Extractive Institutions in the Western Balkans

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EFB issue papers series

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1. Introduction

The most recent Freedom House indicators show alarming signs concerning the state of democracy in all Western Balkans countries.¹ Media freedoms show a marked decline in countries like Macedonia and Serbia, and a daunting absence of progress in countries like Montenegro, Bosnia and Hercegovina, and Albania (Figure 1). Another study gives numerous examples of media freedoms deteriorations in 2015 in the Balkans.²

As shown by numerous studies on democracy, media freedoms are essential for the democratic process.³ Yet, they seem to be on the decline in many parts of the world⁴ not only in the Western Balkans), and the silence about this progression is worrisome, too.

Figure 1: Freedom of the Press (Freedom House)

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¹ The five countries under scrutiny are known by two names: the Western Balkan countries and Southeast Europe. The former name usually denotes the security risk that connects all six countries. Southeast Europe sometimes is used to denote Romania and Bulgaria, while the term Balkan includes Croatia, Turkey, and Greece. (Gligorov, 2012: 16-18). In this paper I use WB5 for the remaining five countries in the Western Balkans (the term coined after the 2003 Thessalonica Summit) that aspire to receive EU membership status but are still some way off from full integration with the EU. The countries are Albania, Bosnia, Macedonia, Montenegro, and Serbia.

² Toby Vogel: Media freedom and integrity in the Western Balkans: Recent developments. (European Fund for the Balkans, 2015)


⁴ “Press freedom declined to its lowest point in 12 years in 2015, as political, criminal, and terrorist forces sought to co-opt or silence the media in their broader struggle for power.” (https://freedomhouse.org/report/freedom-press/freedom-press-2016; Accessed: Sept. 30, 2016)
Other indicators, which relate to electoral process and the rule of law, are also either in decline or do not seem to improve over a significant period of time. For example, the electoral process worsened in Macedonia, Montenegro, and Serbia in 2015-2016, and remained unchanged in Bosnia and Albania. According to the FH corruption index, corruption seems to be on the rise in every Western Balkan country. The respective Democracy Score (which is a composite index of seven sub-indices from the Nations in Transit study, and for which a higher number implies less democratic) worsened in all Balkan countries except Albania (Figure 2).

Figure 2: FH’s Democracy Index (from Nations in Transit)

Why is this happening?

Most Western Balkan countries suffered troublesome times in the 1990s as a consequence of the armed conflicts in former Yugoslavia, which afflicted the whole region. All countries were slowed down in the process of European integration and democracy building.

After a promising start in the new millennium, some of these countries seem either to have stumbled, or slowed down at best. What happened with these countries? Why did the democratic process get stuck or worsen?
2. The Character of the Public Institutions

I offer the following answer to this question. I claim that the major reason for this democratic erosion can be found in the nature of public institutions. I define “public institutions” as a set of rules that determine the allocation of public resources in a country.\(^5\)\(^6\)

Consider several rules. The rules that determine how an agency should distribute subsidies to economic agents; the rules that determine how public enterprises request public tenders; the rules that determine how a public office hires new civil servants; the rules that determine who is qualified for early retirement from the state-run pension fund; the rules that determine what kind of committee a local municipality can form; the rules which give the right to an office to use the resources from the state budget for subsidies to private companies etc. These rules constitute public institutions.

Public institutions may be under the strict surveillance of controlling institutions. We can list some: the agency for the combat against corruption; ombudsperson; commissioners for information of public importance and personal data protection; commissioners for protection of equality etc. This is what is usually called the fourth branch of government.\(^7\) We should also not forget the third branch, namely—prosecution and judiciary. They also, in a different manner though, control how public institutions allocate public resources.\(^8\)

All these institutions oversee what the first type is doing (Figure 3). Public and controlling institutions may be integrated and harmonised. If they are—in that the latter oversees what the former does with the public money—we talk about inclusive institutions that generate responsible behaviour amongst public

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\(^5\) I advance the concept of public institutions from the World Economic Forum’s first pillar, which is named institutions (e.g. property rights, diversion of public funds, irregular payment and bribes, judicial independence, wastefulness of government officials, burden of government regulation etc.). (Detailed explanation of the pillars can be found in the 2016 WEF Report, p. 39). The concept of public institutions is extracted from the World Economic Forum’s set of institution indices, which can be found in any WEF’s Global Competitiveness Index Report. To proxy the allocation of resources, I extract the following institution’s indices: diversion of public funds, public trust in politicians, irregular payments and bribes, favoritism in decision of government officials, and wastefulness of government spending.

\(^6\) I adopt the list of mechanisms and institutions from the World Economic Forum’s first pillar, which is named institutions (e.g. property rights, diversion of public funds, irregular payment and bribes, judicial independence, wastefulness of government officials, burden of government regulation etc.). (Detailed explanation of the pillars can be found in the 2016 WEF Report, p. 39).


\(^8\) Judiciary and prosecution are not fully controlling institutions, as they are also concerned with protection of property and execution of contract among private agents. They are very frequently engaged in controlling processes of public institutions and public administration. It is this aspect of their role that is relevant for this analysis. To keep things simple, I will not give an analysis of judicial systems here.
officials. If the two are detached (you can spend money, but nobody controls you), we can talk about extractive (grabbing) public institutions.

Figure 3: The Impact of Controlling and Judiciary Institutions on Public Institutions

If public institutions are extractive, they will enable a misuse of public resources, generate irresponsible public spending, and, as a consequence, a high level of corruption. In contrast, if they are inclusive, they will promote prudent use of public resources and the accountable behaviour of public officials, which will result in a lower level of corruption.\(^9\)\(^10\)

Public and controlling institutions should be clearly differentiated from democratic institutions. Democratic institutions are related to processes such as human and media freedoms, election, separation of powers, rule of law etc.\(^12\) These institutions regulate how political actors compete for access to the public institutions in a fair and foreseeable manner. Democratic institutions are fair if they give everyone a chance for access to public institutions. If political agents are treated equally, the turnover of political elites will be possible, because everyone will accept leaving the government when they lose the elections, since they know that they will have a chance to return after some future elections. If you knew you would never get a chance to return to office, you may never leave.\(^13\)

Let me now explain the causal link between public and democratic institutions. What happens with democratic institutions depends on what kind of public institutions the political elite finds when it wins elections and gets into office. If elites find public institutions that are well-regulated by controlling institutions


\(^11\) Weak public institutions cannot prevent the abuse of public resources, which are then used for private purposes rather than public. Each euro used for some private purposes is one euro less for some public services. (See: Vito Tanzi (2011) *Government versus Markets: The Changing Economic Role of the State.* Cambridge University Press. p. 231.) This will have repercussions for public wealth. As a consequence, the whole array of public services in which the state is heavily involved—education, health, infrastructure, the legal system, social policy, culture, local services etc.—suffers.


(you can spend, but there is someone who controls you), they will leave democratic institution intact. If, in contrast, public institutions are extractive (you can spend, and there is no one to control you), the elites will try to insulate the privileged access to public resources and keep it only for themselves. How can they do this? By subverting democratic process. The ruling elite will attempt to block the opposition from accessing public resources. This is precisely what happened in Macedonia and Serbia after 2007 and 2012, respectively. In other cases, such as Bosnia, Montenegro, and Albania, the truly democratic process never got off the ground—democratic institutions seems to have developed up to a point, and then have remained there for a long time. In Montenegro and Bosnia, the ruling elite basically have not changed since the breakdown of communism in 1990. Milo Đukanović, who served interchangeably as Premier and President for the past 27 years, probably understood the meaning of the extractive institutions in Montenegro already in 1990, and never let the opposition (except in a most selective way) get anywhere close to it.

Let me conclude this part of the paper by saying the following: when political officials find themselves surrounded by extractive public institutions, they will try to protect and insulate them from the opposition, which compete for access to the same institutions and the same resources. The most recent history of Western Balkan politics is full of examples which point to direct involvement of government officials in electoral fraud, corruption, abuse of power and authority, conflict of interest, blackmail, wiretapping, and criminal activity, but also in the nomination and appointment of public prosecutors and judges. These are all activities that are directed toward insuring this privileged access. The preference for non-democracy is, therefore, a consequence of the preference for privileged access to extractive public institutions.

14 The analogy can be found in the academic literature on the resource curse (Ross, 1999; 2012; 2015; Mehlum et al. 2006; Robinson et al. 2006). The literature examines why some countries which are rich in natural resources (such as oil) end up wealthy and some poor. The major argument is—because of the character of institutions. If they are grabbing friendly, the resources will be spend for a privileged minority. If they are producer friendly, they will raise income of all.

3. What Can Be Done?

There are two things that can be done to reverse such a worrisome trend in the Western Balkans. The first is to directly change some democratic institutions themselves—namely, the institutions that guarantee democratic process. Consider the electoral commissions in the Western Balkans. In no country under consideration is this commission a professional and independent body. Only in 2015-2016, the opposition was in the street in three Balkan countries over the electoral process. In Montenegro, the State Electoral Commission has been an object of contestation and mistrust. In 2016, for the first time, the rules have recently been changed to reflect a balance of power, which again leaves this body with a high political rather than professional nature. In Macedonia, the opposition was in the streets in 2015, asking for fair political process and free elections. As a solution, Premier Gruevski stepped down by the end of 2015, and agreed to a caretaker cabinet that will prepare free and fair elections. The early elections were scheduled for April 2016, but then were postponed until December 2016, due to Gruevski’s party’s frequent sabotages of the agreement. One of the reasons for this postponement was weak electoral process and an unreliable electoral commission. The commission is divided internally and sometimes blocked from decision-making.

In Serbia, the electoral commission was also an object of protest as a consequence of a rather non-transparent and unaccountable tabulation process, the absence of rules that mandate reporting the results, and discretionary powers in solving the electoral irregularities in 164 cases in an incoherent manner. This

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16 Independent from the executive power.
17 In Albania, a similar protest took place after the 2011 elections.
18 “Four SEC members are proposed by the parliamentary majority, four by the parliamentary opposition, one member is appointed from the minority representative who won the highest number of votes in the previous elections, and one member is a representative from the civil society. The chairperson is appointed by the parliament with the majority of votes, while a secretary is appointed from among the SEC members representing the opposition. In line with a previous OSCE/ODIHR recommendation, recent amendments foresee an increased capacity and responsibilities of the SEC. The law also grants the SEC a legal status and increases its operational budget. For the first time, the SEC has established the secretariat and was provided an office space, which was positively assessed by all OSCE/ODIHR NAM interlocutors.” (Montenegro OSCE Report, 2016, p. 5-6).
19 “The SEC worked in a very tense political environment and under criticism from the opposition and many civil society organisations, who were against holding elections on 5 June. It met the administrative deadlines and held regular meetings. Despite legal obligation to meet publicly, the SEC conducted two closed official sessions and regularly also held “working sessions” that were closed to the public. Its decisions were not systematically published on its website, diminishing the transparency of its work. In addition, sessions of the SEC were boycotted by two opposition members.” (Macedonia, OSCE Report on Early Parliamentary Elections 2016, p. 2).
21 OSCE Report Serbia, 2016, p. 3.
led to getting one opposition list below the threshold, which brought about the street protest of the opposition and physical conflict between the opposition’s members and the members of the commission on April 29, 2016.

Consider the examples of fair media representation. In every Balkan country, national broadcasters allocate televised time for each political agent that participates in elections during the electoral campaign. Judged from this viewpoint, all political actors are represented equally and fairly on national TV stations. Yet, this totally misses the point since the major campaign for the ruling party (coalition) takes place outside this allocated time. Media are not required to differentiate between coverage of state officials (presidents, premiers, ministers etc.) and electoral agents. But presidents, premiers, and ministers frequently take part in the campaign as electoral agents rather than as public officials, thereby giving indirect or direct support for the ruling party or coalition. When one takes into account this time and calculates the time allocated to the election campaign, one gets a huge disproportion in allocated time and unequal treatment of the government and the opposition.

If we change the institutions that regulate media presentation of political agents, we could ensure a fairer democratic process and directly facilitate democratic outcomes.
4. The Reform of Public Institutions

There is a second and more critical thing we can do. We can change the character of public institutions. Instead of letting them be extractive, we can transform them to be inclusive: instead of motivating grabbing behaviour, they can motivate responsible behaviour amongst politicians.

Let me now give you a few short examples of extractive public institutions from the WB5 countries.

Kemal Čaušević is a former head of the Bosnian office for indirect taxation (2003-2011).22

He was arrested in 2014 for enabling custom and tax evasion for selected Bosnian tycoons. The total damage of this activity, in terms of missing tax revenues that could be used for financing public goods and services, was estimated at 1 million KM.23 While in office, Čaušević bought half a dozen apartments and pieces real estate in Bosnia worth 1.8 million KM.24

Ardian Fullani was a former Albanian central bank governor in 2004-2014. He was arrested in 2014 for embezzling $6.6 million from the Albanian central bank’s vaults. The governor was removed from office, but in October 2015, the court ruled to acquit him.25

In 2007, the officials of the Montenegrin municipality Budva sold a piece of land on the Košljun hill (located above the Budva town) to a company named SP Luna for €1.4 million. The company, however, shortly afterwards sold the land over to an Arabic company for €11 million. This is not all. The municipality issued a bank guarantee to SP Luna to be able to pay the initial €1.4 million. SP Luna has never returned the loan to Prva Banka, and the municipality had to pay the debt. The total loss for the municipality is €12.4 million.

In 2015, the Serbian state audit commission released a report26 about irresponsible spending at the local level. It found that many municipalities set up various types of commissions for administrative work that is usually carried out by a single bureaucrat or specific offices (provided there are clear rules that serve as guidelines). Among them are: stamp and seals extermination commission, commission for the inventory of strayed dogs in dog asylums, commission for establishing the minimal fulfilment of criteria of the beaches, commission for religious matters, commission for billboards, etc. The total amount of public money spent for the operation of these commissions in 2014 amounts to about €500 million.

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Most of these commissions were under no surveillance by any controlling institution.

I could go on and find more similar examples for any WB5 country. Yet, I believe that the picture is already clear: what unites all these examples are opportunities created by weak public institutions for these people to abuse public office, use public resources, and get off the hook (And these are only some of the known examples. Imagine what would be the total amount of damage if all unknown examples would become known.). No wonder then that politicians and public officials jointly work on the undermining of democratic institutions: if you make it more difficult for the opposition to remove you from power in free and fair elections, the opportunity for you to continue to exploit public resources will grow larger. This mechanism lies at the heart of the most recent democracy decline in the Western Balkans. The administration continues to collect taxes and contributions, but rather then spending them for public goods and services, a significant amount of state revenue goes into private pockets. Public intuitions allocate public resources in the wrong way. The recent democratic decay in the Balkans is happening in order to ensure this “wrong” way.

Figure 4 shows a clear parallel trend between public and democratic institutions in the WB5. We can observe a decline in both public and democratic institutions – when the extractive institutions index is going down (left scale in Figure 4) and the FH’s democracy score index is rising (right scale), it means that both the strength of public institutions and democratic institutions are declining at the same time. Therefore, the weaker the public institutions are, the weaker the democratic institutions.

Can we change public institutions? Yes, if we change the controlling institutions. To accomplish both things, we could be guided by several simple rules that can be made a mandatory component of any public institutional reforms in the Western Balkans. Here is the list of question one could ask anytime public money is used.

Figure 4: WEF extractive institutions (left scale) and FH democracy score (right scale).

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27 The left scale in Figure 4 shows the values for my own composite sub-index of extractive institutions extracted from the World Economic Forum institutions index. (The sub-index includes: diversion of public funds, favoritism in government decisions, wastefulness of government spending, burden of government regulations, public trust in politicians, irregular payments and bribes, and transparency of government policy making). The right scale shows Freedom House’s democracy score (from the study Nations in Transit).
Is the budget transparent? 
Is the contract public? 
Is the payment overblown? 
Is it sold below market prices? 
Has an inventory been taken? 
Is the private partner the appropriate one? 
Is the given money actually spent? 
Who was fined, a person or an institution?

**Transparency of the budget.** Many private partners receive money from the state budget. Every such contract should be published and put on websites. This goes for contracts with public and communal enterprises, local municipalities, cultural public institutions as well as funds, agencies, directorates etc. The public should be empowered to know about the manner in which each cent of public money is spent.

**Transparency of the contract.** Recently, some WB6 governments have signed direct contracts for large world corporations to come to their countries to do business. Some of these contracts are not public. They are usually presented as large direct investments in the local economy, but may contain corruptive clauses, which are only familiar to the contracting parties. If all contracts would be known, such a corruptive practice could be reduced.

**Overblown payment.** In public tender procedures, the public administration bodies frequently overpay for a service from a private company. If a controlling body had a mandate to look into these procedures and compare the payment with market prices, this problem could be reduced and public funds could be safer.

**Sale below market prices.** The land on the Košljun hill was obviously sold below the market value. In such a case, a controlling body could block the sale or cancel it.

**Is the private partner the appropriate one?** Apex Company, which won the tender to do the bus fare system in the city of Belgrade in 2010, was formed several days before the tender. The company obviously had no history, and was most likely formed only for this occasion. If we always insist on the history of the private agents who cooperate with public administration or public companies, we could pick the “right” partners for the public sector, thus reducing corruption.

**Inventory.** In the whole Central and East Europe, privatisation was done without proper inventory listing. If you sell a company but you do not know exactly what you are selling, it creates room for corruption.

**Is the given money actually spent?** Most Balkan countries are today giving out subsidies in order to attract foreign investors. But sometimes these subsidies are not actually spent on production. If there is a body that would keep the spending under surveillance, we could reduce the abuse.

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28 The “right” partners are those companies that have been in business for a longer time. Such firms are more likely to do the job, rather than seek rents.
Fine. Sometimes a responsible individual (prime minister, minister, head of agency or public enterprise) is fined for violating anti-corruptive norms. But these payments are paid out of the responsible agency’s budget rather than from the responsible individual’s own pocket. No responsible behaviour can come out of this practice. If responsible individuals have to pay out of their own pockets, their behaviour would change.

Of course, to be able to ask all these questions, we need to have strong controlling institutions that will oversee what politicians, ministers, and other types of public officials do when they spend public money. These are independent and professional judiciary and public prosecutors, state audit institutions, agency for the fight against corruption, ombudsperson, official for information of public relevance, and so on. We could insure greater independence of these institutions and make them the focus of our attention. Rather than looking at the significant and impressive progress EU candidates ensured in the past year on paper, we could actually look into to what extent these institutions are allowed do their work.29

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29 Something similar is exemplified by the World Bank’s Doing Business DTF index (DTF=distance to frontier). The index measures changes in regulatory reform without taking into account what is happening in the economy. As a consequence, some WB5 countries are rather high on the list, even if their economies are not performing that well.
5. The Role of the EU

It is extremely unlikely that the Balkan countries will implement the abovementioned reform of public and democratic institutions by themselves. Their leaders, politicians, bureaucrats, and tycoons have little or no incentive to do it by themselves. The EU can help, but the EU integration process has to be modified.

The EU integration process used to be a process that helped former communist countries not only to access the EU by way of transforming a socialist economy into a market economy, but also by democratising. This appears to have changed after 2000. The EU integrations apparently still make a great difference on the democratisation process but in the wrong direction. Rather than guiding an applicant towards the EU, it seems to be ensuring a process that will have the opposite outcome of what has been intended.

The major problem with the current EU integration policy is that it is too shallow. The WB5 applicants are given certain tasks such as legislative changes they need to implement in order to meet certain targets (embodied in *acquies communi-taire*). At the level of legislative change, things are usually fine: laws are adopted and changed, and many agencies and institutions that did not exist prior to 1990 now do exist in all former communist countries. If the applicant hits the legislative target, it gets a positive grade from the European Commission, and it opens a new chapter from the EU integration cookbook.

But this is a rather shallow policy. This kind of approach does not take into account the nitty-gritty of the democratic process and the transparency of public institutions. Do the EU commission agents care if the Balkan electoral commissions are composed exclusively of party people? Do they care if in reality the cabinet’s members are given 70% of the positive broadcasting time in a positive light, and the oppositional leaders occupy the remaining 30% in a negative light in the broadcasting space? Do they care if a Balkan prime minister and his cabinet are caught wiretapping 20,000 people not as a security, but rather as a political measure? Do they care if a national bank’s governor embezzled €6.6 million and walked away?

Sometimes, some European and EU officials give a practical boost for the undemocratic practices in the Balkans. Sebastian Kurtz (foreign minister of Austria) frequently visits Serbia and always gives a pat on the back to Mr Vučić. Is this pat a kind of reward for the fact that the Serbian police and prosecution cannot for more than six months launch an investigation into demolishing of private property in the downtown Belgrade on April 25, 2016?

Johannes Hahn, the EU commissioner for enlargement, when asked what the EU thinks about the increasing censorship in Serbian media under the Vučić cabinet, retorted: “Censorship? Give me proof for that!” Yet, it is he who, as a commissioner, should be searching for proof, because this is his job.

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Sometimes the EU does produce accurate documents with precise meanings and recommendations. But reports are rarely read. In contrast, everyone sees a friendly hug on TV.

The EU is currently troubled with its own recent instabilities, which relate to the 2008 financial and debt crisis, the refugee crisis, common currency problems, the rise of the far right (and its possible victory in Austria), Brexit, the worsening of democracy in some EU countries themselves (such as Poland and Hungary), the consolidation of authoritarianism in Turkey, and a possible victory of Donald Trump in the United States. A shallow EU integration policy could additionally reduce the European Eurosceptics’s appetite for enlargement, which is already at a rather low level.

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The European Fund for the Balkans

The European Fund for the Balkans is a joint initiative of European foundations designed to undertake and support initiatives aimed at bringing the Western Balkans closer to the European Union through grant-giving and operational programmes and, as such, is focused on individuals and organisations from Western Balkan countries.

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