

## Integration and (political) opposition in the light of the EU enlargement to South-East: The cases of Montenegro and Albania\*

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### 1. Introduction

The enlargement to the Western Balkans is one of the most pressing issue for the European Union, which is geographically surrounding the area. The 2020 Josep Borrell’s statement “[t]he European Union is not complete without the Western Balkans” represents a clear evidence of the contemporary attitude characterising the EU geopolitical policy, which opened-up several cooperation activities and action plans to guarantee that WB countries meet with the *acquis communautaire*<sup>1</sup>.

Based on Title V TEU (external action), art. 49 TEU, and art. 207 TFUE, the 1999 Stabilisation and Association Process (SAP, subsequently replaced by the Regional Cooperation Council in 2008) started the EU strategy in promoting peace, stability and economic development within the region, in order of increasing integration processes<sup>2</sup>. South-East European countries, such as Montenegro and

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\* The article has been submitted to a double-blind peer review process according to the journal’s guidelines. The content has been drafted within the framework of the research project on “The legal status of political opposition in the Western Balkans: A comparative analysis”, co-funded by the Jean Monnet Module “The rule of law in the new EU Member States” (EUinCEE, no. 620097-EPP-1-2020-1-ITEPPJMO-MODULE), University of Trieste.

<sup>1</sup> HR/VP Borrell in Kosovo: *the European Union is not complete without the Western Balkans*, in *European External Action Service*, 30.01.2020, <<https://www.eeas.europa.eu/>>.

<sup>2</sup> The EU enlargement process involve a considerable amount of theoretical and practical issues that cannot be ignored, but neither they may be addressed in a proper and concise way within a single article’s paragraph. For instance, this matter regards the EU legal system in general and crucial political aspects, as well as theoretical issues related, for instance, to conditionality, states’ responses, EU standards, common identity, etc. For such reasons, the article refers to specific scholarship on these subjects. About the general principles of the EU and the processes of integration (as well as enlargement): G. Martinico, *General principles of EU law and comparative law*, in K.S. Ziegler – P.J. Neuvonen

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Albania, are currently under the spotlight also in the view of an accelerated accession process triggered by the current political crisis between Russia and Ukraine<sup>3</sup>.

Following the independence in 2006, Montenegro gained the candidate status on December 2010. On June 2014, accession negotiations started; to date, 33 chapters have been opened, the last one on competition policy has been opened in June 2020. If compared with other WB countries and along with Serbia, Montenegro has been considered as a ‘frontrunner’, namely a country that is supposed to become an EU member in a short period of time; however, recent political instability is leading to a temporary stalemate<sup>4</sup>.

After the application for the EU membership on April 2009, Albania gained the candidate status on June 2014. After several attempts, in July 2022 joint negotiations (along with North Macedonia) had been formally opened.

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- V. Moreno-Lax (eds.), *Research Handbook on General Principles in EU Law: Constructing Legal Orders in Europe*, Cheltenham, 2022, p. 82 ff.; J.H.H. Weiler, *The political and legal culture of European integration: An exploratory essay*, in *International Journal of Constitutional Law*, 2011, p. 678 ff.; for historical and general aspects see V. Curzon Price – A. Landau – R. Whitman (eds.), *The Enlargement of the European Union: Issues and Strategies*, London-New York, 1999; H.A. Ikonomou – A. Andry – R. Byberg (eds.), *European Enlargement across Rounds and Beyond Borders*, London-New York, 2019; H. Berger – T. Moutos (eds.), *Managing European Union Enlargement*, Boston, 2004; S. Keil – Z. Arka (eds.), *The EU and Member State Building: European Foreign Policy in the Western Balkans*, London-New York, 2015. On the hypothesis of alternative cooperation and differentiated integration: M. Milenković, *Differentiated integration of the Western Balkans – emerging alternative membership options?*, in L. Montanari – A-O Cozzi – M. Milenković – I. Ristić (eds.), *We, the People of the United Europe: Reflections on the European State of Mind*, Naples, 2022, p. 235 ff.; B. Leruth – S. Gänzle – J. Trondal (eds.), *Routledge Handbook of Differentiation in the European Union*, London-New York, 2022. In reference to conditionality see at least L. Montanari, *Condizionalità ed allargamento, tra valori e politica*, in *Diritto pubblico comparato ed europeo*, 2023, p. 279 ff.; M. Dicosola, *Condizionalità, transizioni costituzionali e diritti delle minoranze negli Stati dell'ex Jugoslavia*, in *Diritto pubblico comparato ed europeo*, 2018, p. 667 ff.; A. Baraggia, *Identity and Conditionality in the European Union*, in *Diritti comparati*, 2023, p. 1 ff.; Id., *Ricatto democratico? L'utilizzo della condizionalità a protezione dello Stato di diritto*, in *Quaderni costituzionali*, 2023, p. 355 ff.; D. Kochenov, *EU Enlargement and the Failure of Conditionality*, Alphen aan den Rijn, 2008; T. Sekulić, *The European Union and the Paradox of Enlargement: The Complex Accession of the Western Balkans*, Cham, 2020.

<sup>3</sup> For further considerations on this crisis as a potential ‘game changer’ see I. Ristić, *The war in Ukraine: An additional obstacle or a new chance for the EU enlargement in the Western Balkans?*, in L. Montanari – A-O Cozzi – M. Milenković – I. Ristić (eds.), *We, the People of the United Europe: Reflections on the European State of Mind*, cit., p. 215 ff. See also K. Beshku, *Save the EU's enlargement process! Are the cases of North Macedonia and Albania undermining it?*, in *ivi*, p. 249 ff.

<sup>4</sup> <<https://www.europarl.europa.eu/factsheets/en/sheet/168/the-western-balkans>>. For a critical overview on the enlargement process see A. Di Gregorio, *La nuova stagione di allargamento dell'Unione europea tra dilemmi della condizionalità democratica e fragilità costituzionale dei nuovi candidati*, in L. Montanari – A-O Cozzi – M. Milenković – I. Ristić (eds.), *We, the People of the United Europe: Reflections on the European State of Mind*, cit., p. 119 ff.; Id. (ed.), *The Constitutional Systems of Central-Eastern, Baltic and Balkan Europe*, The Hague, 2019; M. Calamo Specchia, *I Balcani occidentali: le costituzioni della transizione*, Torino, 2008. L. Montanari (a cura di), *L'allargamento dell'Unione europea e le transizioni costituzionali nei Balcani occidentali*, Naples, 2022.

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According to the revised methodology, one of the fundamental pillars for the accession to the EU is the set-up of stable political machineries that guarantees the effectiveness of the democratic principles. Debates on the role of political opposition develop within this framework, in order to foster clear assessments in reference to the political systems.

Moving from the aforementioned crucial issues, this essay provides an overall account on the EU Commission's evaluation on Montenegrin and Albanian oppositional politics within their democratic machineries in the light of the *acquis communautaire*. In doing so, the first paragraph tackles the subjective and objective features of opposition (both political and parliamentary), in order to assess the EU approach and the idea of the opposition deriving from the European tradition. The second and third paragraphs, after briefly introducing the constitutional frameworks in reference to the political system and governance, analyses the EU Commission's evaluation on specific phenomena concerning the opposition in Montenegro and Albania. Conclusion will merge the evaluation of both democratic experiences in the light of the accession to the EU, addressing the question on whether the status of opposition has been considered a pivotal element (especially for the democratic machinery) or one of the weak points in meeting EU standards.

## *2. Assessing the concept 'opposition' within democratic schemes*

The concept 'opposition' is multifaceted and can be approached from both subjective and objective perspectives. In the last meaning, opposition refers to resisting or challenging through force or argumentation; as a subject, in a democratic system, it is characterised for being the main institutionalised actor which expresses strong disagreement with the ruling party. In some specific cases, "The Opposition" denotes elected politicians from the largest party not in government within certain political systems, referring to a specific subject<sup>5</sup>.

Despite the apparent functional differences between subjective and objective features, distinct phenomena have led to a diverse array of variants, encompassing both

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<sup>5</sup> The most usual example is the one provided by the UK parliament in reference to His Majesty's Official Opposition and the role of the Shadow Cabinet within the political system. For a general introduction: I. Jennings, *Cabinet Government*, Cambridge, 1959; G. De Vergottini, *Lo «Shadow Cabinet»*. *Saggio comparativo sul rilievo costituzionale della opposizione nel regime parlamentare britannico*, Milan, 1980. On English constitutionalism see W. Bagehot, *The English Constitution*, Glasgow, 1963 (1<sup>st</sup> ed., 1867); A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8<sup>th</sup> ed., London, 1915; A. Torre, *Regno Unito*, Bologna, 2021. For an understanding of parliamentarism from sociological jurisprudence and the general theory of law: R. Pound, *The Spirit of the Common Law*, London-New York, 1999; G. Radbruch, *Der Geist des englischen Rechts*, Göttingen, 1958. For a comparison with the Italian experience: V. Casamassima, *L'opposizione in parlamento. Le esperienze britannica e italiana a confronto*, Milan, 2013.

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official and informal legal means. This diversity highlights the convergences and differences between four fundamental standards: social, political, parliamentary, and non-parliamentary (or extra-parliamentary) opposition<sup>6</sup>.

Sociological research suggests that opposition should be analysed in relation to the structures of public power and the dynamic aspects of political parties. Social opposition is characterised by a lack of clear definitions regarding its own characteristics, while political opposition is a phenomenon involving public power, with its characteristics varying according to the political regime<sup>7</sup>.

The scheme elaborated in *The legal framework of political and parliamentary opposition in the light of the EU Enlargement to the Western Balkans: A comparative foreword* provides an overview of the concept 'opposition' in parliamentary systems. The analysis highlighted the complexities and nuances of opposition both in theoretical and practical terms, also in reference to democratic structures, constitutional guarantees, and the rule of law (see Fig. 1).

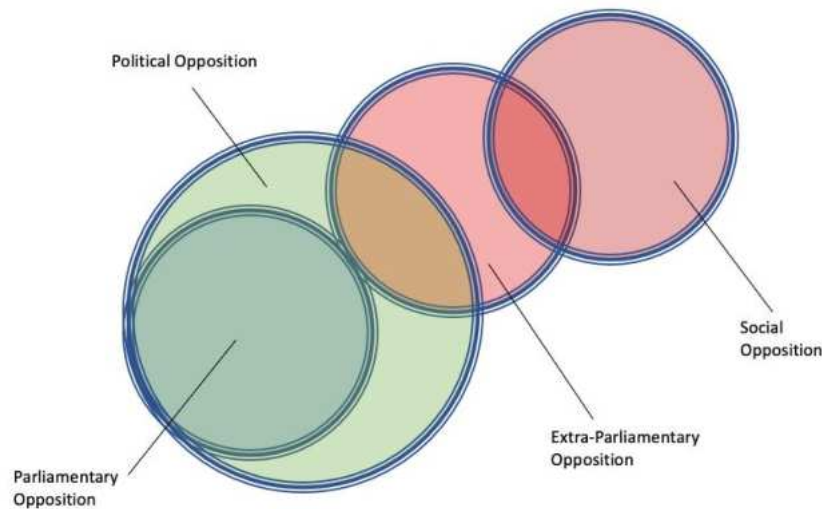
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<sup>6</sup> O. Massari, *Opposizione*, in N. Bobbio – N. Matteucci – G. Pasquino (a cura di), *Il Dizionario di Politica*, Turin, 2004, p. 640. See Fig. 1, *infra*.

<sup>7</sup> *Ivi*. See also O. Massari, *Natura e ruolo delle opposizioni politico-parlamentari*, in G. Pasquino (a cura di), *Opposizione, governo ombra, alternativa*, Rome-Bari, 1990, p. 29 ff.; L. Mezzetti, *Opposizione politica*, in *Dig. Disc. Pubbl.*, vol. X, Turin, p. 347 ff. Robert Alan Dahl analyses several common grounds related to democracy and the rule of law in terms of stability, maturity and tolerance, also referring to the distribution of economic and political resources and the interconnections between political cultures and legal traditions. R.A. Dahl (ed.), *Political Oppositions in Western Democracies*, New Haven, 1966; Id. (ed.), *Regimes and Oppositions*, New Haven, 1973; Id., *Poliarchia, partecipazione e opposizione nei sistemi politici*, Milan, 1980; see also G. Ieraci, *Power in office: Presidents, governments, and parliaments in the institutional design of contemporary democracies*, in *Constitutional Political Economy*, 2021, p. 413 ff. For further perspectives on this complex phenomena: G. Ionescu – I. de Maderiaga, *Opposition: Past and Present of a Political Institution*, London, 1968; A. Lijphart, *Le democrazie contemporanee*, Bologna, 1988; G. Sartori, *Democrazia e definizioni*, Bologna, 1969; Id., *Opposition and control: Problems and prospects*, in *Government and Opposition*, 1966, p. 149 ff.; Id., *Parties and Party Systems: A Framework for Analysis*, Cambridge, 1976; Id., *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, Basingstoke, 1996; M. Duverger, *I partiti politici*, Milan, 1980. With specific reference to the EU enlargement to the Western Balkans see S. Baldin – A. Di Gregorio (eds.), *The Legal and Political Conditions of Opposition Parties in Central and Eastern Europe. An Overview*, Trieste, 2023.



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**Fig. 1:** four basic standards of the concept ‘opposition’: 1) social, 2) political, 3) parliamentary, and 4) non-parliamentary (or extra-parliamentary). Source: P. Viola, *The legal framework of political and parliamentary opposition in the light of the EU Enlargement to the Western Balkans: A comparative foreword*, in *Ordines*, 2023, p. 45 ff.

Defining the constitutional role of opposition is considered a crucial tool for democratisation, transforming political opposition into parliamentary, which is characterised by its organised, pluralistic and permanent nature. Other practices can be external to the institutional framework, such as in the case of extra-parliamentary opposition, which may seek space within democratic representation or operate outside it.

The concept of parliamentary opposition is closely tied to democratic structures, constitutional guarantees, and the rule of law. Within this framework, three fundamental aspects are crucial: functions (controlling, conditioning, influencing, and criticising the government), organisation (e.g., government-in-waiting), and structure (e.g., shadow government and parliamentary groups)<sup>8</sup>.

In most European parliamentary systems, the government represents the majority, and the debate focuses on the rights of the political minority regarding procedures, access to information, representation, and participation. This definition is

<sup>8</sup> O. Massari, *Natura e ruolo delle opposizioni politico-parlamentari*, cit.; A. Rinella, *Materiali per uno studio di diritto comparato su lo “Statuto costituzionale” dell’opposizione parlamentare*, Trieste, 1999. See also S. Curreri, *Lo stato dell’opposizione nelle principali democrazie europee*, in *Rivista AIC*, 2016, p. 1 ff.

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essential for a proper democratic system of government, including free elections, freedom of expression, and association. Thus, the legal aspects devoted to guaranteeing opposition cannot be ignored. Currently, opposition in Europe is typically conceived as a minority whose functions can be ensured by recognising specific rights. Institutionalising opposition requires constitutional recognition; therefore the legal status of parliamentary opposition is consequently the outcome of individual political and legal experiences influenced by cultural, political, and legal elements that foster different understandings of it. The Venice Commission notes that, in many cases, there is no direct recognition of opposition within state structures: it may be considered a label encompassing four categories of subjects within representative institutions, i.e., members of parliament (MPs as individuals), political groups, qualified minorities, and opposition (in general)<sup>9</sup>.

The constitutionalisation of the concept of opposition is a critical aspect of liberal democracies as it defines the framework within which legal arrangements evolve. The principles that shape the legal status of opposition in liberal democracies can be summarised as accountability, pluralism, political solidarity, alternation, effective decision-making, and citizen participation<sup>10</sup>. Parliamentary minorities play a crucial role as the largest parliamentary group not part of government in a political system based on the vote of confidence. In other cases, they can be defined indirectly according to political and legal criteria. Furthermore, in federal systems or bicameral parliaments with different election periods for houses, minority parties in one house may have a majority in another.

In order to define opposition through a proper legal framework, the European tradition emphasises individual and group's rights and duties, rather than a proper individual subject. As first, such an approach fosters incertitude in dealing with not-well-designed subjects and functions, leaving room for a blurry definition of 'opposition'—both political and parliamentary—grounded on the general attitude towards the government; in other words, the basic means to define it is an *ex post* evaluation on the "fact of opposing" to executive's political trajectories<sup>11</sup>.

In reference to the EU's evaluation in the light of a possible—foreseen or even expected—enlargement to the Western Balkans, the basic evaluation on the EU *acquis*

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<sup>9</sup> European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, 84<sup>th</sup> Plenary Session, Venice, 15-16 October 2010.

<sup>10</sup> E. Bulmer, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, 2021.

<sup>11</sup> O. Massari, *Opposizione*, cit.; P. Viola, *The legal framework of political and parliamentary opposition in the light of the EU Enlargement to the Western Balkans: A comparative foreword*, in *Ordines*, 2023, p. 45 ff.

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does not address the existence of a devoted legal and institutional space for opposition as an autonomous subject, but on the aforementioned *ex post* evaluation, while addressing functional rights—and duties—for democratically contrasting the government, especially through freedom of expression, independence of the media, minorities' rights in general. The Commission evaluation on politics' functioning of candidate states and the interconnections with the legal framework proves the aforesaid attitude, thus nurturing incertitude between functional features (e.g. freedom of expression and minorities' rights) and a proper democratic institutional set-up.

### 3. *Constitutional framework, governance and opposition in Montenegro*

Montenegro form of government operates under a parliamentary representative democratic republic. At the core of this system is the Prime Minister, who serves as the head of government, alongside a multi-party structure; executive power is carried out by the government, while legislative authority is shared between the government and the parliament<sup>12</sup>.

Since the preamble, the constitution of Montenegro outlines the commitment of its citizens to fundamental values such as freedom, peace, tolerance, and respect for human rights, defining a specific constitutional order which designs a civil, democratic, and ecological state founded on social justice and the rule of law.

A key-principle guiding Montenegro's governance is the separation of powers into three distinct branches: the parliament exercises legislative power, while the government carries out executive competences. According to art. 11, this structure not only limits the power of government through constitutional constraints, but also promotes a system of mutual oversight among the branches.

About the structure and the role of the parliament, it is composed by 81 directly elected members, chosen through democratic processes. The parliament holds significant responsibilities, including the election and dismissal of the Prime Minister and government members. It operates under a mandate lasting four years, a period during which it must ensure effective governance and legislative functionality. For guaranteeing the need for accountability and prompt governance, dissolution may

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<sup>12</sup> In 2022, the Economist Intelligence Unit categorised Montenegro as a 'flawed democracy', while Freedom House classified it as 'partly free' (69/100) under transitional or hybrid regime (46/100). Also for such reasons, the EU Commission highlighted the need of further analysis (the report refers to 'exploration') of its political dynamics.

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occur in case the parliament fail to elect a government within 90 days “from the date when the President of Montenegro proposed for the first time the candidate for the position of the Prime Minister”<sup>13</sup>. The president is the head of the state, representing the nation both domestically and internationally, commanding the military, and proclaiming laws. The president is elected through direct and secret ballot, ensuring that the position remains accountable to the electorate. The government of Montenegro is tasked with a variety of responsibilities that encompass both internal and foreign policy management, law enforcement, and international relations. For instance, it proposes development plans and national security strategies that lay the groundwork for the country’s future direction.

In reference to Montenegro’s approach to political rights, art. 45 guarantees every citizen, aged at least 18, the right to vote and run for office, reflecting a commitment to general and equal electoral rights through free and direct elections conducted by secret ballot. However, this theoretical framework asks for analysis regarding how these rights are upheld in practice, especially in light of the country’s classification as a flawed democracy<sup>14</sup>. Regarding the protection of minority rights, art. 79 ensures that individuals from minority nations can exercise their rights—either individually or collectively—and have authentic representation in parliament and local governments where they comprise a substantial portion of the population. This is an essential aspect of Montenegro’s multicultural identity, promoting inclusivity and recognition of diverse communities. Furthermore, art. 80 explicitly prohibits the forceful assimilation of minority groups<sup>15</sup>, highlighting the state’s commitment to protecting cultural identities.

Montenegro has been considered, along with Serbia, a ‘frontrunner’ for the accession to the European Union. Following the collapse of Yugoslavia, Montenegro represent a case of no severe ethnic conflict arising from the independence, and it is not by chance that such kind of political unity is the outcome of multiple cultural social groups still striving for finding a specific Montenegrin identity<sup>16</sup>.

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<sup>13</sup> Articles 84 and 92, Constitution of Montenegro. All constitutional articles have been consulted in their English text according to the official translation provided by competent offices, and also compared with those provided by Oxford Constitutions (available at <<http://oxcon.oupplaw.com>>) and Constitute Project (available at <<https://www.constituteproject.org/>>).

<sup>14</sup> See *supra* n. 12.

<sup>15</sup> Art. 80, Constitution of Montenegro.

<sup>16</sup> E. Cukani, *Quel che resta dello Stato. Il differenziale, territoriale e non, delle autonomie nei Balcani occidentali*, Naples, 2018. See also E. Skrebo, *Stato di diritto e Balcani occidentali: un percorso di adesione all’Unione europea in salita*, in *DPCE online*, 2023, p. 3433 ff.



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The “post-socialist condition” nurtured many issues deriving from political transition, economic restructuring and social transformation, having an impact on civic engagement, associational life, and protest politics<sup>17</sup>.

Under functionalist, normativist and structuralist methodology, Bojan Baća identifies three stages for understanding the democratisation process<sup>18</sup>. The first stage starts in January 1989, with mass protests against the party-state leadership, and lasts till the second half of the Nineties, leaving a “highly politicized civil society”<sup>19</sup> split into pro-Milošević electoral base (DPS conservative groups) and anti-Milošević coalition, the latter embracing DPS reformists, progressive opposition and liberal civil society<sup>20</sup>. The second stage begins with the efforts in delegitimizing protest politics occurred after the “unsuccessful January 1998 uprising”<sup>21</sup>, which almost led to civil war, ending with the 2006 independence referendum, leaving a non-contentious and institutionalised political environment that “underwent ethnopolitical narrowing based on an unusual formula: Montenegrins plus ethnonational minorities minus (pro-union) Serbs”<sup>22</sup>. The third stage embraces recent events (till 2020), and is characterised by a “temporary yet impactful recalibration of *demos* into *ethnos*”<sup>23</sup> which had a strong impact on DPS opponents and civil society opposition<sup>24</sup>, coping with a ratio according to which the

<sup>17</sup> B. Baća, *Three stages of civil society development in the Global East: Lessons from Montenegro, 1989–2020*, in *Political Geography*, 2024, 1 ff.

<sup>18</sup> Ivi.

<sup>19</sup> Ivi, p. 5.

<sup>20</sup> S. Darmanović, *Montenegro: The dilemmas of a small Republic*, in *Journal of Democracy*, 2003, p. 145 ff.

<sup>21</sup> B. Baća, *Three stages of civil society development in the Global East: Lessons from Montenegro, 1989–2020*, cit., p. 5.

<sup>22</sup> Ibid. In the aftermath of a socio-economic crisis and the Yugoslav war, even peace movements opposing DPS were labelled as “traitors of their country”, “enemies of Yugoslavia”, “treacherous and dangerous separatists”, but “[t]he unintended consequence of this stigmatization was consolidation and coordination of progressive forces around key political principles rooted in the desire for democratization of the country” (Ivi, p. 4). See also E. Dabizinić, *Between resistance and repatriarchalization: Women’s activism in the Bay of Kotor in the 1990s*, in *Comparative Southeast European Studies*, 2021, p. 45 ff.; F. Kovačević, *Montenegro and the politics of postcommunist transition: 1990 to 2006*, in *Mediterranean Quarterly*, 2007, p. 72 ff.

<sup>23</sup> B. Baća, *Three stages of civil society development in the Global East: Lessons from Montenegro, 1989–2020*, cit., p. 4.

<sup>24</sup> Also new technologies, such as the internet, nurtured civic participation for guaranteeing civil liberties and political rights. For instance, in 2015, against government’s repressive methods and in defence of the opposition coalition’s rights, 10.000 people rallied for free and fair elections. The 2019 *Resist! (Odupri se!)* movement provides another example of online activism. B. Baća, *Forging civic bonds “from below”: Montenegrin activist youth between ethnonational disidentification and political subjectivation*, in T.P. Trošt – D. Mandić (eds.), *Changing Youth Values in Southeast Europe: Beyond ethnicity*, London-New York, 2018, p. 127 ff.; L. Camaj, *Producing anti-regime protest news in a polarized and clientelistic media system: A frame*

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DPS rule was a *conditio sine qua non* for independence and Westernisation<sup>25</sup>. The third stage witnessed the collapse of the DPS as dominant ruling party since the introduction of the multi-party system in 1990<sup>26</sup>.

Since 2021, due to political polarisation and instability<sup>27</sup>, Montenegro political system had to cope with a caretaker government, which had an impact on the legislative activity of the parliament in designing the reforms requested by the EU for the accession negotiation, and the issues regarding the constitutional court, which nurtured “uncertainties and legal discrepancies”<sup>28</sup>. Within this scenario, the EU provided technical and financial support for meeting the rule of law requirements as per the Negotiating Framework. Specifically, the package offered EUR 30 million for the energy emergency to cope with the Russia-Ukraine crisis, and made available EUR 500 million under the Western Balkans Investment Framework.

The first session of the parliament after the 2023 elections was held on the 27<sup>th</sup> of July, but still remain issues in reference to real cooperation between majority and oppositions, forcing the adoption of laws by a simple majority (41 out of 81 seats), thus impacting participation and democratic discussions due to the boycott of several members of the parliament.

As the European Commission highlighted, the legislator failed in drafting and adopting laws on government and parliament according to the EU and the Venice Commission recommendations, thus impacting on governance’s effectiveness. Other cases of absence in discussing reforms before adoption regard the parliament, the executive and independent institutions, such as in the case of a specific law on compensation that was basically defined by the Committee on Economy, Finance and

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*building approach*, in *Journalism*, 2023, p. 1034 ff.; A. Sartori – J. Pranzl, *Politics going civil: Contentious (party) politics in Montenegro*, in *Südosteuropa*, 2018, p. 554 ff.

<sup>25</sup> E. Paleviq, *Montenegro – a democracy under Siege?*, in *Der Donauraum*, 2020, p. 59 ff.; J. Dzankić – S. Keil, *State-sponsored populism and the rise of populist governance: The case of Montenegro*, in *Journal of Balkan and Near Eastern Studies*, 2017, p. 403 ff.

<sup>26</sup> In a very intricate period of transition initiated during the Nineties, and in spite of being currently at the opposition, the DPS still represent one of the major political forces in the country, although for some scholars the governing years marked the establishment of a hybrid regime (see *supra*). In three decades, difficulties arising from the democratisation of the country designed, according to Dimitri Sotiropoulos, a passive parliament which is far from the expected role it should assume in contemporary democracies. Id., *The Irregular Pendulum of Democracy Populism, Clientelism and Corruption in Post-Yugoslav Successor States*, Cham, 2023.

<sup>27</sup> Commission Staff Working Document, Montenegro 2023 Report (Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions), Communication on EU Enlargement policy, Brussels, 8/11/2023 (hereinafter ‘Montenegro 2023 Report’).

<sup>28</sup> Montenegro 2023 Report, cit., p. 3.

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Budget. Furthermore, in terms of rules of procedures, the EU pointed out the absence of a uniform practice for parliamentary hearings and for discussing proposed legislation<sup>29</sup>. However, the legislative body tried to fulfil its commitments of openness and transparency, also in the view of a more participatory and integrated democratic machinery. In reference to this point, the parliament responded to 37 public appeals, offering means for citizens' submissions (99) and e-petitions (15)<sup>30</sup>, while stimulating public participation in decision-making and policymaking processes through citizens' assemblies<sup>31</sup>.

In recent years, efforts have been made for promoting women participation to politics through the cross-party Women's Club, while the Committee on Human Rights and Freedoms received no petitions for violations related to the Code of Ethics. In April 2023, the parliament adopted a decision for allowing criminal proceedings for abuse of their office regarding five members of the parliament. Though, in terms of meeting the requirements for the EU accession, there was no specific parliamentary activity and the last session (at the November 2023) of the Committee on European Integration took place on July 2022.

The EU Commission's evaluation on the Montenegrin democratic machinery and the role of opposition within the political system stressed several critical points, nurtured by 'tense and confrontational positions', an unstable majority for implementing legislative reforms, the 'blockage' of the political apparatus, little parliamentary accountability and government oversight due to the lack of effective political dialogue and constructive engagement between political parties<sup>32</sup>.

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<sup>29</sup> As the Montenegro 2023 Report highlights (p. 14), parliament suffered some limitations in its oversight function, as in the case occurred in reference to the PM hour, which the rules of procedure require to take place once in a month, while they took place only two times in the period covered by the 2023 report. Differently, "[p]arliamentary committees held 27 consultative and nine control hearings [...] regarding] numerous reports that independent bodies submitted to the Parliament in accordance with the law".

<sup>30</sup> Data as per the Montenegro 2023 Report, cit. Amongst the e-petitions, one have been the object of a consultative hearing before the Committee on Health, Labour and Social Welfare.

<sup>31</sup> In cooperation with the EU parliament, the Montenegrin legislative body organised a Youth Parliament Session and the 'Simulation of Parliament' for high school students.

<sup>32</sup> Montenegro 2023 Report. As an example of difficulties in cooperation between the executive and the opposition, in November 2022 President Dukanović referred the proposed amendments to the Law on President to the Venice Commission for an urgent opinion. The Commission concluded that the amendments had been adopted by a parliamentary majority that was insufficient under the existing constitutional provisions for such revisions. Despite this assessment, the same parliamentary majority proceeded to adopt the amendments once more and provided a mandate to MP Lekic to form a new government (failing in this task). The issue intensified as controversies arose surrounding the amended law, prompting the opposition to claim that it was unconstitutional and leading to their boycott of most parliamentary sessions from October 2022 until April 2023. In June 2023, the constitutional court

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Thus, in spite of suitable pre-conditions, implementation of parliament's openness, transparency, and control and supervisory functions, although promising forecasts referring to progresses towards the EU membership, the Commission pointed out the country's need for addressing corruption, ensuring accountability and transparency, and strengthening its institutions<sup>33</sup>, considering that Montenegro's progresses are hindered by deep political polarisation and instability requiring to address its rule of law deficiencies for supporting institutions<sup>34</sup>.

#### 4. *Constitutional framework, governance and opposition in Albania*

Albania operates as a unitary parliamentary republic, characterised by a democratic multi-party system where the president serves as the head of state, while the Prime Minister takes on the role of head of government. This clear delineation of responsibilities underscores the effective functioning of the state, with the executive power being vested in the government and the Prime Minister, along with the cabinet. The parliament of Albania is charged with legislative power, ensuring a separation of functions that is critical for democratic governance. The judiciary, distinct from both the executive and legislature, upholds an independent system essential for guaranteeing the rule of law.

The Preamble of the Albanian constitution highlights the nation's commitment to establishing a rule of law that is both social and democratic, a pledge towards safeguarding fundamental human rights and freedoms. Art. 1 lists several basic features

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unanimously repealed the contentious amendments to the Law on President. For further critical insights: D. Vuković-Ćalasan, *Montenegro in the process of EU integration. Political identity between a civic and an ethno-state*, in L. Montanari – A-O Cozzi – M. Milenković – I. Ristić (eds.), *We, the People of the United Europe: Reflections on the European State of Mind*, cit.

<sup>33</sup> Montenegro 2023 Report. Another case of frictions between the government and the opposition regards the parliamentary debate on the Anti-Corruption Agency (ACA) 2021 annual report. A group of MPs demanded to remove the management of the ACA, raising concerns about its impartiality and alleged bias in handling cases involving the previous political majority. In response, the parliament's Anti-Corruption Committee formed a working group aimed at proposing amendments to the Law on the Prevention of Corruption (LPC) to enhance parliamentary oversight of the ACA and hold its management accountable for any biased behaviour. The working group began its work in early 2023, while members of the parliamentary opposition and the ACA Director opted not to participate. The EU Commission considered these events as an evidence of the fact that Montenegro political framework still faces challenges in establishing strong leadership and a unified approach to revising and improving its legal and institutional machinery for combating corruption in alignment with the EU *acquis* and international standards.

<sup>34</sup> Montenegro 2023 Report, cit.



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of the state (parliamentary republic, unitary, indivisible), it is worth to underline §3 points out that governance is grounded in the principles of free, equal, general, and periodic elections<sup>35</sup>.

The Assembly, comprised of 140 deputies elected through a proportional system<sup>36</sup>, plays a crucial role in the legislative process. Elections are conducted every four years<sup>37</sup>, with the mandate of the Assembly beginning upon its first meeting. Notably, if the Assembly is dissolved before completing its term, elections must occur within 45 days, ensuring continuity in governance<sup>38</sup>. The president of the republic is a symbol of national unity<sup>39</sup>, his duties include addressing the Assembly, pardon, and appointing representatives to international bodies<sup>40</sup>.

The Prime Minister, appointed by the president based on the majority party or coalition in the Assembly, leads the Council of Ministers. However, this prime ministerial appointment is subject to parliamentary approval<sup>41</sup>. If rejected, the president must appoint a new candidate within ten days, with the Assembly retaining the power to elect a new Prime Minister in case of failure. As per art. 96, §4, “if the Assembly fails to elect a new Prime Minister, the President of the Republic dissolves the Assembly”. One-fifth of the MPs may initiate a motion of no confidence against the Prime Minister, requiring a majority vote for approval. This mechanism is crucial for ensuring accountability within the executive branch, reflecting a commitment to democratic governance where leaders are responsible for their actions.

The principles of integrity and accountability are notably emphasised in art. 6, which prohibits individuals with compromised integrity from assuming public functions. This legal safeguard aims to protect the public trust and ensure that those in power serve with integrity and responsibility. Additionally, the constitution emphasises the importance of separating and balancing the legislative, executive, and judicial powers, a cornerstone of democratic governance<sup>42</sup>.

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<sup>35</sup> Art. 1, Constitution of Albania. As in the case of Montenegro, the Economist Intelligence Unit depicts Albania as a highly vulnerable country to social unrest and political instability. Freedom House classified Albania as ‘partly free’ (68/100), under transitional or hybrid regime (46/100), with strong political polarisation and charismatic legitimation of the leaders.

<sup>36</sup> Art. 64, Constitution of Albania.

<sup>37</sup> Art. 65, Constitution of Albania.

<sup>38</sup> Art. 65, §3, Constitution of Albania.

<sup>39</sup> Art. 86, Constitution of Albania.

<sup>40</sup> Art. 92, Constitution of Albania. According to art. 89, Constitution of Albania, “The President cannot hold any other public post, be a member of a party or carry out private activities”.

<sup>41</sup> Art. 96, Constitution of Albania.

<sup>42</sup> Art. 7, Constitution of Albania.

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The multi-party system represent a key feature of the constitutional order: political parties may be established freely, adhering to democratic principles<sup>43</sup>. However, there are strict prohibitions against parties that advocate for totalitarian ideologies or engage in violence to manipulate state policies<sup>44</sup>. Moreover, transparency regarding political party financing is mandated, ensuring that the sources and expenditures of parties remain public knowledge.

In reference to political rights and freedoms, the constitution ensures that every citizen over the age of 18 has the right to vote and be elected; however, citizens declared mentally incapable or those conforming to criminal sentences may face restrictions<sup>45</sup>. The essence of suffrage is upheld through provisions that guarantee personal, equal, free, and secret voting rights<sup>46</sup>.

The collapse of the USSR and the Yugoslavia dissolution (despite the challenging relations) did get an impact on Albania, although its trajectory towards democratic transition has been characterised by several specific factors. As first, the novel political asset did not nurture ethnic revivals, basically thanks to linguistic identity, the unitarian identity under the Ottoman Empire and a millet system, which managed to shaping a 'kin state' rather than a 'host state'<sup>47</sup>.

The post-Enver Hoxha Albania paved the way for the first attempts of participatory democracy guaranteeing the rights to freedom of speech and assembly, which steered, since December 1990, oppositional politics in the form of students protests to accommodate the requests for a multiparty system and the emersion of opposition parties (namely 6)<sup>48</sup>. In spite of a communist majority as result of first multiparty elections, held on March 1991, civic participation gained, as an effect, the resignation of the Prime Minister Fatos Nano and to the formation of a coalition government<sup>49</sup>. In the past 33 years of consolidation processes towards deliberative

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<sup>43</sup> Art. 9, Constitution of Albania.

<sup>44</sup> Ivi.

<sup>45</sup> Art. 45, Constitution of Albania.

<sup>46</sup> Art. 45, §4, Constitution of Albania.

<sup>47</sup> E. Cukani, *Quel che resta dello Stato. Il differenziale, territoriale e non, delle autonomie nei Balcani occidentali*, cit.

<sup>48</sup> V. Laska, *The role of political parties in the constitutional order in Albania*, in *Jus & Justicia*, 2023, p. 75 ff. Shifting from a single dominant party system, Albanian novel multi-party system counted 126 parties engaged in political activities. On this aspect see also A. Xhaferaj, *Which Parties Count? The Effective Number of Parties in the Albanian Party System*, in *European Journal of Social Sciences*, 2014, p. 123 ff.

<sup>49</sup> G. Jandot, *L'Albanie d'Enver Hoxha (1944-1985)*, Paris, 1994; E. Biberaj, *Albania in Transition: The Rocky Road to Democracy*, London-New York, 1999. As Laska (*supra*) points out, pre-1991 Albanian party system has been classified under three stages. The first, spanning from 1920 to 1924, overlaps with the establishment of the first experiences of parliamentarism (1920), and parties were characterised by a more associational attitude amongst individuals, rather than having a specific and stable elected

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democracy, two parties increased their electoral base and become dominant within the contemporary political landscape: Socialist Party of Albania and the Democratic Party<sup>50</sup>.

As far as the accession process is concerned, the first Inter-Governmental Conference took place on July 2022, on the beginning date of the screening in reference to the EU *acquis* under the revised methodology, the Stabilisation and Association Agreement, and the Negotiating Framework<sup>51</sup>.

According to the EU Commission's Report, Albanian politics is still affected by polarisation and divisions within the opposition party, thus jeopardising the role of the parliament within the democratic machinery: "Parliamentary debates and proceedings continued to be negatively affected by harsh political rhetoric, personal attacks and disruptive behaviour in the plenary hall. Disputes between the majority and the opposition, in particular over the Prime Minister's refusal to attend most interpellations requested by the opposition, caused a temporary disruption in the normal functioning of Parliament. The Ethics Secretariat imposed several disciplinary measures, resulting in the unprecedented expulsion of 23 opposition MPs within a

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structure and organisation, with a specific programme defining activities. The second period, spanning from 1925 to 1939, marks a party-less government and the shift from republic to monarchy, in order to guaranteeing stability, rather than democratic functioning. The third phase, overlapping with the WWII (1939-1944), was characterised by military organisations with some political tasks. The fourth phase (1945-1990) marks the most relevant period in contemporary history, the one-party-dominant political system.

<sup>50</sup> Another relevant political actor is the Socialist Movement for Integration, currently re-named Freedom Party. A. Xhaferaj, *Incentives and Practices of Mass-Party Membership in Albania*, in S. Gherghina – A. Iancu – S. Soare (eds.), *Party Members and Their Importance in Non-EU Countries: A Comparative Analysis*, London-New York, 2018.

<sup>51</sup> In 2019, Albania experienced a series of significant political challenges. The political opposition, led by the Democratic Party (PD), coordinated multiple protests against the government, predominantly fuelled by the opposition's allegations of corruption and a perceived lack of transparency in the country's governance. July local elections were conducted in Albania amidst a backdrop of concerns and allegations from the opposition regarding potential violations of electoral rules. However, Albania persisted in its judicial reform process, an initiative aimed at enhancing the independence of the judiciary and bolstering the fight against corruption. This reform initiative represented one of the prerequisites established by the European Union for the initiation of membership negotiations. The relationship between the European Union (EU) and Albania was at a critical juncture, expressing a strong aspiration to accede to the EU, meeting the necessary membership criteria. N. Samkharadze, *Two Roads Toward the EU: How Differently Georgia and Albania Are Moving Forward?*, WEASA Paper, 2020; on the efforts in moving from hybrid regime to liberal democracy in cooperation with the EU and the issues Albania had to cope with in 2019: J. Gjinko – M. Bregu, *Prospects for integration and obstacles to democracy. EU's Role in the Albanian Political Crises*, in *International Journal of Religion*, 2024, p. 1113 ff. On anti-corruption measures, see at least E. Cukani, *A mali estremi, estremi rimedi: maladministration e misuse anti-corruzione in Albania*, in *DPCE Online*, 2019, p. 322 ff.

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month. Higher ethical standards in Assembly proceedings are needed to foster a more constructive political dialogue between the opposition and the majority.”<sup>52</sup>

Another key-point regards the limited parliament’s oversight on the government, and the lack of clear collaboration with opposition and independent actors. For instance, majority rejected instances made by the opposition for two committees of inquiry. Furthermore, participation and transparency still have been considered far from EU standards, although the parliament should play a pivotal role in EU integration and in the accession negotiations process. Thus, the functioning of democratic institutions and public administration reform remain a key issue in the light of the fundamentals of the accession process. It should be noted as well that, in spite of a low turnout of 38.2% and concerns regarding the misuse of state resources, pressures on categories within the electoral base (e.g., public sector workers), and claims of vote buying, international observers (especially OSCE’s Office for Democratic Institutions and Human Rights – OSCE/ODIHR) assessed local election on May 2023 as conducted in a “generally calm manner”<sup>53</sup>, well-administered and competitive, recording the participation of different political actors.

## 5. Conclusion

The analysis of the role of political opposition in the democratic frameworks of Montenegro and Albania provides an assessment on their alignment with the EU *acquis* in reference to a critical factor of democratisation (also in terms of its legal recognition), functional roles, and challenges posed by non-parliamentary activities (e.g., civil action movements).

In Montenegro, the parliamentary system is defined by the separation of powers and a commitment to democratic principles as reflected in its constitution. However,

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<sup>52</sup> Albania 2023 Report, p. 9.

<sup>53</sup> Albania 2023 Report. EU Commission underlined the transition occurred within the legislature as seven MPs were replaced, five from the Democratic Party and two from the ruling Socialist Party (due to their candidacies in local elections), while the reorganization of the parliament’s standing committees and other institutional bodies was not undertaken, attributable to internal conflicts within the opposition and ongoing attempts to assert control over its caucus. Moreover, parliamentary activities were suspended without a proper legal base during the electoral campaign for the 2023 local elections. Despite the establishment of an *ad hoc* committee focused on electoral reform in February 2022, there has been a conspicuous lack of progress both in the formulation of legislative texts and in effectively addressing recommendations by the Organization for Security and Co-Operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission.



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the effectiveness of the parliamentary opposition has been jeopardised by political polarisation and instability, leading to inadequate oversight of the parliament over the government. The EU has highlighted persistent issues such as corruption and governance challenges, which hinder the country's accession process. Albania's political system also reflects a commitment to democracy, characterised by a multi-party background and mechanisms for accountability. However, issues of polarisation and opposition dynamics have negatively affected parliamentary performance, as evidenced by disruptive legislative behaviour and a lack of collaboration between government and opposition parties. Due to this situation, according to the EU Commission, reform of democratic institutions and public administration remain paramount for Albania's EU integration aspirations.

While both countries exhibit potential for alignment with EU standards through their political and legislative frameworks, significant challenges related to the functional role of opposition, governance quality, and political stability should be addressed to facilitate their respective accession processes. Moreover, this is a further evidence of the need of a well-defined institutional space for opposition as a key element in strengthening democratic machineries in line with EU expectations, and such a task could be better addressed through a specific legislation detailing 'opposition as a subject' within the constitutional system, through constitutional provisions and legislative rules of procedures that may facilitate the path for reaching EU standards in terms of participation to the democratic processes and compliance with the rule of law.

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**Abstract:** The enlargement of the European Union to the Western Balkans represents a critical geopolitical issue, stressed by regional challenges and evolving international dynamics. This essay examines the roles of political opposition in the democratic frameworks of Montenegro and Albania, and explores the subjective and objective dimensions of political opposition, drawing connections to the EU *acquis communautaire*, which emphasises the need of robust democratic institutions for accession. In doing so, the first paragraph addresses the features of opposition (both political and parliamentary), in order to assess the EU approach and the idea of the opposition deriving from the European tradition and the demand for drafting 'opposition as a subject'. The second and third paragraphs, after briefly introducing the constitutional frameworks in reference to the political system and governance, analyses the EU Commission's evaluation on specific phenomena related to the opposition in Montenegro and Albania. Conclusion merges the evaluation of both

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democratic experiences in the light of the accession to the EU, in order to assess whether the status of opposition has been considered a pivotal element (especially for the democratic machinery) or one of the weak points in meeting EU standards. This part underscores the importance of institutional frameworks that recognise opposition not merely as a contrasting force but as a fundamental element of democratic stability, crucial for the EU accession process.

**Keywords:** EU Enlargement - Western Balkans - Albania - Montenegro - Comparative Constitutional Law.

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