

POLICY PAPER

Serbia's state of play regarding Chapters 23 and 24: One step forward, two steps back

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- **The discussion on the future of EU enlargement was opened again this year. After yet another disappointment for Albania and North Macedonia at the European Council's session in October, the discussion turned towards a revision of the enlargement methodology. The argument that the enlargement process needs to undergo a reform, put forward by France as a justification of its October veto for Albania and North Macedonia, is based on the fact that the current process is not delivering adequately. That is true especially for the current frontrunners, Montenegro and Serbia, setting a bad example for other candidate countries in the region and giving more reasons to oppose enlargement to some already sceptical EU Member States. Both countries' progress on the accession path has recently slowed down significantly, with some suggesting that the current low number of chapters that are being opened and closed, and progress only on "technical" rather than substantial matters, is due to the serious problems both countries have in the area of rule of law and democratic standards.**



Introduction

After the last five years of “freezing of the enlargement” introduced by European Commission’s President Juncker in 2014¹, the year 2019 promised to bring a new dynamism into the enlargement policy. The first beacon of hope was the Strategy for Western Balkans² released by the European Commission in February 2018. Apart from reaffirming the region’s European future, the document introduced several ideas on how to make the process more rigorous and more delivering on the requirements put on the candidate countries in the process. However, the high hopes set by the Strategy were followed by a disappointment stemming from the lack of concrete and encouraging conclusions of the EU-WB Sofia Summit³, where the EU leaders met with their Western Balkan counterparts for the first time since the Thessaloniki Summit in 2003. The following postponement of the decision on starting the accession negotiations with Albania and North Macedonia in June 2018, freezing of the dialogue between Belgrade and Pristina, and the EU being occupied internally with Brexit and the need of internal reforms, were a sign that the Western Balkan region and enlargement agenda is not among the EU priorities regardless of the Juncker’s Strategy.

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Serbia’s current status with regards to Chapters 23 and 24

With regard to the quality of democracy, respect for human rights and fundamental freedoms and functioning rule of law, the negotiating chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security)⁵ are the most important ones. The importance of these chapters for the success of the accession process is further demonstrated by the fact that they are the first to be opened and the last to be closed in the process. The recent conflicts among EU Member States over the state of rule of law in some countries, led some members to require an even stronger emphasis and stricter approach on these chapters in the negotiations with candidate countries to avoid these internal schisms and backsliding in the future. At the same time, these chapters are also the most problematic ones as the achieved progress in their scope

¹ European Commission, “President Juncker’s Political Guidelines”, July 2014, https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf.

² European Commission, “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, February 2018, https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf.

³ European Council, “Sofia declaration of the EU-Western Balkans summit”, 17 May 2018,

https://www.consilium.europa.eu/media/34776/sofia-declaration_en.pdf.

⁴ Ocena EU: Nema napretka u vladavini prava, ozbiljna kašnjenja u reformama, *European Western Balkans*, <https://europeanwesternbalkans.rs/ocena-eu-nema-napretka-u-poglavlju-23-ozbiljna-kasnjenja-u-reformama/>.

⁵ European Commission, European Neighbourhood Policy And Enlargement Negotiations, “Conditions for membership”, https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en.

has been so far only limited, and the adopted reforms still largely lack proper implementation.

Due to the crucial importance of these chapters for the success of the entire accession process, in addition to the regular progress reports, the European Commission also releases twice a year a “non-paper on the state of play regarding Chapters 23 and 24 for Serbia”, reporting regularly to the Council on the state of advancement of negotiations under these specific chapters.⁶ The report from November 2018, while acknowledging some progress with the legislative and institutional reforms, also warns that the reform agenda is “facing long delays whereas tangible results are still difficult to demonstrate on areas such as judicial reform, including war crimes or media freedom and the fight against corruption.”⁷ The last from November 2019 states that Serbia needs to accelerate reforms in the area of judicial independence and accountability, freedom of expression, the prevention of corruption and the fight against organised crime.⁸ Furthermore, the response to the published non-paper by civil society organizations⁹ shows that even the progress acknowledged in the report is often only limited and on the least problematic issues, or that a proper implementation is lacking. The CSOs also warn that in some cases the reforms even lead to creation of new problems, such as a more politicised process of appointment of members of crucial independent bodies (for example appointment procedure of Board members of the Anti-corruption Agency¹⁰).

The lack of progress on fundamental issues in the accession process was addressed also in the European Commission’s report on Serbia’s progress in individual

chapters.¹¹ With a level of straightforwardness unusual to the previous progress report, the report criticizes the situation or the lack of efforts in several areas.

With regard to the judiciary branch in Serbia, the European Commission calls for a thorough revision of the system following the ongoing adoption of the constitutional amendments to allow for merit-based judicial recruitments and careers. The Commission warns that the current scope for political influence remains a concern and the independence of the judiciary and the autonomy of the prosecution needs to be strengthened. Moreover, the report addresses also the insufficient results in the fight against corruption and the need for law enforcement and judicial authorities to establish a credible track record of operationally independent prosecutions and finalised high-level corruption cases. The report assesses the prevalent corruption in many areas as an issue of concern and calls for a stronger political will to address this problem and for a robust criminal justice response to high-level corruption. The situation is similar in the area of fight against organized crime as the number of convictions for organised crime, especially in the fight against trafficking in human beings, remains low.¹²

The situation regarding freedom of expression and position of media and journalists in Serbia is addressed in particular, with no progress achieved on this issue as a matter of serious concern. According to the report, the cases of threats, intimidation and violence against journalists, supported through the discourse created by political elites, continue to be alarming.¹³ In this respect, the European Commission calls upon the Serbian authorities to

⁶ European Council, “Serbia’s negotiating framework”, <http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=AD+1+2014+INIT>

⁷ Ministry of European Integration of the Republic of Serbia, “Non-paper on the state of play regarding chapters 23 and 24 for Serbia”, November 2018, http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/Non-paper_on_the_state_of_play_regarding_chapters_23_and_24_for_Serbia.pdf.

⁸ Ministry of European Integration of the Republic of Serbia, “Non-paper on the state of play regarding chapters 23 and 24 for Serbia”, November 2019,

http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24_19.pdf.

⁹ PrEUgovor, “Comments on the European Commission’s non-paper on the state of play regarding chapters 23 and 24 for Serbia”, November 2019, http://preugovor.org/upload/document/joint_preugovor_comments_on_ec_non-paper_2019.pdf.

¹⁰ Ibid, p. 2-3.

¹¹ European Commission, “Serbia 2019 Report”, May 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

¹² Ibid, p. 31.

¹³ Ibid, p. 25.

not only improve the legislative framework and its proper implementation but also to publicly condemn any cases of hate speech or threats against journalists. The report addresses also the fact that investigations and final convictions for these crimes still remain very rare with the first ever sentence in a case involving the murder of a journalist pronounced in April 2019.¹⁴

In terms of fundamental rights, the report acknowledges that the legal framework is broadly in place but also mentions that its implementation is inconsistent. In this regard, regular and intensive cooperation with the CSOs is fundamental. However, the European Commission also notices that “the relationship between the government and CSOs is still marked by fragmented cooperation. The continued frequent use of the urgent procedure for the adoption of laws limits the effective inclusion of civil society in the law-making process.”¹⁵

Reporting on progress in Chapters 23 and 24 by independent journalists

In the scope of the project “Support to independent reporting on Serbia’s EU integration process with focus on the Chapters 23 and 24”, supported by the Transition Promotion Program of the Ministry of Foreign Affairs of the Czech Republic, several articles dealing with the most pressing issues covered by these chapters were published.¹⁶ The articles addressed issues relating to the fundamental rights including minority rights, fight against corruption and organized crime, judiciary reform and freedom of expression with particular focus on the situation of independent media in the country. The articles provide an in-depth analysis of the developments of the situation in

Serbia with regard to the issues included in Chapters 23 and 24 and the main obstacles hindering the progress, setting the particular issues into the general framework of Serbia’s EU accession process. While the main issues as well as most conclusions are in line with the reports published by the European Commission, the work of the independent journalists analyses the selected topics in more depth and within the domestic context, drawing attention to possible consequences of the lack of progress or other negative developments with regard to the Chapters 23 and 24 on the lives of Serbian citizens. Simultaneously, these articles underline the fact that the progress in the EU accession process is not only important for the eventual EU membership but also on the quality of life of Serbian citizens and their trust in domestic institutions, regardless of the eventual goal of becoming an EU member but also due to the positive impact by the reforms mandated by the accession process. By bringing forward these issues, the authors addressed an existing gap in the media sphere with mainstream media (largely represented by tabloids) generally avoiding the topic of EU integration and content of negotiating chapters, disregarding them as too technical and unattractive.¹⁷

The authors warn about the increasing practice by Serbian authorities of using the harmonisation of the legislation with the EU laws to shift the power even more in their favour by decreasing the transparency of the decision-making and to exert more control over the presumably independent institutions crucial for the rule of law. One example that experts are following with scepticism is the constitutional reform. Currently, the constitutional amendments do not introduce sufficient guarantees preventing the government from interfering in the judiciary.¹⁸ The process of legislative reforms is also criticized by the authors and experts for the frequent

¹⁴ Ibid, p. 25.

¹⁵ Ibid, p. 8.

¹⁶ More information about the project as well as the links to the articles can be found at <http://europeum.org/articles/detail/2877/support-to-independent-reporting-on-serbia-s-eu-integration-process-with-focus-on-the-chapters-23-and-24>.

¹⁷ Uloga medija u procesu reformi u poglavljima 23 i 24 – pomoć ili prepreka?, *European Western Balkans*,

<https://europeanwesternbalkans.rs/uloga-medija-u-procesu-reformi-u-poglavljima-23-24-pomoc-ili-prepreka/>.

¹⁸ Serbia’s Chapters 23 and 24: Authorities care for the form, not the essence of reforms, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/10/04/serbias-chapters-23-and-24-authorities-care-for-the-form-not-the-essence-of-reforms/>.

exclusion of the Parliament from the discussion by creating packages of a large number of amendments blocking the parliamentary discussion. Another point of criticism in the process of laws adoption is the very frequent use of urgent procedures, which leads to exclusion of the relevant bodies and civil society from the process. It is also pointed out both by the civil society and independent journalists in Serbia and EU experts that while the legislation is often aligned with the best European standards, its implementation is where the real problem lies. With regard to the fundamental rights, one of the examples is the issue of the supplementation of the Criminal Procedure Code with the Article "hate crime". Although the article was adopted already in 2012, it was only in November 2018 when the reference to the article, i.e. hate crime against the person of the same sexual orientation, was used in a court ruling, despite homophobia and homophobic crimes being prevalent in Serbia.¹⁹ Problems with inefficient or significantly delayed implementation of the adopted laws are stressed also in other areas, e.g. the fight against corruption²⁰ or protection of minorities²¹. This lack of proper implementation of adopted legislation and disillusionment of actors independent of the government with its will to true reforms reflects also into the ongoing process of drafting of a new Media Strategy.²²

The scepticism from experts about the Media Strategy implementation is, however, not based only on their experience with the unsuccessful implementation of legislative and strategic documents relating to other areas. The missteps of the Serbian government in the drafting process were a cause for criticism and increasing mistrust towards the authorities from the media associations as well

as the civil society sector. Despite the government presenting it officially as an honest mistake, the fact is that the draft of the Strategy sent to Brussels was different from the version approved by professional associations, with all clauses guaranteeing independence of the media and regulating their financing removed from it.²³

Regarding the constitutional amendments aimed at strengthening the position of judiciary, Serbian experts are similarly sceptical, expressing their worries the change "will not only fail to lead to the depoliticization of the judiciary but on the contrary, to an even stronger covert political influence."²⁴ The way the discussion between the government and experts is conducted creates schisms and conflicts between the two sides rather than cooperation and mutual trust. The comments critical towards the government's proposals are disregarded, the public consultations are organized only "pro forma" and those advocating for the opposite view are discredited in the government-controlled media.²⁵

The lack of constructive discussion about the ongoing constitutional reform ties also to another problem, which is the constant undermining of the role of CSOs in the consultative and monitoring process by the government. The comments from civil society are often disregarded and activists critical towards the government are regularly attacked in the media and even threatened. A new practice in the suppression of civil society in Serbia is the creation of a parallel civil society – the so-called government-run NGOs – which is vocally critical of other CSOs and their views but supports and promotes the government's actions. For example, while the government's proposals for

¹⁹ Ibid.

²⁰ Serbia's troubles with Chapter 23: "Fragile" institutions incapable of fighting corruption, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/07/19/serbias-troubles-with-chapter-23-fragile-institutions-incapable-of-fighting-corruption/>.

²¹ Prava nacionalnih manjina u senci političkih odnosa sa susednim državama, *European Western Balkans*, <https://europeanwesternbalkans.rs/prava-nacionalnih-manjina-u-senci-politickih-odnosa-sa-susednim-drzavama/>.

²² Na šta ukazuju komentari Evropske komisije o slobodi medija u Srbiji?, *European Western Balkans*,

<https://europeanwesternbalkans.rs/na-sta-ukazuju-komentari-evropske-komisije-o-slobodi-medija-u-srbiji/>.

²³ Serbia's Media Strategy – step towards media freedom or simulation of reforms?, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/07/31/serbias-media-strategy-a-step-forwards-for-the-media-freedoms-or-a-simulation-of-reforms/>.

²⁴ Serbia's constitutional reform: Professionalisation of judiciary trapped by politics, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/09/16/serbias-constitutional-reform-professionalisation-of-judiciary-trapped-by-politics/>.

²⁵ Ibid.

constitutional amendments concerning the judiciary met with sharp criticism from the civil sector and professional associations, the recently created associations of judges and prosecutors suddenly emerged and were defending these proposals very loudly as a step towards the independence of the judiciary.²⁶

According to the assessments of experts interviewed for the articles, the situation is grave also in the fight against corruption with the government not able to produce any satisfactory results. Furthermore, the responsible institutions are subject to political influence and lack transparency in their work, making it difficult for the other actors to monitor the situation. The analysis by experts revealed also an important trend, which is the application of mild measures in cases involving high-level officials while strict measures are applied to others.²⁷ The problem with the widespread corruption in Serbia reaches a systemic level, being a part of citizens' everyday life, mainly in health, education and public administration. The low quality of adopted laws and their frequently poor implementation is another problem in the fight against corruption in Serbia. One of the most visible examples of the failing legislative framework is the recently adopted Law on Health Care in Serbia, which enables the medical workers to receive "non-cash" gifts (the individual value of which does not exceed 462 euros) from their patients. This law thus practically legalizes corruption in the health sector.²⁸ On the other hand, when the laws aligned with the EU standards are adopted, their implementation is often lacking due to fragile institutions with little capacities, prone to political interference and incapable of fulfilling their tasks in the fight against corruption properly. The widespread corruption is also mutually conducive with phenomena of the state

capture present in Serbia, recognized also by the European Commission.²⁹

The role of the EU and Member States

While there is no doubt that the improvement of the rule of law and respect for democratic principles in Serbia is a task for Serbia's citizens, officials and civil society, the experience shows that without the pressure from the international community, the lack of political will to truly commit to reforms prevails. Although the Serbian authorities are in some cases not responsive even to the requirements from the EU, usually any advancement on these issues occurs only after they are addressed by the EU.³⁰

The fact that more honesty is needed from the EU in addressing the failures to progress or even setbacks in the question of rule of law and democratic standards is evident also from the positive reaction to the more straightforward language and tone of the European Commission's progress reports in the past two years from experts and civil society. The EU should continue this practice of very honestly and openly addressing the issues present in Serbia and other Western Balkan countries (e.g. the reference to the state capture in the European Commission's Strategy for the Western Balkans). However, this practice needs to be reflected also into the rhetoric and actions of EU and Member States' representatives in their interactions with Serbia's leaders. The currently discussed inefficiency of the accession process is a product of the EU's inconsistency. On one hand, the EU repeatedly makes it clear that the issues covered by Chapters 23 and 24 represent fundamental principles and values the European community stands on.

²⁶ GONGOS: A serious obstacle to public debate on EU integration in Serbia, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/10/16/gongos-a-serious-obstacle-to-public-debate-on-eu-integration-in-serbia/>

²⁷ Borba protiv korupcije: Ko će biti kažnjen?, *European Western Balkans*, <https://europeanwesternbalkans.rs/borba-protiv-korupcije-ko-ce-bit-kaznjen/>.

²⁸ Serbia's troubles with Chapter 23: "Fragile" institutions incapable of fighting corruption, *European Western Balkans*, <https://europeanwesternbalkans.com/2019/07/19/serbias->

[troubles-with-chapter-23-fragile-institutions-incapable-of-fighting-corruption/](#).

²⁹ European Commission, "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans."

³⁰ Na šta ukazuju komentari Evropske komisije o slobodi medija u Srbiji?, *European Western Balkans*, <https://europeanwesternbalkans.rs/na-sta-ukazuju-komentari-evropske-komisije-o-slobodi-medija-u-srbiji/>.

On the other hand, the EU's soft approach towards the illiberal and undemocratic practices of the Western Balkan leaders creates the impression across the region that it is possible to advance on the accession path by achieving only technical progress, reforms adopted only on paper and continuously feigning willingness to change reality on the ground.

The EU and individual Member States need to make it clear that without true reforms there will be no progress in the accession negotiations and call out those responsible for this stagnation. At the same time, it is important to establish and develop relations with other actors in Serbia, including the political opposition, civil society and expert community

as well as independent media. These contacts should be fostered by the EU institutions but also by EU Member States' political representatives, experts involved with the region and CSOs. Simultaneously, the monitoring and reporting process needs to be more rigorous and stricter, with reports issued more frequently and with a narrower and deeper focus on particular problematic issues. However, the findings of the monitoring activities, as well as issues raised by the Serbian CSOs, have to be communicated more proactively, and there needs to be a follow up from the European Commission. The role of the European Parliament as well as EP political groups should be strengthened in the process, and the influence they have over their peer parties in the region fully exerted.

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TRANSITION



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