, 25/10, 32/11, 64/11 и 40/13.

II Characteristics of the substance of criminal offences against electoral rights

Criminal Offence Infringement of Right to Stand as a Candidate (Article 184) – Criminal law protection in case of this criminal offence is provided to the right to be elected, i.e. this incrimination regulates the matter of the protection of the constitutional right to stand as the candidate at the elections.¹¹ In this sense the criminal offence of the infringement of the right to stand as a candidate is committed by someone who, either through the violation of the law or in other illegal manner, prevents or disturbs running for elections. It is important to note that the criminal offence of the infringement of the right to stand as a candidate implies actions which violate constitutional provisions as well as the provisions from the area of the electoral legislation. However, this offence shall exist even in case when the action is undertaken in other illegal forms beside through the violation of concrete legal provisions. This criminal offence shall not exist in cases when someone is denied the right to be elected since the conditions for the same have not been met under the law and Constitution.¹²

On the subjective side, the intent of the offender is essential. The intent of the offender in every concrete case has to include the awareness of the illegality of the act.

In cases where the violation of the right to stand as a candidate occurs in a manner which includes the elements of some other criminal offence (e.g. compulsion), the concurrence shall be only imaginary, since, although it is not explicitly stated, this criminal offence is of subsidiary character. Hence, the criminal offence of the violation of the right to stand as a candidate exists when by preventing or disturbing the candidate, the elements of some other more serious criminal offence are not accomplished.¹³

For the committed offence the offender is punished by a fine or penalty of imprisonment to one year.

Criminal Offence of Violation of Right to Vote (Article 185) – The criminal offence of the violation of the right to vote has two elemental forms. In this sense the first elemental form of this act is done by someone who, with the intention to prevent someone from voting, does not enter him in voters' register, erases him from that register or prevents or disturbs him in other illegal manner to vote. The second elemental form of this criminal offence is done by someone who enters illegally a third party in the voters' register, in order to enable him to vote or enables him to vote in some other illegal manner although he is not entitled to.

11 Čejović, B., *Krivično pravo u sudskoj praksi, Posebni deo*, Kragujevac 2008, 243.

12 Manojlović – Andrić, K., "Izborna prava i sloboda izjašnjavanja kao objekt krivičnopravne zaštite i Evropska konvencija za zaštitu osnovnih prava i sloboda", u: *Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda i krivično zakonodavstvo SCG*, Zlatibor 2004, 221.

13 Stojanović, Z., *Komentar Krivičnog zakonika*, Podgorica 2010, 411.

Unlike the previous criminal offence, with this criminal offence the legal protection is offered to the right to vote.

Whereas the act of the commitment of the first elemental form of the offence prevents a party from his right to vote, the act of the commitment of the second elemental form enables a party to vote even though he is not entitled to. In accordance with the above stated the act of the commitment of first elemental form is set up alternatively and is made of the following elements: illegal failure to enter in voters' register, illegal removal from the voters' register or some other form of illegal preventing or obstructing a party to vote. In this sense, the criminal offence of the violation of the right to vote due to the absence of the illegality of the offence shall not be in case when the voting committee would not permit to a party to vote because he refused the testing with the spray – invisible ink, since this is pursuant to the law.¹⁴

The act of the commitment of the second elemental form consists of enabling a party to vote through illegal registration in the voters' register or in other illegal manner enabling a party to vote even though he is not entitled to it.

The consequence of the alternatively set up acts of the commitment of the first elemental form consists in the failure to use the right to vote. Whereas this is implied in the case of the first and second form of acts, i.e. in cases of failure to register or the cancellation from the voters' register, in case of the acts of the third form it is necessary that the offender committed such act with which he prevented or disturbed a passive subject in the voting in an illegal manner.¹⁵ If with the described act of the commitment of the third elemental form the party was not prevented or disturbed in voting, the attempt to commit this criminal offence shall not be punishable. In the case of the second elemental form of the criminal offence, the act is considered completed when a party is illegally entered in voters' register and if it is the case of enabling a party to vote in other illegal manner then once the party has voted.¹⁶

On the subjective side in the case of both elemental forms of act, the intent and certain intention are necessary which in case of the first elemental form of the act comprises intention to prevent a certain party from his right to vote, whereas in the second elemental form of the act the intention is needed to enable a party to vote even though he is not entitled to it.

For the committed offence from the paragraph 1 and 2 the offender is punished with a fine or penalty of imprisonment up to one year.

Criminal Offence of Infringement of Freedom of Choice in Voting (Article 186) – The act of the commitment of the criminal offence of the infringement of freedom of choice in voting is set up alternatively and it exists in cases of the compulsion of others or any other illegal manner of influencing others to vote or not to vote at

¹⁴ *Ibid.*, 412.

¹⁵ Stojanović, Z. (2008), 433.

¹⁶ Stojanović, Z. (2010), 412.

elections or at the referendum or to vote for or against certain candidate, electoral list, i.e. the proposal. The criminal offence is considered completed at the moment when the passive subject voted or failed to vote due to the accomplishment of some alternatively set up activities of the commitment act. Beside the elemental form from the paragraph 1, the second elemental form exists in cases when a party demands or receives a present or other benefits for himself or others to vote or not to vote or to vote for or against certain party. In this sense the passive electoral bribing has been incriminated which has certain similarities with the criminal offence of bribery accepting (Article 423). The purpose of the incrimination reflects in the prevention of the sale of votes at elections and the subjective element or the intention has to include the awareness why the bribe is accepted, i.e. the bribing has to be directed even subjectively to the voting.¹⁷

The accepted present of other benefit shall be taken away. More severe form of this criminal offence exists in cases if the act from the paragraph 1 and 2 is committed by a member of the voting committee or other person during his service related to the voting.

This criminal offence recognizes a separate form which exists in case when someone, after conducted elections or at the referendum, invites the voter to responsibility in relation to the voting or demands from him to tell how he voted or why he voted or he did not vote. Therefore, the condition which is as such even legally established is that the act of this criminal offence is undertaken once the elections or referendum are held. For the qualification of the act it is necessary to estimate the relation between the offender and the passive subject as well as the manner in which the request is addressed, the seriousness and persistence to find out how he voted and for whom did he vote or why he did not vote.

For the committed offence from the paragraph 1 and 2 the offender is punished with a fine or penalty of imprisonment up to three years. For the qualified form of the act the offender is punished with penalty of imprisonment from three months to five years whereas for the offender of separate form of act the imprisonment is from three months to five years.

Criminal Offence of Abuse of Right to Vote (Article 187) – The criminal offence of the abuse of the right to vote is done by anyone at the elections or at referendum who votes instead of other party under his name or he votes more than once at the same voting or uses more than one voting paper. The act of the commitment is set alternatively and it includes voting instead of third party under his name, voting more times and use of more voting papers during the same voting. More serious form of this offence is found in cases when the member of the voting committee enables someone to perform the criminal offence from the paragraph 1. The offender of the first elemental form of act can be any person whereas the offender of the qualified form can be only the member of the voting committee. In this sense, on subjective side, there has to be the intention of the offender whereas in the case

¹⁷ *Ibid.*, 414.

of the negligent assisting, in the context of the act from the paragraph 2, there is no criminal offences.

For the elemental form of act there is fine or penalty of imprisonment up to one year whereas for the more serious form of act there is fine or penalty of imprisonment up to two years.

Criminal Offence of Composing Inaccurate Voters' Registers (Article 188) – The criminal offence of composing inaccurate voters' registers is done by someone who composes inaccurate voters' registers with the intention to influence the results of elections or referendum. The difference compared to the act of committing a criminal offence of violation of right to vote from the Article 185 reflects in fact that here it is not only the case that some party or individual is not entered or is erased unlawfully from the voters' registers, i.e. it is not the case of partial, individual intervention in the voters' registers but of composing of such inaccurate voters' register which can objectively influence the results of elections. The difference is even more expressed on subjective plan and it reflects in the intention which has to be present in terms of the influence at the elections or referendum whereas this intention with the criminal offence of the violation of the right to vote is directed on that to prevent other party from his right to vote.¹⁸

The offender may be a person in charge for the composing of the voters' register.

For the committed offence of composing inaccurate voters' registers the offender is punished with a fine or penalty of imprisonment up to three years.

Criminal Offence of Obstructing Elections (Article 189) – Criminal offence of obstructing elections has two elemental forms. First elemental form of the offence exists in cases of prevention or disturbing of voting on voting places by using force, threat or in some unlawful manner. The force and threat in the context of this criminal offence too, should be understood in usual manner as the same is understood in criminal law. The second elemental form is done by someone who is obstructing the voting process by causing disorder on a voting place due to which the voting is interrupted.

For the completed criminal offence from the paragraph 1 it is undisputable that the same exists in cases when the voting was prevented. Certain dilemma arises in terms of the existence of this criminal offence in case when it is the matter of the obstruction of voting. In this sense there is an attitude in theory that the obstruction has to be serious, i.e. in cases when the voting has not been prevented holding of the same must have been seriously called into question. Unlike the stated, in cases of the commitment of the offence from the paragraph 2, it is necessary that the disorder at the voting place interrupts the voting whereas in terms of the qualification of the criminal offence it is not significant how long the interruption lasted at the relevant voting place nor whether the voting was continued or not.

¹⁸ *Ibid.*, 415.

The intention is essential on the subjective side of the offender.

For the committed first form of the act the offender is punished with the penalty of imprisonment up to three years whereas in the case of the commitment of the second form the offender is punished with a fine or the penalty of imprisonment up to two years.

Criminal Offence of Preventing of Monitoring of Voting (Article 190) – Criminal offence of preventing of monitoring of voting may be committed only by a member of the authority for the carrying out of elections who prevents or disturbs the monitoring during voting or determining voting results of voting to a person who is entitled to it under the law or on the basis of the decision of the competent state authority, and these could be the representatives of local or foreign non-governmental organizations, EU representatives and of other international organizations as well as the authorized representatives of foreign countries. Republic electoral commission issues or rejects issuance of approvals for the monitoring of elections.¹⁹ The act of committing this criminal offence is made of preventing, i.e. disturbing of monitoring during the voting process or the determination of the voting results to the party who is authorized for that.

The intent makes the subjective element of the substance of the criminal offence.

The offender may be only a party who is a member of the authority for the carrying out of the elections.

For the committed criminal offence of obstructing the monitoring of voting the offender is punished with a fine or penalty of imprisonment up to one year.

Criminal Offence of Infringement of Secrecy of Voting (Article 191) – The criminal offence of the infringement of the secrecy of voting is made by someone who infringes the secrecy of voting at elections or referendum in the manner he discloses how someone voted at elections or at referendum.²⁰ The infringement of the secrecy of voting may be direct or indirect and it may be committed through different actions like entering voting cabin during the voting of third party, taking the voting paper in order to find out how someone voted, secret recording of the voting cabins, etc. The criminal offence is considered completed at the moment when other party found out for whom the passive subject of offence voted. In case of the undertaken acts for this purpose and where the second party did not manage to find out for whom the voter voted, there is an attempt to commit this offence which is not punishable. It is important to note that the second party does not have to be the offender since the offender may make possible to second party to find out how someone voted. This criminal offence is not possible in relation to own voting, i.e. this offence cannot exist in case when the voter would show to present parties the voting paper where it can be seen how he voted.²¹

¹⁹ Stojanović, Z. (2012), 416.

²⁰ Manojlović – Andrić, K., 221.

²¹ Stojanović, Z. (2010), 419.

This criminal offence has more serious form which exists in case when the act of the commitment of the offence is done by a member of the voting committee or other person during his service related to the voting. The offender of the more serious form of this act can be only certain person, i.e. the member of the voting committee or other person who is performing certain duty in relation to the voting.²² Having in mind that the members of the voting committee and other persons related to the voting are obliged to protect the right to secrecy, their liabilities in this respect are still greater and the legislator reasonably provides strong punishments in cases when these parties appear as the offenders of the criminal offence infringement of the secrecy of voting.

The subjective element of the substance of the criminal offence is made of intent which is most often direct. However, this offence shall exist even when it was committed with possible intent.

The fine or penalty of imprisonment up to six months is anticipated for the elemental form of the act whereas for the more serious form of the act the legislator anticipates the fine or penalty of imprisonment up to two years.

Criminal Offense of Falsifying Results of Voting (Article 192) – Criminal offence of the falsifying of the results of voting can be made by a member of the authority for the carrying out of the elections or referendum or other party who performs duties related to the voting by adding or deducting the voting papers or votes during counting or by changing in other manner the number of voting papers or votes or by publishing the incorrect voting results.

The act of commitment is made of three alternatively set up activities, i.e. adding or deducting the voting papers or votes during counting, changing the number of the voting papers or votes in other manner or publishing of incorrect voting results. Unlike first and second acts of commitment which actually change the structure of votes, in case of third form of acts of commitment false results are being published which do not correspond to the determined voting results. The third act of commitment does not actually affect the voting material and documentation but it publishes the voting results which do not correspond to the actual state of affairs.

The intent of the offender makes the subjective element of the substance of offence.

The punishment for the committed offence is fine or penalty of imprisonment up to three years.

Criminal Offense of Destroying Documentation on Voting (Article 193) – It is possible to perform the criminal offence of destroying the documentation on voting through some of alternative acts of commitments like destroying, damaging, depriving or

22 Perović, Z., „Krivična djela protiv izbornih prava“, u: *Ustav Republike Srbije, krivično zakonodavstvo i organizacija pravosuđa*, Zlatibor 2007, 163.

hiding voting papers or some other document concerning the voting at the elections or referendum.

For the existence of this criminal offence it is not important whether the act of commitment was undertaken in relation to one or more voting papers or other voting documents at elections or at referendum. Since it is the case of the natural integrity of the act in case when the act of commitment has been performed in relation to more voting papers and/or other voting documents, it shall be deemed as one criminal offence has been performed.

More serious form of this act exists in cases if the act from the paragraph 1 of this Article is done by a member of the voting committee or other party during his performance of duties related to the voting.

For the elemental form of this act the legislator anticipates the fine or penalty of imprisonment up to one year whereas for the more serious form of the act the penalty of the imprisonment is from three months to three years.

For the main form of the act the legislator anticipates fine or penalty of the imprisonment up to one year.

Guided by fact that more severe punishment should be in certain cases of the occurrence of severe consequences instead of resolving such cases through the concurrence of the criminal offences, the legislator Article 194 anticipates also serious offence against electoral rights. Leaving on the side whether this resolution is really justified in criminal and political sense, it created certain problems in the interpretation and application of the provisions of this article of the Criminal Code.²³ Therefore, in accordance with the provisions of the Article 194, if due to the acts from the Articles 185, 186, 187, 189, 190, 191, 192 and 193 of this legal code public disturbance occurred and the endangering of the property the value of which exceeds the amount of twenty thousand euros or lives of several persons were jeopardized, the offender shall be punished with penalty of imprisonment from six months to five years. If, due to the acts from the Articles 185, 186, 187, 189, 190, 191, 192 and 193 of this legal code a serious bodily injury or property damage occurred which exceeds the amount of forty thousand euros, the offender shall be punished with the penalty of the imprisonment from one year to ten years. If, due to the acts from the Article 185, 186, 187, 189, 190, 191, 192 and 193 of this legal code, death of one party or of more parties happened, the offender shall be punished with the penalty of the imprisonment from five to eighteen years.

²³ Stojanović, Z. (2010), 126.

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