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Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice

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ABSTRACT
Three decades since the beginning of democratization processes, the Western Balkan countries have built a democratic façade by holding elections, by promulgating legal acts guaranteeing freedom of expression, or by constitutionally declaring a strict system of checks and balances. In reality, however, political elites rely on informal structures, clientelism, and control of the media to undermine democracy. Given that formal democratic freedoms are effective only to the extent that political elites are bound by the effective rule of law, the core argument of this study is that the structural weaknesses of democratic institutions are purposefully exploited by domestic regimes, which are able to misuse these fragile institutions to their advantage.

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1. Introduction

As famously suggested by Francis Fukuyama in 1992 – only three decades ago – after the fall of the Berlin Wall it seemed that the Western ideals of liberal democracy, the rule of law and individual rights would be spread undisturbed throughout the world, leading to ‘the end of history.’ Indeed, the end of the Cold War saw the collapse of single-party and military dictatorships throughout Central and Eastern Europe, most of Asia and Latin America. But not all of the countries caught up in that time’s changes succeeded in transforming themselves into fully-fledged democracies. As global economic crisis, an array of nationalistic, ethnic, and religious conflicts, terrorist acts and the war on terror dissolved the ‘triumphalist confidence of the 1990s’ (Tamanaha 2004), the academic world gradually discovered a more ‘nuanced’ (Bieber 2018a) understanding of democratization processes: one that acknowledged different shades of political systems, ranging from fully-fledged liberal democracy to outright authoritarian regimes.

Seen from this angle, the Western Balkan countries (WB) – Albania, Bosnia and Herzegovina (BiH), Kosovo, North Macedonia, Montenegro and Serbia – constitute an ideal playing field for political scientists interested in gradations of democracy. Since the introduction of multi-party political systems in the early 1990s, the WB have experienced a variety of ‘hybrid regimes’ (Collier and Levitsky 1997) falling in the wide spectrum between consolidated democracies and autocracies, yet never reaching the standing of fully consolidated liberal democracies.
The situation on the ground vindicates those who warned that Western Balkan political regimes should not be considered just a passing malfunction or a crisis of democracy, but rather a discrete and stable type of regime. Indeed, three decades since embarking on their democratization processes, the WB are positioned at the bottom of a political continuum from liberal democracy to outright authoritarianism. Conceptually, these regimes are best defined as competitive authoritarian systems, as first described by Levitsky and Way (2010, 5), meaning

civilian regimes in which formal democratic institutions exist and are widely viewed as the primary means of gaining power, but in which incumbents’ abuse of the state places them at a significant advantage vis-à-vis their opponents. Such regimes are competitive in that opposition parties use democratic institutions to contest seriously for power, but they are not democratic because the playing field is heavily skewed in favor of incumbents.

Enduring problems regarding the rule of law in the Western Balkans have already been pointed out by the latest Freedom House (2016) Freedom in the World report that observes an absence of the rule of law and an increase in patronage networks and clientelism, which threaten democratic institutions in the region. Similarly, in its 2018 Communication on a credible enlargement perspective for the region, the European Commission (2018) departed from its usual technocratic account of the state of the rule of law and straightforwardly declared that the countries show ‘clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests.’

Prominent explanations of the rule of law and democratization nexus in the WB are offered by the academic literature which observes that political elites rely on informal structures and clientelism and control of the media (Keil 2018), and even the regular manufacture of crises to undermine democracy and the rule of law (Kmezić and Bieber 2017). Similarly, by factoring informal domestic politics Richter and Wunsch (2019) have provided fresh evidence on how widespread state capture prevents governments in the region from pursuing effective democratic transformation.

This article puts forward a comprehensive theoretical argument that the apparent absence of the democratic rule of law profoundly impacts politics in the WB by acting as a break to democratic impulses, and by creating the regime-centred legal setting allowing for utter arbitrariness and violence of the ruling elites. Given that formal democratic freedoms are effective only to the extent that political elites are bound by the rule of law, the core argument of this study is that the structural weaknesses of democratic institutions are purposefully exploited by domestic competitive authoritarian regimes, which are able to misuse these fragile institutions to their advantage.

Starting from the premise that the key dimension of democratic substance that is missing in the region is the democratic rule of law, this study closely scrutinizes the dynamics at play in the WB in terms of trends, patterns and paradoxes beyond the procedural nexus of democracy, authoritarianism and the rule of law.

Bringing together the study of rule of law and democratization and approaches from comparative politics, this study argues that without a functional rule of law there are no institutional safeguards left, neither for real democracy nor for mere electoralism or formal democracy, presupposing: (1) elected officials; (2) free, fair and frequent elections; (3) freedom of expression; (4) alternative sources of information; (5)
associational autonomy; (6) inclusive citizenship (Dahl 2005, 188). Corresponding to the above mentioned constituent elements of formal democracy, this study offers an in-depth analysis of elections, media, and patterns of clientelism, aiming to a) advance evidence for new patterns of illiberal politics in the WB by means of abuse of the weak state institutions in order to maintain a status quo of hollowing democratization, b) determine which legitimation tools are used by domestic elites and c) suggest how to prevent further democratic backsliding in the WB and revitalize the democratic processes in the region.

2. Theoretical argument: the lack of the functional rule of law

Observing the frequent violations of rule of law that characterized many formally democratic countries in the early 2000s, in the Balkans but also in Latin America, Africa and Asia, democracy scholars began to understand that it is precisely the degree to which the democratic rule of law exists in a given society that reflects the democratic quality of the entire regime (Linz and Stepan 1996; Magen and Morlino 2008). Before proceeding with the study’s main research question, it is necessary to clarify the meaning of the term ‘functioning rule of law’.

Both the democracy and the rule of law principles have a long common tradition in most influential legal orders, but they have not been precisely defined by any of them. The definition of the rule of law and democracy remains legitimately open-ended, and therefore academics and practitioners alike are at liberty to formulate what attributes must be included in their definition. Yet, it is of interest for this study to observe that the rule of law and democracy are in fact interlinked and mutually reinforcing concepts. When considered not solely an instrument of the government but as a rule to which the entire society, including the government, is bound, the rule of law is fundamental in advancing democracy. Conversely, O’Donnell (2004) claims that the system of the rule of law within a democratic framework ensures mechanisms of political accountability, which in turn ensures the equality of all citizens and constrains potential abuses of state power. Hence, the rule of law should be understood as the ‘foundation upon which every other dimension of democratic quality ultimately rests’ (Magen and Morlino 2008, 7).

This brings us to conclude that the key function of the functional rule of law is the ability to control the conferral of wide and unguided powers of the political and economic elites. No doubt, this is an area in which the doctrine of the separation of powers serves the ends of the rule of law, yet neither of the two principles alone are not able to answer the trends of state capture and the crisis of constitutionalism in which (non-) elected clientelistic elites are given the power to legislate, govern and impact on state institutions, including the judiciary. More precisely, most of the regimes in the WB, as a result of the high party discipline, strong control over the parliamentary majority, and legitimized corrupt elites (Richter and Wunsch 2019) have been able to create the legal basis for their contentious actions and practices. Accordingly, there is a common mantra under which every conduct and action, no matter how controversial, is at least formally in agreement with positive legal order. In this sense, it is clear that it is more material aspects of the rule of law incorporating such elements as an effective electoral system, guarantees for a strong civil society, and protection of the effective performance of the
various state agencies from potential obstructions and intimidation by powerful State actors,—that are necessary requirements for the existence of the functional rule of law.

Thus, establishing a lasting and effective rule of law requires not only the presence of (independent) state institutions, but also a widely shared identification with the law in society—citizens and political and economic elites alike. Accordingly, in a political system that upholds the rule of law, the legal system is fair, competent and efficient, while the government is embedded in a legal framework that is accepted by officials.

This is not currently the case in the WB where political elites have been successful in building a democratic façade; but this, of course, is not enough to make democracy effective. Formal democracy has been established by holding regular elections (or premature elections, which is often the case in Serbia, for example), by means of promulgating legal acts guaranteeing freedom of expression, or by constitutionally declaring a strict system of checks and balances. But in reality, elites are obstructing citizens’ political and individual rights by violating the rule of law.

Starting from this basic argument, this study sets out to explain the seemingly enduring obstacles to establishing liberal democracy and a functioning rule of law in the Western Balkans. First, the WB emerged from authoritarian regimes in the classical sense, where there is only one political party serving to provide a veil of legitimacy to an illegitimate government. Building on this legacy, regime change acquired a new morphology through a process of concentration (Dolenec 2013, 20), whereby the executive established dominance over the parliamentary and judicial branches of power. In addition, Zakošek (1997) observed that non-institutional actors frequently proliferated around the executive office, thus further weakening the state institutions’ capacity to prevent abuses by other public agencies and high-ranking individuals. Second, economic liberalization was abused for economic gain, thus transforming political into economic elites. This happened via the privatization of state-owned companies and through state intervention in the enterprise sector. Abusing their access to privileged information [and] privileged loan terms (Ramet and Wagner 2010, 22), political party affiliates built private fortunes and media empires overnight. In a second step, that economic power was used to wield political influence, leading to inside state capture (Dolenec 2013, 21). Finally, the sidelining of formal institutions and legal instruments led to competing networks of clients, further entrenching state capture, practices of clientelism, patronage, corruption and abuse of office.

The three processes described above profoundly distorted the path of political development in WB. As a result, despite legal and constitutional provisions guaranteeing multi-party elections, the separation of power, media pluralism, and so on, the long-standing practice of the concentration of power unconstrained by the rule of law successfully adapted to new circumstances, strengthening competitive authoritarian rule in the region.

In the following two sections I will demonstrate how the above-mentioned processes are manifested in two rule of law-related sub-fields, namely in the case studies of electoral processes and freedom of expression.

3. Elections

Free and fair elections are a cornerstone of democratic rule. In the absence of either of these two legitimizing factors, elections are meaningless as they fail to meet their original
purpose: to provide citizens a genuine opportunity to challenge the incumbent elites in the electoral arena. Thus far, elections in the Western Balkans have contributed to the political transformation of the region. Through their regularity, they have given legitimacy to the democratic process in all the countries of the region. However, on the other hand, many elections in the Western Balkans have been ‘divisive, fraudulent, boycotted by some parties, contested on various occasions and linked with excessive spending or corrupt party financing’ (Anastasakis 2014, 15).

Democratic consolidation in the region is hampered by the fact that those who hold political power also control public and private resources, and are thus in a privileged position to solidify their dominance through the voting process. Citizens recognize that the election dynamic is tilted towards the elites in power, which results in a low level of trust in electoral processes across the region. Citizens’ trust in the election process is lowest in BiH, at only 11% (Centar za Izborne Studije 2017). This in turn leads to a vicious circle whereby those very same citizens are more inclined to take part in the clientelistic chain offered by the system rather than confront it. Hence in Serbia, for example, the ruling SNS has roughly 750,000 party members: 200,000 more than the party membership of Germany’s ruling Christian Democratic Union, and even 600,000 more party affiliates than the UK’s Conservative Party.¹ In order to process this information one must keep in mind that Serbia’s population is just above seven million people, in comparison to Germany’s 83 million or the UK’s 66 million citizens.

In light of this observation, the analysis of the quality of the election processes will not focus on the voting process itself. Instead, it will closely consider four key sectors capable of affecting the electoral process, with potentially grave consequences for the rule of law, namely (1) Exploitation of public resources; (2) Media dominance; (3) Electoral register; and (4) Voter fraud and vote coercion.

**Exploitation of public resources**

The exploitation of public resources in election campaigns creates a major corruptive force in the electoral process, as it introduces or exacerbates power inequalities and provides unfair leverage for the elected incumbent or political parties via patterns of clientelism, party patronage, corruption, and nepotism. It erodes the quality of democracy, as incumbent elites can take advantage of a civil service, public contractors, government communications, public media, and even private companies and privately owned media which are part of the established clientelistic chain. After the elections, powerful voted officials can pay back the services rendered during the campaign by securing well-paid positions in the public sector for their supporters, providing access to privileged information, granting favourable procurement contracts, and so on. This system of paying back was best described by the former Serbian President Tomislav Nikolic (2008), who openly shared his understanding of the reason for participating in politics: ‘to be able to provide jobs or hospital treatment to [his] friends.’ The fact that none of the Western Balkan countries’ legislators have precisely defined the notion of public resources, or enumerated activities that can be introduced under election campaign costs, leaves vast space for manipulation.

For the most part, the abuse of state resources follows the line of ‘relational clientelism,’ (Nichter 2018), that is, the relationships between the incumbent political parties...
and voters. Hence, political parties are acting as providers of jobs, lucrative public procurement contracts or favourable credits in return for secured votes, or in the worst cases even punish their non-voters. It is striking how as of lately described abuses of public resources often takes place in plain sight, or even under the spotlight of news cameras, as for example in the case of the Bosnian Serb member of the tripartite BiH Presidency, Milorad Dodik, who openly threatened ‘to fire on the spot’ (TV1, 2018) those who vote against him, or alternatively the President of the Jagodina City Assembly in Serbia, Dragan Marković Palma who is regularly handing out public money to Jagodina citizens without any political supervision or fiscal accountability thus directly feeding into the clientelistic chain between himself and the voters. Promises made during election campaigns regularly include an increase of salaries in the public sector or the creation of new public institutions as a way of creating new public positions. More frequent, however, are cases of indirect clientelism whereby political parties provide ‘targeted help to specific groups’ (Prelec 2019), for example, through farming subsidies or by directing social workers to households in need.

On the other hand, the incumbents’ misuse of administrative resources – state events and/or financial/technical resources – for campaign purposes is present in all countries in question. In practice, varieties of this problem range from pressure exerted on civil servants and public employees to the use of state events and resources during the electoral campaign, for example via the public officials’ visits to companies, schools, hospitals, factories, or construction sites. In Kosovo alone, misuse of public office was observed in 96 out of the 655 electoral campaigning activities scrutinized during the 2017 Kosovo elections (Prelec 2019).

One specific problem area of the misuse of public office is the blurring of the lines between party and state. These include, for example, identifying local infrastructure projects that could be carried out in the pre-election period to create incentives to vote for a specific incumbent; disproportionate spending of parts of the budget during the pre-election phase; using public property for campaign advertising; using public funds for campaigning purposes. Blurring the line between the party and the state is particularly common in Serbia and the Republic Srpska, where, for example, municipal officials organize concerts by popular folk singers in the municipal premises as a ‘gift’ to citizens, while in fact promoting specific electoral lists (Alo 2018), or provide public transport buses for the SNS campaign (Nikolić 2017). The boundaries between the state and party have also been blurred by involving teachers and pupils in campaign events – sometimes even during school holidays (Andrić 2019) – or by civil servants campaigning during office hours or carrying out official duties, such as doctors providing medical advice in a political campaign (JugMedia 2016).

**Media dominance**

Considering their performance with regard to upholding the freedom of expression, media should adhere to the principles of fairness, balance and impartiality. This goes not only for their coverage of election campaigns, but also for programming that does not explicitly relate to elections, including news, interviews, and political talk shows. Although the situation regarding the incumbent political parties’ media dominance
varies across the Western Balkans, the general conclusion is that balance and impartiality in reporting remain serious concerns.

Media bias is most visible in public broadcasting services that are financially dependent on the parliament, and thus susceptible to political influence. The media dominance of the incumbent political parties in public broadcasting services is significant and well recorded in Kosovo and Serbia. Serbian President Aleksandar Vučić, for example, had four times more presence in public media than the next-placed candidate during the 2017 presidential elections (Gavrilović et al. 2017). At the time of the elections Vučić was acting as Prime Minister, and this added to his media presence as a candidate meant that he accounted for a whopping 61.2% per cent of the media presence of all election candidates, more than nine times the next-placed candidate, who received only 6.4% (Novi Sad School of Journalism 2017). In BiH the situation follows the political division within the country: Republika Srpska’s public broadcaster, Radio Television Republika Srpska (RTRS), is extremely politicized, while the influence is less outright in the Federation’s Federalna Televizija (FTV) (Ibid). Similarly, in major print media, the Serbian incumbent Aleksandar Vučić featured on 147 front pages during the election campaign, of which 118 were positive. The next-placed candidate featured on 79 pages, of which 39 were negative (Gavrilović et al. 2017). Parts of the privately-owned media with a wide reach – especially TV stations with national broadcasting licences and high circulation tabloids – frequently take part in vicious smear campaigns against political opponents, as described in more detail in section 4 of this article.

Free political advertising exists in all the Western Balkan countries, although it does not always meet the requirement of proportional access. More worrisome, however, is that political contestants are not able to ensure the fairness of the electoral process, even through paid advertising. In North Macedonia the public media are not allowed to broadcast paid political advertising at all, while in Kosovo the Election Law (Article 49.12) allows private broadcasters the right not to air paid political advertising time. In other countries of the region there are no restrictions on paid political advertisement, although in Montenegro some parties reported significantly lower costs for media advertising than that offered in the official price lists, raising suspicion of covert deals (Prelec 2019).

**Electoral register**

So far, none of the Western Balkan countries have created credible and electronically accessible electoral registers. Irregularities in the electoral registry distort the outcome of the voting process or, in the worst cases, can be misused for election fraud. Problems with the electoral registry, particularly a significant presence of deceased or emigrated voters, are a common occurrence across the region.

For example, in BiH the electoral register contains 3,345,486 voters (Central Election Commission 2016), while only 3,531,159 people are estimated to still live in the country, making the electoral register implausible (Agency for Statistics of Bosnia and Herzegovina 2013). In the city of Tuzla the Electoral Commission even registered more voters than then there are registered residents. The situation is similar in Serbia (Ilić 2017)
and North Macedonia (Bieber 2018b), and even worse in Kosovo, where, at present, there are more voters on the electoral register than citizens in the country (Prelec 2019).

The lack of appropriate legal frameworks on the transmission of data regarding the recently deceased, and the high level of emigration from the WB countries – which is significantly higher than the official statistics suggest (Vračić 2018) – are among the biggest logistical hurdles to updating the electoral registers. But the main problem in tackling the issue of cleaning the electoral registers is the persistent lack of political will to act on this matter. This is perhaps best observed in the context of the 2012 Serbian general elections, which were overshadowed by the opposition SNS’s accusations that the ruling Democrats had instrumentalised the voter registry. After the two sides had swapped power following the elections, the SNS completely downplayed these accusations and continued to organize elections without making any modifications to the election register.3

Recent evidence of outright political manipulation through the misuse of electoral registers in North Macedonia explains the political will to maintain flawed electoral registers. The 2015 leaked tapes revealed how the Macedonian government took advantage of inaccuracies in the electoral register by creating fake identities for phantom voters and bringing people from outside the country to the polls during the 2013 local elections (Prelec 2019).

**Voter fraud and vote coercion**

Illegal interference in the process of an election – either by increasing the vote share of the favoured candidate, depressing the vote share of the rival candidates, or both – is still fairly widespread in the Western Balkans. While the bulk of irregularities are estimated to take place before the opening and after the closure of the polling stations, problems which have been observed during election day include pressure on voters, for example through the presence of supporters outside polling stations telling people not to vote (Prelec 2019), the presence of supporters inside (Ibid) or outside polling stations (Nedeljnik 2018) taking photos and writing down the names of those who voted, etc.

Another method of confusing people into voting for a candidate other than the one they intended to vote for is to create political parties with names or symbols similar to those of existing candidates or parties. In the 2018 local election in Belgrade, for example, the list of the previously unknown Enough is Enough of Robbery, Corruption and Thievery – Radulović Milorad drew the public’s attention due to its striking similarity to a previously announced list Enough is Enough and – For these ones to go, and for them not to return (CRTA 2018). In addition, the aforementioned manipulations of the electoral register and the postal vote have become potential sources of pre-election voter fraud. The registration of fake voters from Croatia for postal voting is a well-documented issue of pre-electoral voter fraud in the 2018 elections in BiH (Prelec 2019).

4. **Media freedom**

Freedom of expression is a fundamental right of every human being. Media freedom is often seen as a corollary of the general right to freedom of expression (Amos et al. 2012). This comes as no surprise, since a diverse and impartial media is in fact a crucial
promoter, but also a protector, of freedom of expression. In addition to media freedom, freedom of expression includes a range of other aspects, focusing notably on holding, receiving and imparting ideas or information. Thus, freedom of expression includes other less formal channels of communication, ranging from discussions and debates in public spaces to social media. However, traditional media remains at the core of freedom of expression.

Recent assessments of the situation concerning media freedom in the Western Balkans have been sobering. The region is brewing with incidents of media freedom violations, attacking not just the basic right to freedom of expression, but also the state of democracy as such. Harlem Désir, the Organization for Cooperation and Security in Europe (OSCE) Representative for Freedom of the Media, recently stated that due to the lack of ‘strong political will to support and protect the media and their diversity […] there is still a long road ahead’ (2018) for the Western Balkan countries to reach satisfying levels of media freedom.

This assessment is in line with the findings of other authoritative sources of information regarding global media freedom, which highlight deterioration across the board in the region. According to Freedom House’s annual Freedom Press Report, the media in these countries is considered only partly free (Freedom House 2016). The Media Sustainability Index, produced by the IREX, reports on the ‘collapse of law, ethics, professionalism, and social norms’ (Reporters without Borders 2018) which marked the previous year in the media field in the Western Balkans. The Reporters Without Borders World Press Freedom Index ranks Bosnia and Herzegovina as 62nd and North Macedonia as 109th out of the 180 countries considered in its latest report (Reporters without Borders 2018) – the highest- and lowest-ranked Western Balkan country respectively. In absolute numbers, the latest Reporters Without Borders index demonstrates a slight rise in the region’s ranking, but this is the result of an overall deterioration in media freedom in Europe and the rest of the world rather than any improvement of the media scene in the Western Balkans. Overall, each of the aforementioned sources implies a decline in regional press freedom, with setbacks registered in the legal, political and economic environment.

The Western Balkan media landscape can best be explained by observing the features of ‘hybrid media systems’ (Voltmer 2013): the mixture of, on the one hand, liberal ideas of a free and de-regulated press, the sudden liberalization of the media market, and the flourishing of various commercial audio-visual outlets, with, on the other hand, the legacy of the communist past, post-conflict and contextual local factors such as the high level of clientelism, and the backsliding of democracy. This section describes features of Western Balkan hybrid media systems by tracing (1) the legacies of the authoritarian past, (2) the abuse of the media system for media control, and (3) methods of indirect and (4) direct pressure on media.

Legacies

Before proceeding with an analysis of specific cases, I will take a broader historical perspective into account. This will affirm that backsliding in media freedom in the Balkans is not a recent trend nor an exception, but rather the rule. Following 60 years of communist rule marked by the absolute control of media (Jović 2008), the press gradually
acquired limited freedom in the 1980s, only for this to be curtailed by the nationalist and authoritarian politics that emerged towards the end of the decade. The introduction of a multi-party political system in the following years resulted in the evaporation of single party control over the media, but this did not mean the end of political interference. By abusing the power of the media to influence public opinion, public authorities in Yugoslav successor states made the press an essential tool in igniting the wars of the 1990s (Thompson 1999). This media landscape presented a picture that was formally pluralist, but remained government-controlled. Even after the second democratic revolution in 2000, governments in the region were more oriented towards political reform and lacked wide-ranging control over the media, but they continued to use the control mechanisms of their authoritarian predecessors. Furthermore, independent journalists’ economic vulnerability provided an opportunity for economic interference in the media, including influence exercised by the representatives of foreign capital.

**Abuse of the legal system for media control**

The new legislative framework which aims to improve access to information about public affairs, has largely failed to break the clientelistic chain and prevent political influence on the media. First, the law completely omits the regulation of state advertising, while at the same time it allows for the co-financing of media projects of common interest as a permissible form of state aid. These categories, therefore, remain unregulated and non-transparent across the region, and as such they are potential tools for creating clientelistic relations between state bodies and the media. According to a study prepared by the Balkan Investigative Reporting Network (BIRN) in 2012 and 2013, the Serbian government, its specialized agencies and public companies have spent approximately 12.5 million EUR on media. Half of this sum was shared between only four media outlets, while the other half was divided among 500 other recipients (Maksić 2015). In addition, the pressure on media comes from marketing agencies that are connected to the ruling elite (Tadić Mijović and Šajkaš 2016). In Serbia, for example, after the change of power in the 2012 elections the Mediapool marketing agency, run by Goran Veselinović, former employer of the current Serbian President Aleksandar Vučić, became the most influential actor in the advertising business despite having a relatively low profile until then (Georgiev and Đorđević 2014).

Media regulatory institutions are nominally independent of government bodies, both functionally and financially. However, their employees are still included in the corps of civil servants, and as such they are subjected to governmental oversight. Although the governments of the region took no visible actions that could qualify as interference in the independence of the broadcasting regulators, continuous manipulation by informal, rather than direct, political influences still exists across the WB according to Matić (2016).

Particularly worrisome is the trend of abusing state bodies in order to limit the scope or prevent the work of journalists. The most illustrative example of such practice was the secret police’s unauthorized surveillance of journalists in North Macedonia in 2015, which caused both political crisis and media controversy in the country, contributing to a growing atmosphere of caution and self-censorship among Macedonian journalists (Vangelov 2019). As seen in the case of Zrenjaninske novine in Serbia, the government uses its tax policies selectively so that critical media may be shot down as a reprisal for
their critical journalism, while loyal media, such as TV Pink, are allegedly allowed to owe millions of euros in unpaid taxes (Barlovac 2015).

Recent years have seen a positive development with regard to the decriminalization of libel and the confinement of journalists’ responsibility for defamation to civil procedure and monetary compensation, measures which are expected to have a positive impact on investigative journalism. Nonetheless, criminal law still remains a significant potential pressure mechanism on the media, particularly through the selective interpretation of open-ended concepts such as public disturbance, incitement to hatred or security-related standards. In addition, judges remain partially unaccustomed to key international legal documents on freedom of speech and the practice developed by the European Court of Human Rights (Kmezić 2018). As a result it occurs that, as in the case of Stojan Marković, journalists are held legally responsible even for satirical articles about public officials.

**Informal pressure on media**

Despite the fact that the media market in the Western Balkans includes numerous registered outlets – for example, there are 2,072 registered media in the Serbian Business Registers Agency, of which 216 are TV stations (IREX 2018) – social and political diversity are still not adequately reflected in media content. The majority of regional media outlets are closely connected with the centres of political and economic power, as confirmed in reports like the World Press Freedom Index (Reporters without Borders 2018). However, unlike the explicit political pressure and censorship of the past, influences on media today are much more subtle and covert. This does not necessarily diminish their efficiency, but it does make their identification much more difficult. In the words of Veran Matić, former director of the Belgrade-based B92 radio station that withstood numerous attacks by Slobodan Milošević’s authoritarian regime in the 1990s, today there are ‘more ways to restrict freedom, and as they get more sophisticated, it is impossible to pick up on them at once’ (Matić 2009). Even though there have been important steps towards a more free and independent media in recent decades, political pressure and attempts to control the media have remained in place, supplemented by growing economic pressure on media outlets and the emergence of private media controlled by political and economic elites. The political pressures that lead to self-censorship are facilitated by the fact that a great number of journalists continue to work in informal conditions, lacking both individual and collective work contracts. These negative tendencies are additionally cultivated by the lack of general political and social transparency and the weakness of the underdeveloped media market in rural parts of the region.

Furthermore, the ongoing privatization of the media is marked by numerous controversies, including the purchasing of media by party cronies. Political influence over the media is exerted through the media owners’ direct involvement in politics, hidden shares, or owners’ affiliations with particular politicians. An example is the case of the privatization of Niška Television, where Vladan Gašić, son of a senior member of the ruling Serbian Progressive Party (SNS), has become one of the owners (Dobrašinović 2016). On several occasions privatization has been implemented by a legal entity wholly or partly financed from public funds (Dobrašinović 2016). Thus, political influence and
control of the media has survived the transformation of ownership, only to reappear in a new shape.

**Direct pressure against the media**

Government officials regularly put direct pressure on the media. Matić (2016) establishes that pressures on the editors-in-chief are more powerful than any legal pressure to respect the rights of others. In such cases, the editors serve as brokers in the clientelistic chain. Their dependency is based on the previously established pattern of the politically-driven appointment of chief editors in the remnants of the state-owned media, and their low incomes under private ownership. In addition, there are no formal arrangements to guarantee editorial independence for editors and journalists (Londo 2018). The existing work contracts cover merely administrative matters and do not contain anything like a conscience clause, thus enabling the top-down continuation of the clientelistic chain in media.

Even the highest-ranking public officials, such as the President of the Republic of Serbia Aleksandar Vučić, are involved in such pressure. Vučić repeatedly engages in transparent confrontations with journalists and media outlets in his near-daily public addresses, accusing some of working for foreign governments or the CIA (Balkan Insight 2015). His Montenegrin counterpart Milo Đukanović did not hesitate to accuse the Vijesti media group of promoting ‘fascist ideas’ and ‘wanting to overthrow power at any cost’ (Vijesti 2018). Such smear campaigns against independent news outlets and investigative journalists are backed up by the remnants of publicly-owned media and the mushrooming tabloid journals. Their sole aim is to personally discredit disloyal journalists by fabricating unfounded stories labelling them as, for example, ‘sado-masochistic French spies’ (Informer 2016) or accusing them of ‘bestiality’ (Tomović 2014).

Particularly worrisome are political influences on public media broadcasters. In most of the Western Balkan countries, public service broadcasters are either used for political purposes or commercialized, or both, failing to provide either impartial news or quality programming due to ‘political colonisation and instrumentalisation’ (Marko 2016). Moreover, as a consequence of non-transparent and occasionally illicit financial management, public service broadcasters are used as a means of transferring public resources (such as well-paid positions and funds dedicated to programme production and advertising) to party clients (Bajomi-Lazar 2016). In such a context, regulatory frameworks and legislative protection of public media broadcasters’ independence are ineffective against populist and increasingly authoritarian elites who ‘adjust laws as they wish, in order to turn [public service broadcasters] into instruments of political power’ (Marko 2016). The most illustrative example of political influence on public media service is the dismissal of the entire editorial team and several journalists at Radio Television Vojvodina (RTV), which coincided with a change in power in the northern Serbian region following the most recent provincial elections. In an open letter, 77 journalists and editors from RTV condemned the wave of dismissals and demanded an explanation as to whether they were politically motivated (Dragojlo 2015). Most recently, in March 2019 protestors in Belgrade stormed the Serbian public broadcaster Radio Television Serbia (RTS) to denounce its reporting bias. Amidst the growing tensions, Pauline Adès-Méval, head of the influential media watch organization Reporters Without Borders, called on the RTS to fulfil its task as a public service media outlet.
5. Discussion and conclusions

This article noted that the rule of law, a functioning prerequisite for the region’s convergence to liberal democracy, is absent. It further argues that democracy needs to be analysed not just at the level of political regime, but also in relation to the state and governance. In other words, the framing of the depicted democratic backsliding across the board in WB in terms of the democratic rule of law, reflect awareness of an empirical reality in which what is absent from supposedly democratic regimes are not formal democratic constitutions or procedures, but the more elusive qualities that characterize real democracies. Hence, by juxtaposing the constitutive elements of formal democracy against the functioning rule of law, this study maintains that the WB lack the substance not just of liberal, but also of formal democracy.

Along these lines the study established how since the start of the democratic transition in the 1990s, voters have freely expressed their political preferences in more or less regular election cycles, but nonetheless these elections have been frequently plagued by various irregularities that secured the triumph of the incumbent candidate or the ruling party. Second, it showed how the control of media has become political loot, as public and private media alike are continuously (mis)used to provoke popular mobilization, thus putting the incumbents at a significant advantage over their opponents. In other words, this study was able to confirm that political systems in the Western Balkans have provided for electoral competitions, but have largely failed to ensure the conditions for their fairness according to the rule of law. The institutionalisation and viability of democracy in the region has failed, meaning that, thirty years since the start of the democratization process, the political systems in the Western Balkans should still be considered mere competitive authoritarian regimes.

Before proceeding to specific explanations of the regional problems described, it must be said that they are not unique to the geographical area of the Western Balkans. The reversal of democracy and the rule of law occurs today even in long-standing democracies like the United States, where it is principally linked with the growing prevalence of neoliberal governmentality, which allows for the persistent weakness of the state and institutions. It is in this regard that Cavatorta rightly emphasizes that both democratic and authoritarian regimes seem to be moving towards a common system of governance where ‘real policy-making power is concentrated in a few hands’ (2010, 218).

But what makes the WB case so distinct is the inherent lack of internal capacities to eliminate the conditions preventing its countries from moving beyond the category of electoral to liberal democracies. How can the implementation of democratic laws be ensured, and how can the independence of state institutions and media be secured in order to substantively enhance the chances for democratic consolidation? Success in this matter rests upon the precondition of eradicating the root causes of the Western Balkans’ un-rule-of-law-embedded political systems. The key remains to unlock a new party dynamics that would enable these countries to break away from their established patterns of clientelism, informal networks and strong party control over media and state institutions. In other words, liberal structures must be strengthened in order to persistently challenge illiberal power structures and norms. If this does not happen, the prevalence of these patterns will cement the democratic smokescreens behind which business as usual shall continue in decades to come.

Machiavelli knew enough to say the following: ‘There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things’ (1532, 19). This is precisely the task for the WB if they are to move away
from the current competitive authoritarian political order – not simply to achieve a change of elites, but to initiate a completely new order of things.

The good – albeit conditional – news is that there seems to be a way out of the vicious circle of the Western Balkans’ state capture. This was recently seen in North Macedonia, where, against all the odds, the country’s authoritarian leader, Nikola Gruevski, was defeated in the 2016 general elections. The realization of the Macedonian scenario, as it is pejoratively called by the neighbouring countries’ authoritarian leaders, was not easy to achieve. It required an honest political settlement by all parliamentary parties over the issues guaranteeing the fairness of the electoral process, massive bottom-up pressure from local civil society and grassroots groups, and decisive top-down pressure applied by the EU, which included robust international supervision with strong oversight mechanisms, including on media reporting. Yet ensuring a more enduring political transformation requires not simply a change of government, but a change of everyday practice, retreating from informal and fast fixes, ensuring independent and accountable institutions and promoting a meritocratic system. On the success of the Macedonian scenario, meaning the eventual transition from competitive authoritarianism to democracy, as well as on the result of the WB6 democratic transition, the jury is still out.

Notes

1. Interview with a high-ranking politician, Belgrade, January 2019.
2. Interview with a political analyst, Belgrade, June 2019.
5. Interview with a journalist, Skopje, January 2019.

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