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The legal framework of political and parliamentary opposition in the light of the EU Enlargement to the Western Balkans: A comparative foreword

ABSTRACT - The enlargement to the Western Balkans represents one of the crucial pillars for the next future's political strategies of the European Union, and discourses on conditionality shed lights on the importance of legal comparison to further analyse the candidate states' EU acquis within their domestic legal systems. According to this entrenched pattern, key aspects regarding democratic functioning of the political systems and the rule of law are fundamental concerns in order of respecting EU standards. Against this backdrop, opposition (both political and parliamentary) is a key-topic and concern for securing the aforementioned benchmarks. Moving from these postulations, the article addresses different – but interconnected – topics with the aim of fostering a scholarly and interdisciplinary dialogue under a critical methodology, going through several crucial steps: after an introduction drafting the whole structure of the essay, paragraph 2 exposes the reasons in providing an unambiguous definition of 'opposition', thus trying to overcome such a burden to define it in political and legal terms. Paragraph 3 provides several comparative public law data – especially in reference to constitutional systems – on how political systems (forms of government) cope with issues deriving from their own democratic machinery. Paragraph 4 introduces the EU enlargement policy to the Western Balkans and recalls the state of the art of the two 'frontrunners' (Serbia and Montenegro) in reference to current matters related to opposition. Conclusion highlights the need of considering further hypothesis in dealing with opposition and democratic functioning.

KEYWORDS - Comparative Public Law - EU Enlargement - Comparative Legal Systems - Western Balkans - Opposition (Political and Parliamentary)

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light of the EU Enlargement to the Western Balkans:
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1. *Introduction*

Issues regarding political participation, democratisation and the rule of law are at the bottom of the evaluations for the EU accession. Considering the contemporary legal and political landscapes, on the one hand there is an unquestionable EU will to promote the securing of the *acquis* for Western Balkans countries, while on the other hand there is a general revival of nationalistic and populist narratives that usually foster polarisation into domestic politics. Against this background, the role of opposition, both as political and parliamentary, may function as litmus paper to provide an overall assessment on the state of democratic machinery. However, the lack of a precise meaning in reference to the concepts ‘democracy’ and ‘opposition’ nurture ambiguities and/or specific attitudes in coping with the lack of the basic EU standards in terms of political participation and cooperation.

With the aim of addressing the aforementioned issues, this article analysis, under an interdisciplinary and comparative law methodology, several critical aspects, namely the meaning and the role of opposition, the legal framework devoted to foster good governance and pluralism, the current experience of the so-called ‘frontrunners’ – i.e. Serbia and Montenegro – in the light of the EU enlargement to the Western Balkans.

The second paragraph, moving from attempts made by political scientists in addressing different forms of opposition (social, political, non-parliamentary, parliamentary), tries to define opposition as a specific subject legal systems have to deal with, also providing an overview on divergent understandings – of these subjects or, as it will be further

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explained, phenomena – deriving from different traditions (both political and legal). The third paragraph focuses on subjects, sources, functions, rights and duties of opposition, with the aim of ascertain whether there is a common and general view on opposition and related common legal frameworks for ascertain and/or guaranteeing the functioning of democratic institutions and the rule of law. The fourth paragraph introduces the EU enlargement process and briefly recalls the Commission evaluation on Serbia and Montenegro in terms of pluralism, political participation and opposition; this paragraph will prove, as conclusion emphasises, that the EU acquis focuses on functional elements rather than subjective features in order to evaluating and ensuring institutional machineries of countries having a long-lasting status of candidates for the accession to the EU as member.

2. *Defining opposition*

The term ‘opposition’ can be addressed under subjective and/or functional terms. Generally, ‘opposition’ refers to “the act of resisting or fighting against by force or argument”¹. Besides the common meaning of strong disagreement, scholarship also mentions ‘the Opposition’ (capital letter, preceded by the definite article) as a specific subject within some political systems, which defines elected politicians belonging to the largest party that is not in government². Although the differences in between

¹ Cambridge Dictionary, available at <https://dictionary.cambridge.org/>, last acc. October 2023. This article offers some tentative results of a still ongoing 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.

² 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 UK political system. For a general introduction: I. JENNINGS, *Cabinet Government*, CUP, Cambridge, 1959; G. DE VERGOTTINI, *Lo «Shadow Cabinet». Saggio comparativo sul rilievo costituzionale della opposizione nel regime parlamentare britannico*, Giuffrè, Milano, 1980. On English constitutionalism see W. BAGEHOT, *The English Constitution*, Collins, Glasgow, 1963 (1st ed. 1867); A.V. DICEY, *Introduction to the Study of the Law of the Constitution*, 8th ed., Macmillan, London, 1915 (*Introduzione allo studio del diritto costituzionale. Le basi del costituzionalismo inglese*, a cura di A. TORRE, il Mulino, Bologna, 2003); A. TORRE, *Regno Unito*, il Mulino, Bologna, 2021; while for an historical overview through the developments of the executive see A. TORRE (ed.), *Storia costituzionale del Regno Unito attraverso i primi Ministri*, Wolters Kluwer, Alphen aan den Rijn, 2020. For an understanding of parliamentarism

subjective and objective features might appear quite functional for a detailed definition, distinctive phenomena fostered a wide set of variants, both through formal or unconventional legal means, thus emphasising differences and convergences between four basic standards: 1) social, 2) political, 3) parliamentary and 4) non-parliamentary.

According to sociological scholarship, opposition should be analysed in terms of the structures of public power and the dynamic aspects in relation to political parties. In particular, as Oreste Massari points out, social opposition is characterised by the lack of strict definitions with regard to its own characteristics³. In spite of these difficulties, it is possible to assume that opposition refers to the sociological bases of a threefold phenomenon: 1) social conflict (actors like unions, groups, movements); 2) political power (in reference to a political strategy or project); 3) social revolt (when really severe)⁴.

In contrast, political opposition is a phenomenon involving public power, its characteristics vary according to the political regime, and the first and most intuitive difference is in between non-democratic and democratic regimes. In non-democratic regimes, opposition is not tolerated, can be perceived as façade actor, while genuine attempts often develop illegally and/or secretly⁵. Within these contexts, the main objective of political opposition is to defeating the basis for the system's legitimacy⁶. In democratic systems, the existence of specific rights devoted to expressing dissent fosters specific guarantees arising from the rule of law⁷. To this end, defining the constitutional role of the opposition has

from sociological jurisprudence and the general theory of law: R. POUND, *The Spirit of the Common Law*, Routledge, London-New York, 1999; G. RADBRUCH, *Der Geist des englischen Rechts*, Vandenhoeck & Ruprecht, Göttingen, 1958. For a comparison with the Italian experience: V. CASAMASSIMA, *L'opposizione in parlamento. Le esperienze britannica e italiana a confronto*, Giappichelli, Milano, 2013.

³ O. MASSARI, *Opposizione*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (a cura di), *Il Dizionario di Politica*, UTET, Torino, 2004, pp. 640.

⁴ Ivi. See also O. MASSARI, *Natura e ruolo delle opposizioni politico-parlamentari*, in G. PASQUINO (a cura di), *Opposizione, governo ombra, alternativa*, Laterza, Roma-Bari, 1990, pp. 29 ff.

⁵ O. MASSARI, *Opposizione*, cit.; L. MEZZETTI, *Opposizione politica*, in *Dig. Disc. Pubbl.*, vol. X, UTET, Torino, pp. 347 ff.

⁶ O. MASSARI, *Opposizione*, cit.

⁷ Robert Alan Dahl analyses suggest 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*

been considered a basic tool for the democratisation of regimes, and this shift represent a sort of 'rite of passage' that transforms the political opposition into parliamentary, ensuring three specific characteristics: 1) organised; 2) pluralistic; 3) permanent⁸.

Other practises close to that of the opposition can be external in reference to the institutional framework (they can also be lawful and/or legal), especially in cases of extra-parliamentary opposition, which sometimes try to find space within democratic representation, thus becoming parliamentary – differently, other phenomena (i.e. contestation, struggles, etc.) could be considered as oppositional politics avoiding the democratic representation (see Fig. 1)⁹.

Democracies, Yale University Press, New Haven, 1966; Id. (ed.), *Regimes and Oppositions*, Yale University Press, New Haven, 1973; Id., *Poliarchia, partecipazione e opposizione nei sistemi politici*, FrancoAngeli, Milano, 1980; see also G. IERACI, *Power in office: presidents, governments, and parliaments in the institutional design of contemporary democracies*, in *Constitutional Political Economy*, 32, 2021, pp. 413-430. For further perspective on this complex phenomena: G. IONESCU and I. DE MADERIAGA, *Opposition: Past and Present of a Political Institution*, Watts, London, 1968; A. LIPHART, *Le democrazie contemporanee*, il Mulino, Bologna, 1988; G. SARTORI, *Democrazia e definizioni*, il Mulino, Bologna, 1969; Id., *Opposition and Control: Problems and Prospects*, in *Government and Opposition*, 1, 1966, pp. 149-154; Id., *Parties and Party Systems: A Framework for Analysis*, CUP, Cambridge, 1976; Id., *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, Palgrave Macmillan, Basingstoke, 1996; M. DUVERGER, *I partiti politici*, Edizioni di Comunità, Milano, 1980.

⁸ O. MASSARI, *Opposizione*, cit. In his analysis, the author suggests that the second feature might be considered as 'collective' rather than pluralistic, while the institutionalisation of opposition within the state machinery can be addressed as a funding element of a democratic political environment based on the rule of law. For further studies on these issues and their legal aspects see G. DE VERGOTTINI, *Opposizione parlamentare*, in *Enc. dir.*, vol. XXX, Milano, 1980, pp. 532 ss; A. PIZZORUSSO, *Minoranze e maggioranze*, Einaudi, Torino, 1993.

⁹ O. MASSARI, *Opposizione*, cit.

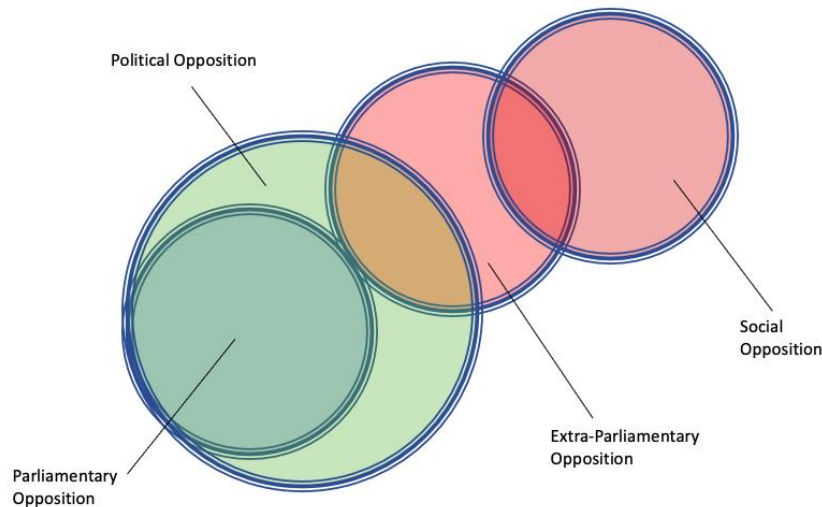


Fig. 1: different forms of oppositions and their interconnections

Political-parliamentary opposition is closely linked to democratic structures, constitutional guarantees and the rule of law, especially regarding three basic aspects: functions (to control, condition, influence, criticise the government), organisation (e.g., government-in-waiting), structure (e.g., the so-called shadow government, parliamentary groups)¹⁰. Within this framework, the political system (or form of government), the model of democracy, the practical functioning of the majority principle, the electoral system, and the competitive nature between majority and minority(-ies) are determining elements of parliamentary opposition¹¹.

With regard to the parliamentary opposition in particular, the primary characteristic is the exclusion from the government, i.e. the political parties that are represented in parliament but not in the government. In Europe, in most parliamentary systems, the government is the expression of the majority, so the debate usually focuses on the rights of the political minority in terms of procedures and access to information, representation and participation, intervention, voting, draft laws, motions, amendments, supervision and control of the work of the executive, thereby defining specific and fundamental rights at the basis of a proper democratic system of government, such as free elections, as well as

¹⁰ Ivi. 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*, EUT, Trieste, 1999; V. CASAMASSIMA, *L'opposizione: genesi ed evoluzione di un concetto, nel Regno Unito e in Italia*, in *Amministrazione in cammino*, 2014, pp. 1-51.

¹¹ O. MASSARI, *Opposizione*, cit.

freedom of expression and association¹².

The analysis of opposition's legal aspects cannot be ignored, even if the theoretical basis of the discourse on opposition remains that of the political system. Currently, opposition in Europe has usually been conceived as a minority whose functions can be guaranteed by recognising specific rights, while institutionalising opposition requires constitutional recognition¹³. The legal status of the parliamentary opposition is thus the outcome of individual political and legal experiences, within which cultural, political and legal elements foster different understandings of it.

3. Comparative public law understandings of opposition

This paragraph addresses the legal framework of opposition (both political and parliamentary) in reference to three basic aspects: 1) subjects, 2) sources and functions, 3) rights and duties. The analysis of these three pivotal elements aims at providing a general overview in comparative terms, while sub-paragraphs 4.1 and 4.2 introduces the (so-called) "frontrunners" experiences in coping with democratisation of institutions and the rule of law in the light of opposition's issues.

Although the term democracy has been widely quoted within legal scholarship, there are no universally accepted definitions and, therefore, no single standard for describing opposition¹⁴. However, considering the European historical development of democratic structures, the opposition could be broadly considered as a minority. According to the Venice Commission, in many cases there is no direct recognition of the opposition within the state structures, so it may be considered as a label including four categories of subjects within representative institutions, namely members of parliament (MPs as individuals), political groups, qualified

¹² Ibid. European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, 84th Plenary Session, Venice 15-16 October 2010.

¹³ European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, cit.

¹⁴ European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, cit.; A. RINELLA, *Materiali per uno studio di diritto comparato su lo "Statuto costituzionale" dell'opposizione parlamentare*, cit.; E. BULMER, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, 2021.

minorities, opposition (in general)¹⁵.

The opposition plays the role of the largest parliamentary group that is not part of the government in a political system based on vote of confidence, while in other cases it can be defined indirectly according to political and legal criteria¹⁶. Furthermore, in federal systems or in bicameral parliaments with different election periods for the houses, the minority political party in the lower house may instead have a majority in the upper one.

The primary place for opposition parties is within the parliamentary group opposing the government. In legal terms, with a few exceptions¹⁷, the political choice is up to individual MPs (in most cases it follows the one of their party). In some specific cases, such as in the House of Commons, reference is made to parties, not parliamentary groups, while legal references to defection rules include the Spanish case (Art. 23.2 reg. Congress)¹⁸, while in other cases there is no binding option for the MPs (Art. 38.1 G.G. Germany, 51.2 Const. Greece, 67.2 Const. Spain)¹⁹.

As far as the choice of a specific legal source regulating the opposition is concerned, historical events and political-legal traditions play a pivotal role through party (soft)rules, rather than legal obligations, with the aim of avoiding floor-crossing. Moreover, with a few exceptions, rules concerning parliamentary opposition, the status of the leader, political minorities are usually sub-constitutional (acts, statutes, parliamentary rules, etc.). In other cases, such as the United Kingdom, many rules are conventions (also constitutional).

In the past, Westminster-style constitutions (e.g. Australia, Canada, India and Malaysia) did not recognise the leader of the opposition as a form of 'institutional courtesy'²⁰. In contrast to the US constitutional experience, recent constitutions outlining a presidential system of

¹⁵ European Commission for Democracy through Law (Venice Commission), Report on the Role of the Opposition in a Democratic Parliament, cit.

¹⁶ S. CURRERI, *Lo stato dell'opposizione nelle principali democrazie europee*, in *Rivista AIC*, 3, 2016, pp. 1-70.

¹⁷ See note 25.

¹⁸ S. CURRERI, *Lo stato dell'opposizione nelle principali democrazie europee*, cit. For a comparative appraisal on three constitutional experiences (namely India, Israel and New Zealand) see C. NIKOLENYI, *Government termination and anti-defection laws in parliamentary democracies*, in *West European Politics*, 3, 45, 2022, pp. 638-662, arguing that such kind of legislation fosters unity within the executive, rather than avoiding party switching.

¹⁹ S. CURRERI, *Lo stato dell'opposizione nelle principali democrazie europee*, cit.

²⁰ E. BULMER, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, cit.

government refer to the leader of the opposition (Kenya, Senegal and the Seychelles). The question of constitutionalising opposition prerogatives is highly context-specific, and given the aforementioned variables impacting on the substantive structure of the opposition, defining a single global model appears quite challenging (see Fig. 2)²¹.

	Widely constitutionalized	Rarely constitutionalized
Westminster-model parliamentary systems	<ul style="list-style-type: none"> Appointment and removal of the leader of the opposition Right of the leader of the opposition to participate in judicial appointments and in appointments to regulatory and oversight (fourth-branch) institutions 	<ul style="list-style-type: none"> Right of the opposition to choose the chair of the public accounts committee Right of the opposition to be included on parliamentary committees Requirements for opposition seats on committees Opposition days in parliamentary calendar
Consensual, proportional and multiparty parliamentary systems	<ul style="list-style-type: none"> Inclusive (supermajority or multiparty) appointments to fourth-branch institutions 	<ul style="list-style-type: none"> Right of the opposition to choose the chair of the public accounts committee Proportional representation on committees Right of the minority to refer bills to the constitutional court Right of the minority to establish committees of inquiry Minority-veto referendums Minority delay procedures
Presidential and semi-presidential systems		<ul style="list-style-type: none"> Appointment and removal (or recognition) of the legislative minority leader Recognition of the leader of the opposition Requirements for opposition seats on committees Opposition days in parliamentary calendar Right of the opposition or minority leader to choose the chair of the public accounts committee or equivalent (e.g. Tunisia)

Fig. 2: examples of constitutionalisation. Source: E. Bulmer, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, 2021.

²¹ Ivi.

The constitutionalisation of a specific matter often defines the framework within which certain legal arrangements evolve, while sub-constitutional legislation details various aspects. It is possible to refer to the principles that shape the backbone of liberal democracies with regard to the (constitutional) legal status of the opposition. A non-exhaustive list could include the following: a) accountability; b) pluralism (fostering constructive criticism and control); c) political solidarity (and shared responsibilities); d) alternation; e) effective decision making; and f) citizens' participation²². While the basic purpose of the aforementioned principles is to prevent authoritarianism, they are based on two specific characteristics, i.e. interconnection and dynamism.

Parliamentary opposition's (or those related to political minorities) can be considered under a 'narrow' or a 'thick' spectrum in terms of legal protection. Legal system directly providing for an institutional machinery and specific subject belong to the 'narrow' spectrum, while the 'thick' one highlights those cases within which legal provisions go far beyond the opposition's status (i.e. right to participate, special powers of control, right to stop or delay majority bills).

As far as the subjective aspects are concerned, although legal systems recognise individual MPs' right regardless their political affiliation, in practice political groups are the most important actors according to rules of procedure and, in some cases, to specific constitutional provisions²³. To this end, European parliamentary tradition provides a suitable example, considering that parliamentary dynamics have been historically based on equal treatment of representatives, freedom of political expression (including protection from binding mandates and the right to change party allegiance) and specific rights that are common to many constitutional texts²⁴. Specifically, rights of political groups include

²² European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, cit.

²³ Ivi; E. BULMER, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, cit.

²⁴ European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, cit. E. BULMER, *Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition*, cit. lists several rights that, depending on specific experiences, have different pragmatic implications: to vote (on laws, budgets, etc.), to table amendments and motions, to speak in debates, to question (both orally and written) to the Government, to take part in the work of committees, to receive information and documents submitted to Parliament; to appeal to the Constitutional Court, while activities carried out within the mandates should be characterised by parliamentary immunity (as well as responsibility and inviolability).

participation and representation (in committees), while some constitutions refer to parliamentary groups' arrangement as basic elements of contemporary parliamentarianism, as in the case of Denmark:

Art. 52 "The election by the Folketing of members to sit on committees and of members to perform special duties shall be according to proportional representation"

Constitutions refer not only to clear non-absolute majorities but also to 'qualified' minorities. The criteria from according to rules of procedure, nevertheless the rights regarding qualified minorities are an echo of the opposition's role as a sentinel on government action²⁵.

The semantic and subjective plurality of the opposition explains why legal references to opposition rights in general are unusual in European constitutions. In those systems that are structurally close to British parliamentarianism, some rights have been recognised even conventionally. For instance, the UK Leader of the House has the privilege of questioning the Prime Minister, while traditionally also in Norway non-government MPs chair some committees²⁶. With reference to the Maltese political system, the Deputy Speaker is, on a conventional basis, not a member of political forces in the government.

Articles 48 and 51-1 of the French Constitution are quite interesting for the recognition of certain rights of the opposition:

Art. 48:

[...]

Without prejudice to the application of the last three paragraphs of article 28, the agenda shall be determined by each House.

During two weeks of sittings out of four, priority shall be given, in the order determined by the Government, to the consideration of texts and to debates which it requests to be included on the agenda.

In addition, the consideration of Finance Bills, Social Security Financing Bills and, subject to the provisions of the following paragraph, texts transmitted by the other House at least six weeks previously, as well as Bills concerning a state of emergency and requests for authorization referred to in article 35, shall, upon

²⁵ O. MASSARI, *Opposizione*, cit.

²⁶ European Commission for Democracy through Law (Venice Commission), *Report on the Role of the Opposition in a Democratic Parliament*, cit.

Government request, be included on the agenda with priority.

During one week of sittings out of four, priority shall be given, in the order determined by each House, to the monitoring of Government action and to the assessment of public policies.

One day of sitting per month shall be given over to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups.

During at least one sitting per week, including during the extraordinary sittings provided for in article 29, priority shall be given to questions from Members of Parliament and to answers from the Government.

Art. 51-1:

The Rules of Procedure of each House shall determine the rights of the parliamentary groups set up within it. They shall recognize that opposition groups in the House concerned, as well as minority groups, have specific rights.

In reference to the role of parliamentary minorities, it seems quite useful to recall some of the features derived from the British “Her Majesty’s Most Loyal Opposition”²⁷. The adjective ‘loyal’, which is supposed to represent one of the features of parliamentary minorities, is not only an attribute, but a duty fostering specific activities: a) constructive cooperation; b) interaction with parliament (which is also an obligation, including towards those represented); c) deference towards the institutions (especially concerning the members of the opposition)²⁸.

Many of the prerogatives and rights of the opposition can be used as a legal basis for activities that misrepresent their rationale from the point of view of political/parliamentary strategy. This is the case of filibustering, which may lead to a misrepresentation of legitimate conducts, aiming at undermining the government and/or legislature. Under the theory of responsible party governance, parties must be both responsive to their voters and accountable for their actions; these two obligations have

²⁷ See note n. 2, *supra*.

²⁸ O. MASSARI, *Opposizione*, cit.; Venice Commission (European Commission for Democracy through Law), ‘Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: A Checklist’, 119th Plenary Session (Venice, 21-22 June 2019).

become increasingly incompatible in the last decades. In fact, some scholars argued about an “increasing gap” in Europe between parties which govern but fail to represent, and parties which claim to represent but fail to govern²⁹. The latter are the ‘new opposition’, rarely in power and therefore able to maintain a high degree of responsiveness to the electoral base, generally marked by a populist rhetoric although not defined as ‘anti-establishment’³⁰.

4. *A brief foreword to the enlargement of the EU to the Western Balkans: insights on political opposition and the WB “frontrunners”*

On 24 June, the General Secretariat of the European Council referred to the main policies and other issues related to the EU enlargement. It mainly addressed events concerning Ukraine, the Republic of Moldova, Georgia and Turkey, as well as advancing the integration process of the Western Balkans in a wider interdisciplinary framework. Currently, the term ‘Western Balkans’ in relation to the EU enlargement policy

²⁹ E. DE GIORGI and G. ILONSKI (eds), *Opposition Parties in European Legislatures: Conflict or Consensus?*, Routledge, London-New York, 2018.

³⁰ C. ROVIRA KALTWASSER, *The Responses of Populism to Dahl’s Democratic Dilemmas*, in *Political Studies*, 62, 3, 2014, pp. 470-487; G. IERACI, *Anti-System Oppositions, Political Competition and Coalition Potential in Polarized Party Systems. A Conceptual Re-Framing*, in *Quaderni di scienza politica*, 3, 2021, pp. 281-310; Id., *Centre parties and anti-system oppositions in polarised systems*, in *West European Politics*, 15, 2, 1992, pp. 17-34; M. ZULIANELLO, *The Integration of Populist Parties in Europe*, in L. MANUCCI (ed.), *The Populism Interviews: A Dialogue with Leading Experts*, Routledge, London-New York, 2022, pp. 34-39; G. MARTINICO, *Populismo*, in M. CARTABIA and M. RUOTOLO (eds), *Potere e Costituzione*, Enciclopedia del diritto, Giuffrè, Milano, 2023, pp. 391-409; P. BLOKKER, *Populism as a Constitutional Project*, in *International Journal of Constitutional Law*, 17, 2019, pp. 536-553. For a critical assessment moving from the ECtHR’s jurisprudence: A. ZYSSET, *Calibrating the response to populism at the European Court of Human Rights*, in *International Journal of Constitutional Law*, 20, 3, 2022, pp. 976-1005; J. PETROV, *The Populist Challenge to the European Court of Human Rights*, in *International Journal of Constitutional Law*, 18, 2, 2020, pp. 476-508; E. VOETEN, *Populism and Backlashes against International Courts*, in *Perspectives on Politics*, 18, 2, 2019, pp. 407-422; A. PIN, *The Transnational Drivers of Populist Backlash in Europe: The Role of Courts*, in *German Law Journal*, 2, 20, 2019, pp. 225-244. As far as the general theory of law is concerned: D. LANDAU, *Abusive Constitutionalism*, in *University of California Davis Law Review*, 47, 2013, pp. 189-260; K.L. SCHEPPELE, *Autocratic Legalism*, in *University of Chicago Law Review*, 2, 85, 2018, pp. 545-583; G. HALMAI, *Populism, Authoritarianism and Constitutionalism*, in *German Law Journal*, 3, 20, 2019, pp. 296-313.

essentially refers to Albania, Bosnia and Herzegovina, Kosovo³¹, Montenegro, North Macedonia and Serbia. With regard to the Western Balkans, the EU stressed its “unambiguous commitment” and willingness to accelerate the integration of the Western Balkan countries into the EU³², even though detailed concerns continue to exist regarding the rule of law (including the independence of the judiciary and corruption) and minority rights³³, the accession negotiations between Bulgaria and Northern Macedonia, and other interests regarding the need for substantial progress on the resolution of bilateral and regional issues, particularly the Belgrade-Pristina talks on normalizing political relations between Serbia and Kosovo³⁴. Candidate status was granted to Bosnia and Herzegovina

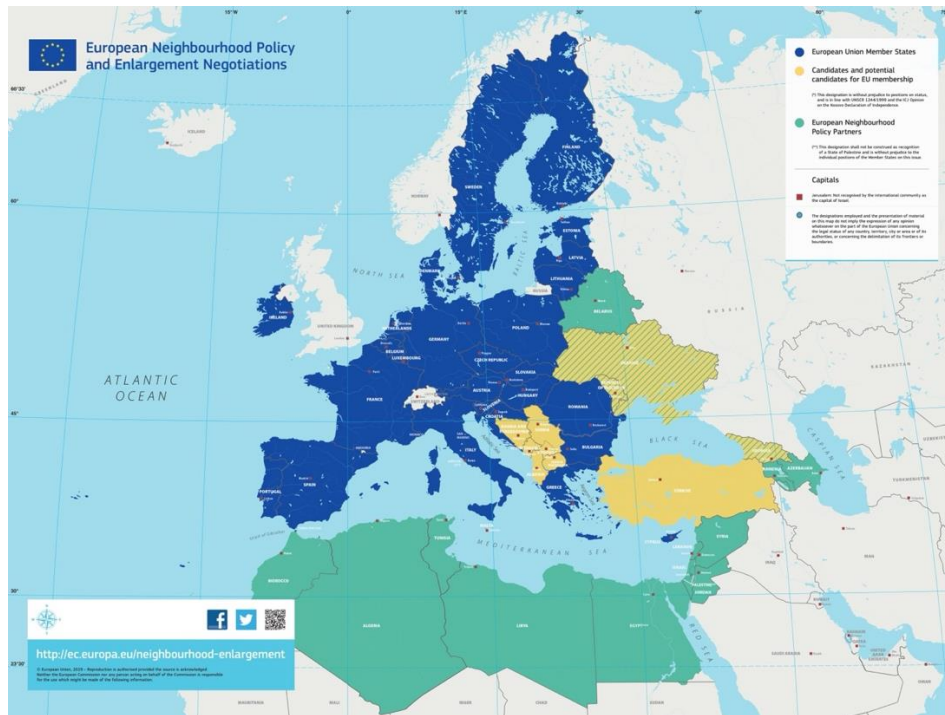
³¹ In line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence and the EU neighbourhood policy.

³² EUCO 24/22, CO EUR 21 CONCL 5, Brussels, 24 June 2022, § 15. This part recalls and updates the argumentative pattern provided within P. VIOLA, *The EU Enlargement to the Western Balkans, the implementation of “green” policies, and integration through the law*, in *Queste istituzioni*, 4, 2023, pp. 147-159. 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 involve 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 refer to specific scholarship on these subjects. In reference to the general principles of EU and the processes of integration (as well as enlargement): M. DAWSON, *How Can EU Law Respond to Populism?*, in *Oxford Journal of Legal Studies*, 1, 40, 2020, pp. 183-213; G. MARTINICO, *General principles of EU law and comparative law*, in K.S. ZIEGLER et al. (eds), *Research Handbook on General Principles in EU Law: Constructing Legal Orders in Europe*, Elgar, Cheltenham, 2022, pp. 82-98; J.H.H. WEILER, *The Political and Legal Culture of European Integration: An Exploratory Essay*, in *International Journal of Constitutional Law*, 3-4, 9, 2011, pp. 678-694.

³³ EUCO 24/22, CO EUR 21 CONCL 5, Brussels, 24 June 2022, § 17.

³⁴ *Ibid.*, § 17-19. For historical and general aspects see V. CURZON PRICE et al. (eds), *The Enlargement of the European Union: Issues and Strategies*, Routledge, London-New York, 1999; H.A. IKONOMOU et al. (eds), *European Enlargement across Rounds and Beyond Borders*, Routledge, London-New York, 2019; H. BERGER and T. MOUTOS (eds), *Managing European Union Enlargement*, MIT Press, Boston, 2004; S. KEIL and Z. ARKA (ed.), *The EU and Member State Building: European Foreign Policy in the Western Balkans*, Routledge, London-New York, 2015; F. LAURSEN, *EU Enlargement: Current Challenges and Strategic Choices*, Peter Lang, Pieterlen and Bern, 2013. For a more critical appraisal: F. DEANA, ‘L’allargamento dell’Unione europea nei Balcani occidentali: una strada oscura che conduce al nulla?’, in *Eurojus*, 2, 2022, pp. 173-190; D. KOCHENOV, *EU Enlargement and the Failure of Conditionality*, Kluwer Law International, Alphen aan den Rijn, 2008; T. CERRUTI, *Lo stato di diritto nel processo di allargamento ai Balcani occidentali*, *Diritto pubblico comparato ed europeo*, 1, 2019, pp. 137-166, T. SEKULIĆ, *The European Union and the Paradox of Enlargement: The Complex Accession of the Western Balkans*, Springer, Cham, 2020.

following the European Council's 2022 declaration³⁵.



Map. 1, EU enlargement map.

Source: <https://neighbourhood-enlargement.ec.europa.eu/>

It is worth recalling that the accession of WB countries has followed a specific process which is based on four main pillars: 1) trade concessions, 2) economic and financial assistance, 3) assistance for reconstruction, development and stabilisation, 4) stabilisation and association³⁶, the latter

Regarding a comparative law perspective and an introduction to WB constitutional systems: A. DI GREGORIO (a cura di), *The Constitutional Systems of Central-Eastern, Baltic and Balkan Europe*, Eleven, The Hague, 2019; M. CALAMO SPECCHIA, *I Balcani occidentali: le costituzioni della transizione*, Giappichelli, Torino, 2008.

³⁵ EUCO 34/22, Brussels, 15 December 2022.

³⁶ <https://neighbourhood-enlargement.ec.europa.eu>. Last accessed October 2023. On the hypothesis of alternative cooperation and differentiated integration, especially in reference to Serbia and Montenegro, see M. MILENKOVIĆ, *Differentiated integration of the Western Balkans – emerging alternative membership options?*, in L. MONTANARI et al. (eds), *We, the People of the United Europe: Reflections on the European State of Mind*, Editoriale Scientifica, Naples, 2022, pp. 235-247. On the concept of EU differentiation see generally B. LERUTH et al. (eds), *Routledge Handbook of Differentiation in the European Union*,

being characterised by the political stabilisation of the countries, the establishment of a market economy and regional cooperation. The legal basis for promoting the accession of WB countries is based on Title V of the TEU on the external action of the EU, Article 207 of the TFEU on international trade agreements, and Article 49 of the TEU on the criteria for application and membership, and the basic objective is “to promote peace, stability and economic development in the Western Balkans and open up the prospect of EU integration”³⁷.

With regard to the Copenhagen criteria, democratic structures and the prerogatives of the opposition are among the EU’s democratic values that candidate countries are required to respect and promote, in particular in the framework of Criterion 1 “Stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”, which is specifically addressed in the revised methodology for the accession negotiations under the thematic cluster “Fundamentals”³⁸.

These steps should improve and strengthen the functioning of the system and ensure constructive dialogue across the political spectrum, in particular between political parties and within parliament, while the executive should allow the opposition to play its constructive role and fruitfully engage in the democratic process. In particular, it underlined the lack of free and fair elections, the failure to implement international monitoring recommendations and the inadequacy of effective legislation on public and private financing of political parties.

Regarding the rule of law, fundamental rights and governance, the Commission in its last report emphasised that the implementation of a standard close to that of the EU is the most pressing issue for the Western Balkans, while with regard to the role of the opposition and democratic rules, other pillars are a) ensuring freedom of expression, b) guaranteeing the independence of the media, c) protecting minorities, and d) fighting discrimination. Such an approach, rather than referring to the institutional

Routledge, London-New York, 2022.

³⁷ <https://www.europarl.europa.eu/>. Last accessed October 2023.

³⁸ In reference to conditionality see at least L. MONTANARI, *Condizionalità ed allargamento, tra valori e politica*, in *Diritto pubblico comparato ed europeo*, 1, 2023, pp. 279-284; M. DICOSOLA, *Condizionalità, transizioni costituzionali e diritti delle minoranze negli Stati dell'ex Jugoslavia*, in *Diritto pubblico comparato ed europeo*, 3, 2018, pp. 667-688; A. BARAGGIA, *Ricatto democratico? L'utilizzo della condizionalità a protezione dello Stato di diritto*, in *Quaderni costituzionali*, 2, 2023, pp. 355-380.

³⁸ EUCO 34/22, Brussels, 15 December 2022.

representation of opposition under a post-structuralist and interpretive methodology, proves the aforementioned theoretical basis that dilutes opposition within the political system by referring to opposition through minority guarantees and the recognition of individual and group rights.

In reference to the opposition within the so-called “frontrunners”, namely Serbia and Montenegro, the Reports made by the Commission follow the European attitude of dealing with minority rights rather than focusing on the opposition as a subject (and as an institutional actor in reference to parliamentary opposition), especially in reference to media exposure and hate speech.

4.1 *The case of Serbia*

In view of EU’s “unequivocal commitment” of guaranteeing the membership of the Western Balkans, the analytical evaluation of the EU acquis underlined several concerns on the Serbian democratic processes and its functional features. Despite a wide and pluralistic participation of political parties to the latest elections (3 April 2022), media are still very polarised and “dominated” by the Serbian Progressive Party (SNS) and the incumbent President Aleksandar Vučić, quite often using hate speech as means for annihilate opponents – a recurrent conduct also within parliamentary debates and electoral campaigns³⁹.

To avoid the aforementioned issues related to opposition (both political and parliamentary) in view of the 2022 elections, the European Parliament fostered an Inter-Party Dialogue⁴⁰, leading to the

³⁹ The new legislature (August 2022) appointed three women, three representatives of the opposition and two representing national minorities. The chair of the Committee for the Stabilisation and Association process also belonged to the opposition. Generally, 95 novel MPs were women (38%). Political forces’ seats within the novel parliament have been assigned as follow: 120 to the Serbian Progressive Party, 31 to the Socialist Party of Serbia, 38 to the United for the Victory of Serbia, 15 to Nada/Hope for Serbia, 13 to Moramo/We Must, 10 to the Zavetnici list and to the Dveri-POKS, while the remaining 13 seats to national minorities (2 Bosniak and 1 each for Hungarian, Albanian, and Croat-Ruthenian list). Commission Staff Working Document, Serbia 2022 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, 2022, 40 (hereinafter ‘Serbia 2022 Report’).

⁴⁰ Some of the political parties opposing the government did not join the Inter-Party Dialogue, although they joined non-parliamentary forces for a dialogue without external

implementation of several measures, such as the establishment of temporary supervisory body for media, amendments to the law on electronic media in December 2021 and the drafting of several election laws, namely 1) the framework law on election of MPs, 2) law on election of the president, 3) law on local elections, 4) law on political activities' financing. Furthermore, on September 2021 the Parliament amended the Code of Conduct, while in October established the ethics commission⁴¹.

The new Code of Conduct entered into force in 2020 and has been amended in September 2021, while the ethics commission has been established on October 2021. However, parliamentary debates still contain offensive language against political opponents and civil activists, thus highlighting the little impact of the CoC to prevent and sanction hate speech and offensive language in a more systematic and effective way. Such a trend questions the independence and the effectiveness of the Regulatory Body for Electronic Media in order of guaranteeing pluralism and participation, also considering differences between the public and private broadcasters. To this end, the ODIHR's media monitoring reported that the public sector equitably covered candidates, but they were no critical towards candidates with the status of public officials; private TV broadcasters, however, allotted the 90% of national coverage to the president and to the members of the government, usually portraying them – as well as their views and actions – in positive terms⁴². Overall, according to the ODIHR, the Regulatory Body for Electronic Media failed in complying with its mandate and remained “passive in the campaign period”, also due to the fact that “the effectiveness of the newly established TSB [...] was undermined by its lack of enforcement powers and disagreements between members nominated by the REM and those by the

mediation.

⁴¹ Following the European political and legal tradition, the Rules of Procedure of the National Assembly do not directly mention opposition, but provide a quite large framework for parliamentary groups, which are the pivotal elements within the democratic machinery. About the legal system's foundation, the Serbian constitution pays attention to political parties in general, without mentioning opposition as an individual subject. To this end art. 5 guarantees the existence of party pluralism as a pillar for democracy and as a means for recognising and ensuring citizens' demands. Parties may be freely established (Art. 5, §2), but their “activities [...] aiming at forced overthrow of constitutional system, violation of guaranteed human or minority rights, inciting racial, national or religious hatred, shall be prohibited” (Art. 5, §3). On this last aspect, see *infra*.

⁴² Serbia 2022 Report, cit.

opposition”⁴³.

The novel legal frame enhanced opposition’s participation to democratic processes, paving the way to a political environment complying with the rule of law and democratic participation, even allowing the representation of non-parliamentary opposition within electoral commissions. Furthermore, legislative changes extended the *locus standi* and the time limits for petitions related to the elections, they also provided for election materials audits and for positive actions for minorities. However, really important recommendations made by ODIHR and the Council of Europe bodies’ remained unattended, especially those regarding “key aspects of the electoral process, such as access to media, campaign finance, measures to tackle pressure on voters, and the public scrutiny and auditing of voter lists”⁴⁴.

In contrast with the efforts made for implementing the democratisation of Serbian politics, both within institutional machineries and extra-parliamentary activities, according to the Commission there is still a general lack of strong rules of procedures in line with the EU standards, while “[t]he effectiveness, autonomy and transparency of Parliament, including the role of the parliamentary opposition, [still] need to be strengthened unequivocally, in order to ensure the necessary checks and balances”⁴⁵.

4.2 *The case of Montenegro*

⁴³ According to the Report, “[h]ate speech and discriminatory terminology are often used and tolerated in the media and are rarely followed up by regulatory authorities or prosecutors. In early 2022, REM looked into two videos broadcast on cable and national channels, but reacted publicly with condemnation only in the case of the cable one seen as criticising the authorities”. Serbia 2022 Report, cit.

⁴⁴ Serbia 2022 Report, cit., p. 11.

⁴⁵ Ivi. For further critical insights regarding the practical impact of populism and polarisation on opposition’s actions: I. FIKET and D. SPASOJEVIĆ, *Opposition in Serbia: oppression, delegitimization and extra-institutional engagement*, in A. DI GREGORIO and S. BALDIN (eds), *The Legal and Political Conditions of Opposition Parties in Central and Eastern Europe. An Overview*, EUT, Trieste, 2023, pp. 205-231. See also D. SPASOJEVIĆ, *Two and a Half Crises: Serbian Institutional Design as the Cause of Democratic Declines*, in *Political Studies Review*, 4, 20, 2022, pp. 550-563; M. STOJIC, *Party Responses to the EU in the Western Balkans: Transformation, Opposition or Defiance?*, Palgrave, London, 2018; B. TODOSIJEVIĆ, *Serbia*, in S. Berglund et al. (eds), *The Handbook of Political Change in Eastern Europe*, 3rd ed., Elgar, Cheltenham, 2013; D. VUKOVIĆ, *Rule of Law in Serbia*, in D. SPASOJEVIĆ (ed.), *Undermining Democracy. Processes and Institutions in Serbia 2010-2020*, CRTA, Belgrade, 2021, pp. 17-44.

Contemporary attempts in securing a stable government for Montenegro have suffered numerous issues that undermined democratisation and good-governance. In fact, the Commission stated that “political tensions, polarisation, the absence of constructive engagement between political parties [...], the failure to build consensus on key matters of national interest” are at the bottom of two votes of no-confidence for the past two governments⁴⁶. The aforementioned volatile and instable political scenario is one of the effects of an improper functioning of democratic structures that impacted also on higher jurisdictions, such as in the case of the Constitutional Court, which had to function with an incomplete composition due to the parliament’s failure in electing members⁴⁷.

Against the aforementioned background, the Commission highlighted that “[t]here was no progress with regard to a comprehensive reform of the electoral legal and institutional framework, including on the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) recommendations, following the observation mission of the 2020 parliamentary elections”⁴⁸.

⁴⁶ Commission Staff Working Document, *Montenegro 2022 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, 2022 (hereinafter ‘Montenegro 2022 Report’). The Report also mention the Fundamental Agreement with the Serbian Orthodox Church as a further reason for tensions and volatile politics (especially in reference to the EU agenda and the role of the Montenegrin parliament), while stressing that “[o]n freedom of thought, conscience, and religion, the government and the Serbian Orthodox Church signed in August 2022 a fundamental agreement, amidst protests from CSOs, several members of the government and some political parties, leading to a no-confidence vote and the subsequent fall of the government. Religiously motivated attacks, for instance during the enthronement of the Metropolitan in the Cetinje Monastery in September 2021 or on a bus transporting children and young people from Niksic in Cetinje in April 2022, are a matter of serious concern” (36).

⁴⁷ Montenegro 2022 Report, cit. The failure in guaranteeing the quorum for Constitutional Court’s functioning had a strong impact on political certainty, leading to a more tensed environment amongst executive, legislative and judicial powers. Such impasse occurred in spite of the constitutional provision devoted to the composition and functions of the Judicial Council, which defines the Council as an “autonomous and independent authority that secures autonomy and independence of the courts and the judges” (Art. 126), even considering that Art. 127 provides for reserved quota for the opposition in reference to the members of the Judicial Council (“Members of the Judicial Council shall be as follows: [...] 3. two Members of the Parliament elected and dismissed from duty by the Parliament from amongst the parliamentary majority and the opposition”).

⁴⁸ Montenegro 2022 Report, cit., 4. In reference to the critical aspects regarding politics of

As an example of such an attitude, the Parliamentary Committee for electoral reform, aiming at amending the electoral process and with a mandate ending in May 2022, was not active till November 2021 and met two times in 2022. Specifically, the Parliamentary Committee for electoral reform's mandate aimed at fostering novel legislation or amendments to existing laws in order to implement the rule of law and democratic processes, basically through several fields: a) election of MPs and councillors, b) voter's registry, c) financing (also electoral campaigns), d) registers of residence, e) period for holding municipal local elections, f) design a code of ethics for election campaigns⁴⁹.

In spite of the Parliamentary Committee's failure, the Parliament amended the Law on Self-Government, which provided for a common election day. This amendment has been declared unconstitutional by the Constitutional Court following the so-called "envelope affair"⁵⁰.

Montenegro and social (and ethnic) matters see D. VUKOVIĆ-ĆALASAN, *Montenegro in the process of EU integration. Political identity between a civic and an ethno-state*, in L. MONTANARI *et al.* (eds), *We, the People of the United Europe: Reflections on the European State of Mind*, cit., pp. 259-270: "On the wave of these protests walks called 'litije', the Montenegrin opposition led by pro-Serb forces gained a slender victory on the August 2020 elections, so the first change of power happened since Montenegrin independence in 2006" (p. 288). However, as the author suggests, there is a misuse of affirmative actions related to the difficulties in providing affordable data in a deep divided society: "[r]egardless of whether they are part of the government or the opposition, political elites have a tremendous responsibility to reduce the degree of political abuse of ethnic and national identities" (p. 264). In reference to these aspects it is quite crucial to recall Part 5 of the Constitution of Montenegro 'Special-Minority Rights', with regard to Art. 79 'Protection of Identity': "Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows: [...] 9. the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action".

⁴⁹ The Committee had the mission of analysing and proposing amendments to several important legislation, namely 1) Law on identity cards; 2) Law on Montenegrin citizenship; 3) measures to implement the State Election Commission and the Anti-Corruption Agency. On these aspects, the Montenegro 2022 Report states that "[n]o progress was achieved on any of these issues [...], no comprehensive audit to enhance public trust in the voter's registry [...] has been conducted", while highlighting the need of further investigation on double-registered voters (p. 10).

⁵⁰ The so-called 'envelope affair' regarded a case of illegal financing to political parties dating back to 2016 (although news have been made public on January 2019). On this affair, the Montenegro 2022 Report stresses that "[a] credible, independent and effective institutional response to the so called 'envelope affair' remains to be ensured" (p. 4 and p.

Overall, the Montenegrin Parliament has been characterised by polarisation and a lack of constructive engagement between the parliament and the executive, leading to boycotts from both the ruling majority and the opposition, thus impeding a normal functioning of governance's mechanisms. Furthermore, another crucial element fostering instability and volatile politics is the lack of rules of procedures designed through an Act by the legislative for ensuring the cooperative – and not competitive – engagement between parliament and the executive within the democratic process.

Aside from the aforementioned critical features, Montenegrin parliament did ensure transparency and communication, e.g. providing online access to proceedings via the internet and other media, even allowing citizens to directly promote the legislative process through the “E-petition project”, with the aim of fully involve civil society through the digitalisation of procedures and transparency in the law-making procedure⁵¹.

Participation and transparency, however, according to the Commission seem to have a little impact on Montenegrin politics' issues, i.e. party fundings⁵², corruption, and gender issues. In reference to party fundings and corruption, in early 2022 the government started an analysis for the legislative implementation to prevent corruption, especially in reference to asset confiscation in line with the EU acquis. As far as gender issues are concerned, according to the Commission, Montenegrin politics still is “male-dominated and it is noticeable that verbal abuse against women in political life is growing, especially in the public sphere and particularly towards the younger politicians”⁵³, “inappropriate speech still dominates some debates, with MPs using terms that in the context of deepened political, social and ethnic divisions do not contribute to much-needed reconciliation and improved inter-party dialogue”⁵⁴, while there are “patriarchal attitudes and insufficient party interest”⁵⁵ to nurture a suitable environment for involving women⁵⁶.

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⁵¹ Montenegro 2022 Report, cit.

⁵² See *supra*.

⁵³ Montenegro 2022 Report, cit., p. 13.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ While highlighting the patriarchy within the Montenegrin parliament and political system, the Report also emphasises some crucial steps for improving gender equality, i.e. the “cross-party Women’s Club in the Parliament continued its active role and initiated

5. Conclusion

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 – founded 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 trajectories⁵⁷.

In reference to the EU evaluation in the light of a possible – foreseen or even expected – enlargement to the Western Balkans, the basic evaluation on the EU aquis 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 the Serbia and Montenegro politics' functioning 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. As in the case of Serbia, although several minimal attempts in promoting and respecting opposition's democratic role, strong polarisation, discrimination and media's capture represent major criticisms. With the same attitude but different achievements, opposition in Montenegro suffers a general lack of cooperation within political forces in the Parliament, while functional features underlines a still critical political environment in terms of minorities and gender issues.

In both cases, it is clear that focusing on functional elements – although crucial for Western liberal democracies – cannot suffice for

discussions on improving the legal framework on gender related issues [...], while the Committee for Gender Equality improved its oversight function, by organising a number of consultative control hearings" (13). Furthermore, according to the Report, "MPs and parliamentary staff increased their capacity in gender-responsive budgeting and gender assessments in drafting and adopting legislation and policies" (ibid.).

⁵⁷ See *supra*.

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solving the failures of institutional machineries, while a well-defined opposition as a subject, through constitutional provisions and legislative rules of procedures, may facilitate the path for reaching an EU acquis in terms of participation to the democratic processes and compliance with the rule of law.