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3 Confronting Rule Adoption and Implementation in Montenegro's Europeanization

Edina PALEVIQ[1]

Abstract: Montenegro is a frontrunner in the EU accession process, and yet it is stagnating and even backsliding in terms of democracy and the rule of law. A question arising is whether the EU's conditionality—under its new methodology, known as the "new approach"—regulating the EU accession process effectively strengthens democratic institutions there. This chapter argues that so far this approach has not worked successfully in Montenegro beyond the norm adoption phase for three main reasons: a lack of clarity about EU conditionality, the presence of long-ruling elites, and a specific national political culture. Through Europeanization theories, this research tests two areas in rule of law promotion: judiciary reform and freedom of the press. Based on a normative approach, the content of rules and laws in the judicial sector and freedom of expression are studied to challenge the EU's external demands (rule adoption) empirically, by discussing the regular obstacles mentioned in the media and in reports by non-governmental organizations (implementation). In particular, the political and social context in which these dynamics operate is emphasized. Conclusions show that, while EU conditionality has brought an undeniably positive change in Montenegro and has successfully led to the adoption of new laws, implementing democratic institutions remains arduous since political elites overshadow integration. At the same time, checks and balances have eroded in the face of unpunished abuse of power. The study speaks to debates on Europeanization and ways to strengthen the rule of law along with EU standards in candidate member states and provides useful solutions to the failures of EU conditionality.

Montenegro is a small European, Mediterranean country located on the Balkan Peninsula, which does not often appear at the forefront of international news, except in 2017 when US President Donald Trump inconsiderately pushed past former Montenegrin Prime Minister Duško Marković at a NATO Summit. With an area of 13,812 square kilometers and approximately 650,000 inhabitants, Montenegro was part of the former Yugoslavia before the latter was dismantled in 1992. That year, Montenegro, Serbia, and the Kosovo province joined to become the Federal Republic of Yugoslavia, which was further renamed in 2003 as Serbia (at the time, it included Kosovo, until that country declared its independence in 2008) and Montenegro. When in 2006 Montenegro became a fully independent state following a referendum, its government started to gear its foreign policy towards EU integration and full Union membership. Today, Montenegro is considered to be part of the "Western Balkan" (WB) countries, which includes Montenegro, Serbia,

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Kosovo, the Republic of North Macedonia, Albania, and Bosnia and Herzegovina—all countries that hold a perspective for EU accession but are not yet EU members. In 2003, at a summit in Thessaloniki where the government representatives of the EU member states came together, the WB countries received assurance from the European Council that membership was on the horizon for them. However, over two decades have passed since the EU accession process has started in those countries. Moreover, over the years, the European Commission (EC) has proposed a number of enlargement methodologies for the WB, so that the credibility of an imminent EU membership is slowly diminishing in the region.

The Copenhagen criteria, established by the European Council in June 1993, outline the necessary conditions for countries to become EU members. These criteria are divided into three main categories: political policy, economic policy, and acceptance of the *acquis communautaire*. The political criteria are focused on institutional stability, as to guarantee democracy, the rule of law, human rights, and respect for and protection of minorities. The economic criteria demand the presence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union. Acceptance of the *acquis communautaire* involves the ability to take on the obligations EU membership entails, including adherence to the aims of political, economic, and monetary union. The *acquis* thus represents the main body of EU conditionality, as set by the Copenhagen European Council in June 1993. It includes all rights and obligations that are binding on all EU member states, contained in the primary law of the EU treaties, secondary law—all legal acts, such as regulations and directives—and the judgments of the Court of Justice, as well as all international treaties on EU matters. The *acquis* is divided into up to 35 different "chapters" for the purpose of membership negotiations between the EU and a candidate country (33 for Montenegro). The progress made in the accession process is measured by the number of chapters that have been opened and provisionally closed. A chapter is "opened" when the European Commission (EC), together with a candidate country, scrutinizes each policy field with respect to the conditions lined up under that particular chapter. When the EC deems that the conditions have been met, the chapter can be "closed," which is an indicator of success for government officials in the candidate country. EU officials in the Directorate General for Enlargement and desk officers working in EU delegations in candidate countries monitor the implementation progress in each negotiation chapter throughout the year. Their evaluations are published by the EC as annual reports to show both improvements and remaining shortcomings in each candidate country. Furthermore, even when chapters are fully closed, membership is not necessarily guaranteed, as closed chapters may be reopened in the course of negotiations. Strictly speaking, the contents of the *acquis* aim at the "core goals" of Europeanization, such as the strengthening of democracy and the rule of law. The latter especially constitutes a key conditionality imposed on candidate countries.

In the WB, EU enlargement and the power of the EU to bring about transformation there or within the Union itself have increasingly been questioned. Although the WB countries have taken robust steps towards EU integration, there has been no concrete indication about when any of them could access membership. This stagnation has been two-sided and based on various factors. On the one hand, the EU has lacked the ambition

to make the changes necessary for new members to join. This shortcoming does not come as a surprise, since the Union has been marked by many crises in recent years, such as the financial and economic crisis, the migration and refugee crisis (Hobolt 2018), the rise of populism (D'Alimonte 2019) and Euroscepticism, EU disintegration (Rosamond 2019), and more recently the pandemic and the war in Ukraine. Thus, among other issues, the capacity of the Union and its institutions to accept new members is likely to remain a problem in itself. On the other hand, the enlargement process has been hampered by the inability of the WB countries to meet the accession criteria set by the EU. And since "the EU is politically not ready to enlarge, while the prospective candidates are politically not ready to accede" (Economides 2020, 2), a dilemma has arisen, bringing uncertainty and raising doubts among decision-makers in the WB, with a number of them even turning their backs on the European path and preparing for other alternatives. In particular, powerful non-Western third party actors such as Russia, China, Turkey, and the Gulf states have been increasingly present in the region to support WB countries in various spheres, from economics to religion (see Prelec 2020). These circumstances may lead to changes in the balance of power among international actors and in geostrategic stability. While conditionality has been a long-standing aspect of EU accession processes, it is considered "new" in the context of this study due to its evolving application and the increasing emphasis on specific policy areas such as the judiciary and freedom of expression in recent years. This evolution reflects a more nuanced and rigorous approach tailored to address contemporary challenges in candidate countries.

The main challenges currently facing the EU are the backsliding of democracy and the rule of law and human rights violations in parts of Central and Eastern Europe (CEE), especially in Hungary and Poland (see Kapidžić 2020). This slipping back of democratic ideals has taken place despite the fact that the EU, through heavy conditions, induced various reforms and transformed the CEE accession candidates into modern EU member states (Gateva 2016). EU conditionality constitutes a set of rules and norms set by the EC for candidate countries to implement as a pre-condition to membership. These rules and norms are key instruments through which the EU has sought to foster the promotion of human rights, democratization, and "good governance," as well as improve democratic reforms, the market economy, and legal structures in candidate countries. The relapse in democratic values has been observed in the CEE but also WB countries. The effects of EU conditionality on candidate states have been criticized in both CEE (Dallara 2014; Magen and Morlino 2009) and WB countries. Researchers have argued that promoting the rule of law has only led to superficial reforms in the WB (Elbasani and Šabić 2018) and that formal and informal political leaders have continued to control the state and maintained their private economic interests and grip on political power (Kmezić 2017; Dallara 2014).

Building on these critiques about WB countries in general, this chapter assesses the effectiveness of EU conditionality in Montenegro, focusing in particular on the effectiveness of the EU's "new approach" in strengthening the rule of law. This new methodology, which prioritizes chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom, and security)—known as the "fundamental chapters" for their critical role in the accession process—mandates that these chapters be the first to be opened and the last to be closed in

EU accession negotiations. Montenegro currently ranks higher than all other WB countries in meeting EU accession standards, thus providing a significant case study for evaluating the impact of these reforms. This chapter engages in the ways in which this new strategy might strengthen the rule of law in Montenegro but argues that, so far, conditionality has not worked successfully beyond the norm adoption phase. In reality, institutions and legislations have been harmonized, in line with EU norms, in areas such as the rule of law, human rights, and freedom of expression, but major problems have emerged in implementation. At fault are a lack of clarity in EU demands but also a lack of genuine dedication to reforms on the part of Montenegrin political leaders, who do not have a sincere and principled commitment to Europeanization, which they use instead as a pretext for political gain. These leaders have indeed benefitted from their long-ruling presence, which has created a specific national political culture that hinders the implementation and internalization of EU values and norms across Montenegrin society.

The WB countries that expect EU accession are often lumped together in the literature on Europeanization, but there has been a dearth of studies specifically devoted to Montenegro's accession process. Moreover, scholars have undertheorized the relationship between the effort of the EU to strengthen democracy and the rule of law through its conditionality and implementation in the WB candidate countries. This study focuses on Montenegro as the front-runner in the accession process to test two areas in the promotion of the rule of law: judiciary reform under Chapter 24 and freedom of expression under Chapter 23 of the *acquis communautaire* (*acquis*), i.e., the negotiation chapters. Chapter 24 covers different dimensions of organized crime—such as human and drug trafficking—terrorism, borders and Schengen-based rules, migration, asylum, judicial cooperation in criminal and civil matters, and customs and police cooperation. Chapter 23 covers the judiciary, the fight against corruption, and fundamental rights—including freedom of expression and the rights of EU citizens. For negotiations about EU accession to begin, candidate countries must show that these freedoms and rights are present domestically. The areas covered in chapters 23 and 24 are also usually reviewed in the European Commission progress reports, where the rule of law performance lag—which measures the fundamental aspects of institutions such as the independence of the judiciary, the fight against corruption and organized crime, and the freedom of expression—is regularly highlighted. By focusing on Montenegro, this chapter also contributes to the discussion on Europeanization and the strengthening of the rule of law along EU standards in other new candidate member states. It paves the way for further research on the credible future of EU enlargement. Indeed, analyzing the experience of Montenegro independently from that of other WB countries provides useful solutions to the failures of EU conditionality overall.

Drawing from two Europeanization theories, namely rationalist institutionalism (which sees Europeanization as driven by the EU) and constructivist institutionalism (which sees Europeanization as driven by candidate states), this study highlights the gap between rule adoption and implementation to show that there is a lack of commitment on both the EU's and Montenegro's side; this gap has caused stagnation in Montenegro's integration process. Furthermore, the demonstration combines two methodological

threads. First, based on rationalist institutionalism, the normative approach is used to analyze the content of the rule of law in both the judicial sector and freedom of expression to test the EU's external requirements for rule adoption. Second, based on constructivist institutionalism, the chapter empirically evaluates the ways in which rules are implemented and internalized through an examination of national media content and reports by non-governmental organizations on the integration process.

A Conceptual Analysis

The term "Europeanization" was first used in the 1980s and since then has usually described the impact of European integration and governance on EU member states (Goetz and Meyer-Sahling 2008; Treib 2014). Since the 1990s, when the EU began to promote general principles of political order such as democracy, human rights, and a functioning rule of law in post-communist countries (Lavenex 2004, 695), the concept has gained popularity among Europeanists. The transfer of EU general principles has led to the further use of the concept of Europeanization within candidate countries and the rise of a separate sub-field in Europeanization research. This new realm of inquiry has entailed an examination of the EU's influence on national domestic politics in candidate (and potential candidate) countries and of the instruments the EU uses to promote rule compliance there.

Thus, the concept of Europeanization has been used to measure the influence of the EU on domestic politics in both member states and candidate countries. At times, it has also been understood as a short cut for modernization (Hood 1998). In this sense, it is the *outcome* of transformation processes that is being measured in a particular country's policies or institutions. Moreover, Europeanization has also been described as the process of rule adaption and a framework for domestic interactions in individual countries. In line with these approaches, Europeanization is understood here as a politically driven process in which EU institutions, rules, and policy-making influence domestic legal systems, institutional mechanisms, and the formation of a collective cultural identity in EU candidate states. One core requirement of Europeanization rests on the commitment to adopt the *acquis*. While full implementation and enforcement of the *acquis* occur during the accession negotiations, national government bodies must demonstrate a willingness to align their policies with EU criteria as part of the candidacy process.

During the previous enlargements of 2004 and 2007, EU conditionality brought about great progress in the effectiveness of governance in CEE countries. Nevertheless, problems such as corruption and organized crime came to light after some countries gained membership. For example, Romania's and Bulgaria's accession highlighted the challenges of ensuring sustained rule of law reforms, as both countries faced significant difficulties in addressing corruption and the lack of judicial independence, which persisted post-accession. These hurdles led the EU to implement the Cooperation and Verification Mechanism (CVM) to monitor and support reforms by providing a structure for the continuous evaluation of progress made on these issues. This new tool underscored the

importance of maintaining rigorous oversight even after formal accession to ensure that the foundational principles of the EU are upheld (Carp 2014). After the creation of the CVM, the concept of the rule of law began to take on a different meaning throughout the Union because it has had to be applied to different legal systems in member states where democratic values developed at different rates. Moreover, crises emerged around the idea of the rule of law within the Union itself, and the EU became divided over fundamental values. For example, the situation in Hungary and Poland has profoundly impacted the enlargement of the EU in the WB based on concerns over the erosion of democratic norms and the rule of law. Both countries have faced criticism for their governments' attempts to undermine judicial independence, restrict the freedom of the media, and weaken checks and balances (Dominguez and Sanahuja 2023; Razin and Sadka 2023), in contradiction with the Union's fundamental value and in conflict with EU institutions. The term "enlargement fatigue" (Szołucha 2010) has even spread among Europeanists to explain that the EU is no longer ready—nor able—to accept new members; this fatigue could in turn overwhelm EU processes and institutions while also undermining the economic prospects of the Union. Additionally, many member states have expressed dissatisfaction with the effectiveness of the *acquis.* The fact that the WB countries have not historically upheld the rule of law has hindered the expectation that previous *acquis* conditions could effectively transform the process of Europeanization in these countries. Hence for the first time, the EU Council deemed the rule of law to be fundamental to the accession process for WB countries, a departure from its strategy in previous enlargements.

In 2011, in response to difficulties in Romania and Bulgaria, the EU Commission adopted the "new approach" that foresees that Chapter 23, which focuses on "Judiciary and Fundamental Rights," and Chapter 24, which focuses on "Justice, Freedom, and Security," will be opened early in membership talks. The new approach also mandates the EU Commission to monitor the assumed obligations and track the record of candidate states in these two areas during the entire negotiation process, also mandating that negotiations can only end when chapters 23 and 24 have been closed (Wunsch 2018). The overall pace of the talks is, thus, determined by the progress made on these two chapters (Nozar 2012). It is understood that the issues these two chapters cover "should be tackled in the accession process and the corresponding chapters opened accordingly based on action plans, as they require the establishment of a convincing track record" (European Commission 2011, 5). The new approach extends the negotiation process on chapters 23 and 24 and introduces for the first time interim benchmarks in addition to the existing opening and closing benchmarks. The interim benchmarks are linked to key elements of the *acquis*. Generally, opening benchmarks entails key preparatory steps for future alignment—such as strategies and action plans—and for the fulfillment of contractual obligations that mirror *acquis* requirements. In contrast, closing benchmarks focuses on legislative measures, administrative or judicial bodies, and the implementation of the *acquis.* The interim benchmarks added in the case of WB countries aim to further guide the reform process and keep it on track. They are designed to ensure continuous and verifiable progress, focusing on how well new institutions function, how independent the judicial system is, and how effective anti-corruption measures are. Unlike traditional

benchmarks that only set start and end points, interim benchmarks provide measurable indicators of progress at various stages of the negotiation process (Tilev 2020; Blockmans 2014). This ensures that reforms are not simply initiated but also sustained and effectively implemented. Furthermore, for the first time, local stakeholders and civil society organizations are involved in the negotiations and their monitoring, which enhances transparency and accountability and ensures that reforms are rooted in the local context.

By the time the new methodology had been adopted in 2011, Croatia was already in the process of concluding negotiations and preparing to sign its accession treaty. Therefore, it was too late to implement the new approach and firmly anchor the rule of law there. Since Montenegro had been at the time only in the process of opening negotiations, in effect it became the first candidate country to negotiate with the EU under the new approach (Wunsch 2018). By 2020, all 33 chapters of the *acquis* that applied to Montenegro would be opened, and three were even provisionally closed. However, the pace of negotiations has been slow since 2017, with no additional chapters closing.

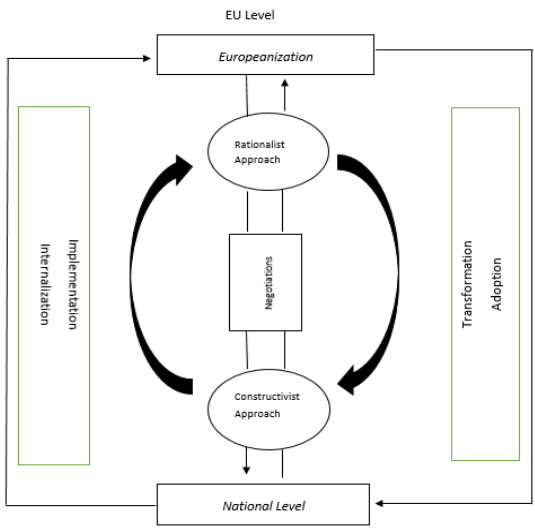
Theoretical Approaches to Europeanization for the Implementation of the Rule of Law

Europeanization is not in itself a theory; it is a phenomenon, which a number of theoretical approaches have sought to explain (Schimmelfennig and Sedelmeier 2004; Grabbe 2006; Schimmelfenning 2015). The theoretical perspectives often used in Europeanization studies have defined the various mechanisms by which the EU influences and places conditions on candidate countries to meet EU requirements. Scholars analyzing the accession process of CEE countries have distinguished between two main explanations of the mechanisms of Europeanization (Schimmelfennig and Sedelmeier 2004). Europeanization can be driven on the one hand by the EU and on the other hand by domestic factors. Furthermore, when candidate countries adapt to EU norms, they do so based on two institutional logics: the "logic of consequence," which derives from "rationalist institutionalism," and "the logic of appropriateness," which emanates from "constructivist institutionalism" (March and Olsen 1989, 160-162).

Rationalist institutionalism, often referred to as "rational institutionalism," focuses on the impact of EU conditionality on candidate countries and addresses how clearly these conditions are articulated. This theoretical approach assumes that rational actors engage in strategic interactions to maximize their power, utility, and welfare under given circumstances. Moreover, the "logic of consequence" indicates that the candidate countries' cost-benefit calculations can be manipulated by the EU through external incentives. Thus, the EU sets rules and norms, which candidate countries must adopt; and the primary strategy through which the EU enforces the adoption and implementation of these rules and norms in target countries is "reinforcement by reward" (Schimmelfennig and Sedelmeier 2004). Research on the effectiveness of conditionality in CEE and WB countries has shown that rationalist institutionalism based on the "logic of consequence"

has not been successful at solving problems arising in the area of the rule of law. Many factors have reduced the overall credibility of conditionality as a path to membership: determinacy of EU conditions, the speed of reward (EU membership), the domestic cost of adopting EU rules, as well as the role of veto players, such as private and public domestic actors. The second mechanism—constructivist institutionalism—is based on the "logic of appropriateness" and focuses on "norm socialization," which leads both the government and the general population in the candidate country to positively identify with the EU and consider the rules promoted by the EU as legitimate and appropriate. Constructivism, in this context, entails the mutual construction of identities through interaction. Thus, all domestic actors are likely to openly accept behavioral changes and internalize EU norms through "social learning" and through the development of multiple soft skill mechanisms, which include intergovernmental interactions and transnational processes involving societal actors. Therefore, Europeanists have posited that the constructivist model is more functional that the rationalist model, as it leads candidate countries to better integrate by successfully transforming their institutions and changing the mentality of domestic actors, with long-lasting effects on society (Checkel 2005; Elbasani 2013; Keil 2013). However, the two approaches must influence each other in order for the transformation to materialize. Diagram 1 conceptualizes how rationalist institutionalism—a top-down approach where rules are set by the EC—combines with constructivist institutionalism. It shows that both approaches impact each other and lead candidate countries to not only meet but also internalize EU conditions at the national level, hence reaching the standards set by the EU.

Diagram 1. The Europeanization Process



Source : The author

Discrepancies often emerge between the planning, adoption, implementation, and evaluation phases of new measures. The benchmarks set by the EC at the very beginning of the negotiations are often not sufficiently concrete to help a candidate country meet those demands. The limited availability of clear and unambiguous rules—i.e., the "hard *acquis*," which includes interim benchmarks—makes it difficult for candidate countries to identify precisely which reforms they need to adopt. This is especially true under Chapter 23, which focuses on "Judiciary and Fundamental Rights."

Montenegro must meet 83 interim benchmarks: 45 under Chapter 23 and 38 under Chapter 24. Closing these chapters' overall benchmarks can only happen once the interim benchmarks have been satisfactorily met. To meet the conditions set by the EU, Montenegro has prepared strategic and action plans, which were approved by the EC. However, the fulfillment of EU conditions and benchmarks can best be achieved through "social learning." According to this constructivist approach, social actors, such as domestic stakeholders, decision makers, and civil society, are all involved in accession negotiations, in a bottom-up approach that ensures that the rules of the EU correspond to what people want domestically and that the policies that comply with EU rules are sound.

The Essence of the EU Rule of Law Conditionality

Alongside the principles of human dignity, freedom, democracy, equality, and human rights, the rule of law is defined in Article 2 of the EU Treaty. Operationally, the rule of law is a central dimension in four distinct core areas of EU identity and activity (Magen 2016):

1. It is a fundamental value upon which the Union itself is founded;
2. it is a requirement of trust essential to the functioning of the internal market, along with freedom, security, and justice;
3. it is a significant element of the way in which the EU engages with the world and envisages its role as a global actor; and
4. it is a key criterion of eligibility for EU membership.

Functionally, the rule of law performs two main tasks. First, it ensures that people in positions of power exercise this power within the restrictive framework of well-established public norms, rather than in an arbitrary, *ad hoc,* or purely discretionary manner. Second, the rule of law manages and coordinates citizens' behaviors and activities (Tamanaha 2012). For the rule of law to be effective and long-lasting, not only must institutions be independent from the executive branch, but society as a whole—all citizens, including the elites in power—must internalize and identify with the law. To reach this goal, procedures must be as transparent as possible; laws must be public and easy for citizens to access. Furthermore, laws should be explicit, clear, and prospective, rather than retroactive. Moreover, the drafting of laws must follow known, clear, and stable rules (Magen 2016).

Since the fall of the Iron Curtain, the rule of law and fundamental rights have been increasingly the focus in the EU, particularly for integration. Citizens now expect their government to ensure the conditions for a safe and prosperous living environment, where their rights are protected not only against crime but also against state authorities themselves. The rule of law has been considered an important tool to fight corruption and poverty, address democratic dysfunctions, and avoid or stop ongoing conflicts. Three conditions must be met for the rule of law to emerge: the judicial system must work effectively; organized crime and corruption must be absent; and fundamental rights must be respected (Nozar 2012). However, there is a fundamental historical difference in how the rule of law has developed in post-communist and Western European countries. While in most European countries the rule of law emerged conceptually before democracy did (Fleiner and Basta 2009; Pech 2009), in post-communist countries, it came about only in the mid-1990s, so that these countries found themselves simultaneously adopting democracy and a liberalized market economy. During that time, the harsh political and economic situation in some of the WB countries created an environment that allowed for the development of criminal networks, for example those focused on cigarette smuggling or drug and human trafficking. Economic gains made through illegal markets were slowly invested in the licit economy through money laundering. Today, organized crime, corruption, and nepotism have remained prevalent in WB societies. Moreover, judicial administrations in these countries are often staffed with people who have served in previous regimes, and thus the system lacks efficiency (Nozar 2012). Whereas conditionality may produce successful results in countries with long democratic traditions and independent institutions, it may not have the same effect in countries in transition.

Reforming the Judiciary in Montenegro

The EC's yearly reports account for almost all the obstacles to judicial independence, freedom of expression, and organized crime and corruption in Montenegro. The purpose of the "new approach," based on Chapter 23 "Judicial and fundamental rights" and Chapter 24 "Justice, freedom and security," is to assist the country in engaging complex reforms from the beginning of the accession process. Apart from technical aspects, such as capacity building and legislative alignment, the closing of these two chapters would require Montenegro to prove a track record of fighting organized crime and high-level corruption. However, Montenegro has shown to be deficient in its judiciary reforms and in protecting the freedom of expression.

Analyzing reforms pertaining to the judiciary in Montenegro is key to understanding how the new approach has played out there. A functioning judiciary underlies the idea of a modern state, as it is a fundamental principle and integral element of all liberal democracies and democracy building. Montenegro has strived to start the process of EU integration as effectively as possible. Therefore, the introduction of judiciary legislation and fundamental rights in Montenegro, as well as regulations on justice, freedom, and security that abide by EU rules have led to positive evaluations by the European

Commission. The pressure of EU conditionality has indeed yielded improvements in Montenegrin legislation, as the government has passed laws and established formal institutional frameworks in line with EU rules; however, Montenegro has been unable to extinguish certain issues within the judiciary since EU standards for judiciary reforms emphasize the rule of law, judicial independence, and robust anti-corruption measures. Candidate countries must ensure transparent, accountable, and politically unbiased judicial institutions as part of the Copenhagen criteria (Kmezić 2019), which Montenegro has not done.

After Montenegro's independence in 2006, Montenegrin institutions started incorporating stronger rule of law principles. For example, a judicial reform was effected between 2007 and 2012, setting out priorities for establishing a transparent employment and promotion system among judges on the basis of objectively measurable criteria. A new constitution was also adopted in 2007 to limit political control over the judiciary. A law was also passed to regulate judiciary officers' salaries and other earnings as well as the procedure followed by the state prosecutor's office. Furthermore, in the same year, a law was adopted to regulate how judges sitting on the Judicial Council are to be elected. The Judicial and Prosecutorial Council also adopted *The Rules of Procedure* in 2011, establishing clearer criteria for the appointment, dismissal, evaluation, and promotion of judges and prosecutors, as well as criteria for disciplinary proceedings concerning judges. In particular, the new constitution stipulates that the Parliament elects the Supreme State Prosecutor and four members of the Judicial Council (from among prominent lawyers) by a two-third majority (55 MPs) in the first electoral round and by an absolute majority (49 MPs) in the second round. However, achieving this majority can often take time because the parliamentary opposition has been divided.

Individuals holding long-term judiciary positions represent another concern in Montenegro (European Commission 2020). For example, the President of the Supreme Court, Vesna Medenica, was greatly criticized by non-governmental organizations when the Judicial Council elected her for the third time in elections that were deemed unconstitutional because they violated Article 124 (5) of the Constitution that limits that function to two terms (Centre for Civic Education 2019). The EC explained that:

> The decision of the Judicial Council to reappoint seven court presidents, including the President of the Supreme Court, for at least a third term raises serious concerns over the Judicial Council's interpretation of the letter and the spirit of the Constitutional and legal framework, which limits those appointments to maximum two terms to prevent over-concentration of power within the judiciary (European Commission, 5).

As a result, Vesna Medenica, who is considered to be the most powerful woman in Montenegro, resigned from her position after a thirteen-year tenure (Vijesti, June 04, 2021).

In Montenegro, the same ruling party has been in power since 1991. The government's leaders who are part of this group have been able to undermine the consolidation of independent judicial institutions and maintain control over public administrations, the media, and the electoral process while pursuing their own interests, which include remaining in power (Džankić and Keil 2019, 193). In 2012 and 2019, there were several election-related corruption scandals in the country, known as the "Tape Recording Affairs." These scandals involved leaked recordings of conversations between members of the ruling party. The first recording was released at the beginning of 2013 and exposed Zoran Jelić, the Director of the Employment Agency. On the tape, he is heard promising jobs to four people in exchange for their votes in favor of the ruling party (Democratic Party of Socialists, DPS) (Janković, March 07, 2017). Although the Parliament asked the state prosecutor to investigate the affair, the inquiry did not result in the prosecution or conviction of those responsible for the corruption. The court's decision led the largest governmental coalition to boycott parliamentary sessions in protest. Nonetheless, the ruling party won the 2012 parliamentary elections (MANS 2013, 18). In the end, instead of a conviction, Zoran Jelić was promoted to the State Audit Institution, while his wife replaced him at the Employment Agency. Another tape recording scandal, known as the "Envelope Affair," emerged in 2019 when a video clip was posted on social media showing Duško Knežević, one of Montenegro's richest businessmen who owns Atlas Bank and represents Djukanović's ruling Democratic Party of Socialists, handing the former mayor of Podgorica an envelope containing 97,000 Euros before the parliamentary elections of 2016. Since this donation was not mentioned in the party's final campaign report, a lawsuit against the president and chief prosecutor was initiated based on suspected money laundering; it was also suspected that the protagonists intended to form an organized crime group. Although this case would require an independent and effective institutional response, to date, there has been no further development in the judicial follow-up of the alleged misuse of public funds for political party purposes.

On the one hand, these two scandals caused citizens to gradually lower their expectations about the likelihood of a fair judiciary, and this distrust has been evidenced by nationwide surveys conducted by the Center for Democracy and Human Rights (CEDEM). In 2020, only 39.7 percent of citizens said they trusted the judiciary, dropping from 41.9 percent in 2019 and 42.5 percent in 2018 (CEDEM 2020). On the other hand, what these scandals also revealed is the level of corruption still existing at the heart of judicial institutions and the strong legacy of communist rule in the administrative sector in terms of abuse of power—under the communist regime, the executive traditionally dominated the judiciary (Kmezić 2017). The uniqueness of Montenegrin social heritage and traditions, which are still anchored in the tribal-Achaean model of identity founded on kinship, constitutes a favorable terrain for the condoning of corrupt behavior. This context is influenced by the history of a certain collective political identity in ancient Greece, where intense rivalries and tribal affiliations gradually led to a broader sense of unity and political structure (see Economou 2020; Blackburn 2012). Similarly, in Montenegro, social connections among citizens remain influenced by the country's history as a tribal society, of which some traits persist, leading to interactions being often perceived through the tribal lens.

Individuals are not seen solely as individuals but as members of a family or a tribe, and they are recognized through their surname (see Batrićević 2023; Simic 2019). These deep-rooted tribal affiliations, local loyalties, and kinship traditions can overshadow national laws and ethics, shaping social and political dynamics and enabling the acceptance of corrupt practices. Indeed, kinship networks play a crucial role in social and economic interactions in Montenegro. The immediate or extended family often functions as a primary support system, providing assistance in times of need, for example to secure employment opportunities. This network is so influential that it can affect decision-making processes in both personal and professional spheres, as people may prioritize familial loyalty over merit or legal considerations. Throughout Montenegro's history, the tribal system has stood as a form of social organization in which each tribe, or "pleme," is an autonomous unit with its own leadership and territory. This system has fostered a sense of solidarity and mutual assistance among tribal members but also perpetuated rivalries and conflicts among different tribes (Cvijić 1922). Despite modernization, remnants of this system continue to influence contemporary Montenegrin society. These cultural features have shaped both institutional and non-institutional arrangements (Sedlenieks 2015) and hindered the fight against corruption and nepotism, making it difficult to build a merit-based employment system. Clearly, the EU determinacy has failed to account for Montenegrin socio-historical aspects and has focused instead on the technical capacities of the judiciary, such as judges' training or improvements in infrastructure (Mendelski 2013). The EU top-down approach, with its focus on institution building, has failed to sanction corrupt elites who have blocked the creation of a system that could foster citizens' trust in the law and institutions.

Freedom of Expression in Montenegro

Freedom of expression is a fundamental prerequisite for human rights and sustainable democratic development. According to Article 19 of the Universal Declaration of Human Rights, freedom of expression represents the right of every individual to hold opinions without interference and to "seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice" (Global Freedom of Expression 2015). Since the EU has borrowed heavily from the Universal Declaration in its own texts, freedom of expression has also been part of its foundational values—as noted in Article 2 of the Treaty on the EU—and an important criteria candidate countries must fulfill to join the Union. In particular, freedom of expression is required for democracy, governance, and political accountability to improve. Under the "new approach," accession negotiations address freedom of expression under Chapter 23 (Judicial and Fundamental Rights), and media-related issues are raised under Chapter 10 (Information Society and Media).

Although the *acquis* does not clearly define the media landscape, the term generally pertains to the overall context in which media organizations operate, accounting for the types of media available (such as print, broadcast, and digital), the nature of ownership

and control of media outlets, the regulatory framework governing the media, and the conditions affecting media freedom and journalistic practices. The EC has put forward mechanisms to help candidate countries create an environment favorable to freedom of speech and to measure improvements in this area, for example through the assessment of whether investigative journalists risk external pressures. The EC also evaluates the extent to which professional journalistic organizations can dialogue with the authorities on relevant sectoral issues. These measurable objectives are then combined with tangible benchmarks, which gauge various other elements:

- The legislation affecting the media;
- Statements made by public officials resulting in the media self-censoring;
- Physical attacks, threats, and other forms of intimidation toward journalists; or
- The transparent delivery of state aid and financial assistance by state-owned enterprises to the media (European Commission 2014).

Montenegro has guaranteed pluralism in its legal framework to enhance freedom of speech and of the press, as well as the development of free media. The 2007 Montenegrin constitution also guarantees freedom of expression in the spoken and written word, images, and any other medium. The constitution has not only protected the freedom of the press but has further prohibited censorship and guaranteed that people have access to information. It has outlawed imprisonment as punishment for libel and ensured a high level of protection for the media, committing Montenegrin institutions to interpreting laws in light of European human rights standards. But in reality, governmental authorities have continued to insult and harass the media and professional journalists. This hostility has been exacerbated by a lack of efficiency in judicial processes, which frequently fail to protect journalists and effectively prosecute perpetrators of crimes against journalists (Trpevska and Micevski 2018). Most attacks targeting independent or pro-opposition journalists and professionals (Kajošević 2021) have remained unresolved cases, which has challenged EU integration. For example, Vijesti's investigative reporter Olivera Lakić was shot in the foot in front of her house in Podgorica in 2018 in an attempted murder. The attack likely stemmed from her report providing incriminating information that threatened powerful interests. The police identified nine members of a criminal gang in 2019 as the culprits, but no formal charges were ever filed. Such attacks show how journalists in Montenegro are intimidated when investigating corruption or other sensitive topics. According to media reports, out of the 85 attacks perpetrated against journalists since 2004, more than two-thirds have resulted in unresolved investigations or no conviction.

In addition, ownership of the media is concentrated and lacks transparency in Montenegro, which raises concerns about plurality, diversity of viewpoints, and media political independence. In fact, media outlets are often politically controlled and influenced, which undermines their editorial independence and leads to biased reporting. This situation affects the overall quality of journalism and erodes public trust in media institutions. Social inclusiveness and pluralism in Montenegro's media landscape is also

limited by significant barriers preventing minorities and marginalized groups from fully participating and having their voices heard. The media regulatory framework is insufficient to address these risks effectively and ensure transparency in media ownership and editorial independence from political and economic pressures. The digital media landscape in Montenegro mirrors the traditional media environment, with similar issues of ownership concentration and political influence. The same risks affecting traditional media also impact digital media, highlighting the intertwined nature of these platforms (Manninen and Hjerppe 2021). The government in office at the time of writing has promised to strengthen the freedom of the press and improve conditions for the media and journalists. However, the legislation has not changed, and there has been no improvement in the investigation of violence against journalists so far. This attitude toward the media can be attributed to the legacy of 60 years of communist rule during which the regime had absolute control over the media (Jović 2008). When Montenegro became independent in 2006, the government focused fully on political reforms, but it has continued to use the same authoritarian mechanisms to exercise control over the media as those used before independence. Meanwhile, most media outlets have admitted to being at the service of the long-ruling party and to be affiliated with political and economic centers. Moreover, private media often take on a leading role in defamation campaigns against critics of the government (Nikočević and Uljarević 2019).

Effectiveness of EU Conditionality in Montenegro

Drawing on theories of Europeanization (Schimmelfennig and Sedelmeier 2006), this chapter has identified and explained the gap between the adoption and implementation of rule of law reforms in Montenegro in the face of EU accession conditionality. Despite the undeniable positive change brought about by conditionality in terms of aligning domestic legislation with the European *acquis* in Montenegro, the development of democratic institutions has remained arduous because political elites have overshadowed the integration process and checks and balances have eroded in the context of incidences of abuse of power that have remained unpunished. The Montenegrin political sphere still suffers from clientelism, as politicians are still influenced by personal acquaintances in their decision-making. Likewise, the highly politicized judicial system has shown deep-rooted corruption. Both clientelism and corruption have undermined the freedom of expression and the credibility of institutions, as the latter have remained weak and failed to solidify lasting judicial reforms during the pre-accession phase of EU membership negotiations.

In Montenegro, a strict application of the "new approach" to EU membership has sought to Europeanize the country. However, the conditions the EU has imposed on Montenegro have remained ambiguous, based on vague criteria, unclear membership promises, and administrative inefficiencies, which has made progress difficult to measure (Bonomi 2020). The level of corruption and organized crime in a social and political environment such as Montenegro's is difficult to evaluate. One solution may be to conduct

surveys to learn about the citizens' experiences with and perceptions of corruption, but people's political or sensitivity biases may influence survey results. Another option might be to analyze the existing legislative and institutional framework and decisions by law enforcement institutions to unveil whether the incidence of crime and corruption has increased or decreased. The introduction of the stricter new approach to EU membership has spread skepticism across Montenegrin society because of double standards in accession conditions. Since the new approach came into effect, the EU has demanded more from candidate countries than it had in the course of previous enlargements, so that candidate countries must now exhibit stronger levels of attainment than some of the current member states did at the time of their accession.

With increasing political integration within the Union itself, a small country such as Montenegro could be quickly integrated. Unfortunately, in contradiction with its own values about human rights and the rule of law, the EU has not held Montenegrin elites—who make use of pro-European rhetoric—accountable. As Montenegro seeks integration into the Union, this accountability should be strengthened through corrective measures, in particular when the elites violate the rule of law. Such measures would constitute an essential tool to also combat people's skepticism about the normative power of the EU in general.

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