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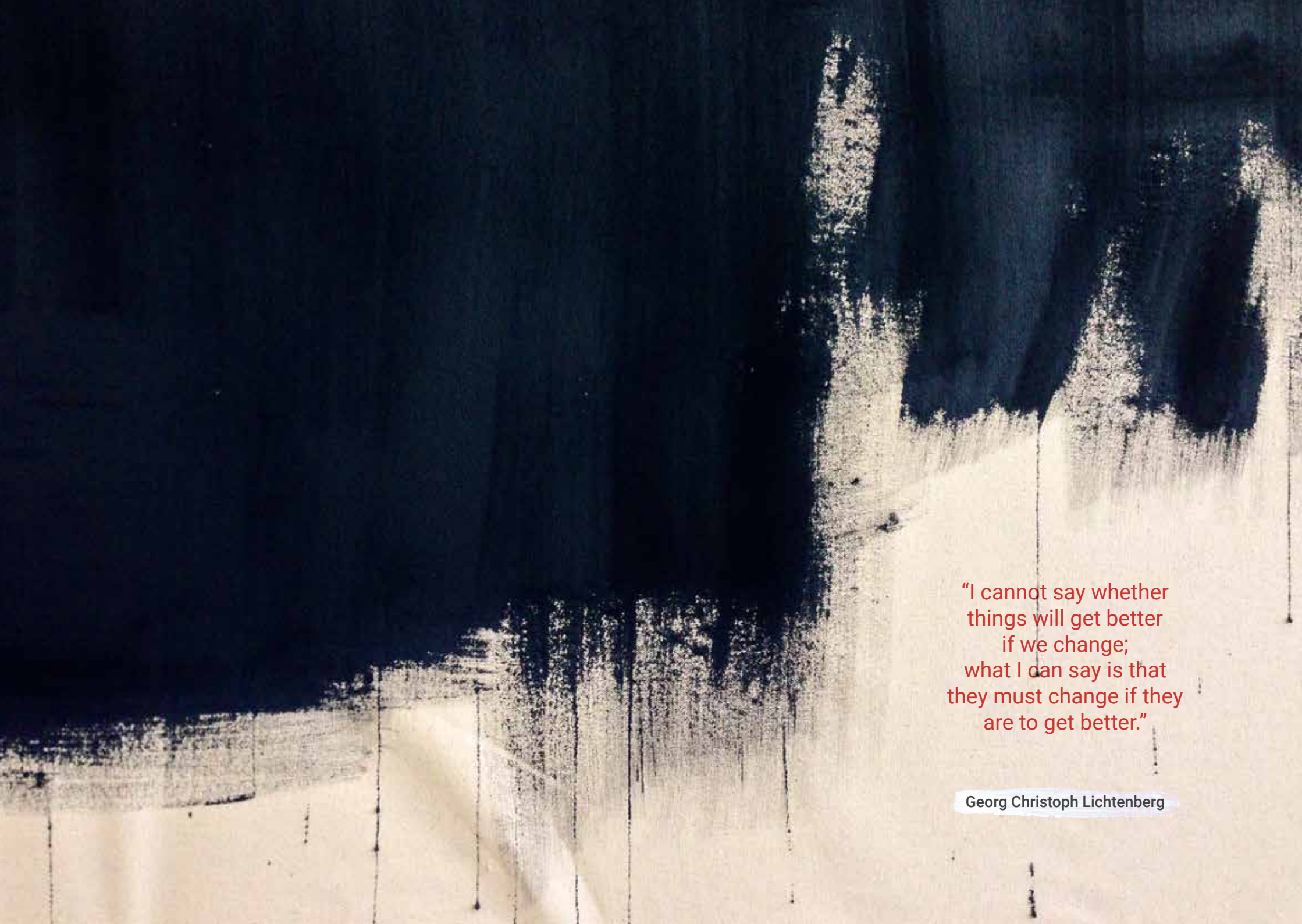
POLI

# »THE RULE OF THE CARTEL

SRĐAN  
BLAGOVČANIN



Švedska  
Sverige



"I cannot say whether  
things will get better  
if we change;  
what I can say is that  
they must change if they  
are to get better."

Georg Christoph Lichtenberg



## **The Rule of the Cartel**

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## Summary

The paper discusses the political and institutional development of the post-conflict Bosnia and Herzegovina, which remains a country that is still undergoing transition (with all the attendant caveats and reservations that this term implies), based on the theoretical assumptions of the phenomena of hybrid regimes, state capture and cartelisation of politics. Analysing the physiognomy of the hybrid regime emerging from the post-conflict environment, the paper seeks to shed light on the key mechanisms of how this regime operates, i.e. the levers used by the ethno-national elites to seize control over the state, institutions and the democratic process – the same ones that have organised themselves into a cartel of sorts to secure an undisputed monopoly over the state and society.



## 1. Introduction

The triple transition<sup>1</sup> that Bosnia and Herzegovina (BiH) faced in the aftermath of the war in the mid-1990s not only failed to bring the country towards liberal democracy founded on the rule of law and market economy, but its achievements, or, more precisely, the absence thereof, only go to show the inadequacy of transitional paradigm in understanding political processes. Instead of the proclaimed outcomes – liberal democracy and market economy, the ethno-national kleptocratic elites succeeded in effectively capturing all transition processes, thus creating a hybrid regime, which, on the imaginary axis between liberal democracy and autocracy, persistently strives for the latter. The regime rests on a brutal logic, whereby the closely connected coterie of the political elite continues to amass enormous wealth by siphoning off public resources, while the debts, losses and overall negative consequences arising from such a state of play are shouldered by disenfranchised citizens.

This outcome is actually in keeping with the global trend of proliferation of hybrid regimes. Combining elements of democracy and autocracy, they have forged resistance to a wide array of potential threats to their sustainability. In order to fully understand them, it is important to look at their *modus operandi*, which, put most succinctly, can be described as – corruption.



## 2. On mimicry in nature and in society

The phenomenon of mimicry, fairly common in the natural world, allows species that use it to survive by mimicking the appearance of other, more dangerous species in order to deter predators or blend in with their environment. This highly interesting natural phenomenon could not pass unnoticed by social researchers, who drew parallels with mimicry in the natural world in a bid to explain certain social phenomena, primarily in sociology, political science, international relations and organisational sciences (Powell & Di Maggio, 1983) (Andrews, Pritchett, & Woolcock, 2017).

One of the central challenges of the transition process concerns the building of inclusive institutions that work for the public good (Acemoglu & Robinson, 2012)<sup>2</sup>. Being highly complex, the process of building inclusive institutions may result in outcomes that diverge considerably from the proclaimed ones. It is in this respect that the phenomenon of mimicry may be used to vividly illustrate how institutions operate in hybrid regimes. As in the world of nature, the purpose of mimicry in the institutional context of hybrid regimes is survival. In order to ensure their survival, hybrid regimes create a semblance of inclusive institutions, which are in fact extractive in nature, i.e. they exist and operate with the sole aim of serving particular interests. Hybrid regimes use mimicry to conceal their true nature with a view to ensuring internal legitimacy, i.e. securing the consent of those being ruled over, but also the equally important external legitimacy as a precondition for the country's full credibility on the international stage and the generation of international financial support essential for the survival of hybrid regimes. Mimicry actually makes it possible to reduce democracy to camouflage, by democratic means. While on paper, i.e. by the letter of the law by which they were founded, state institutions have the prerogative to act, in actual effect they are nowhere near fulfilling their stated purpose, leaving only a semblance of inclusive institutions. This kind of institutional mimicry is engendered by the interests of the ruling elite. The mimicry actually seeks to conceal the fact that actual power is in extra-institutional hands and at the service of a particular interest, i.e. in the hands of a small coterie of the ruling elite, while at the same time efforts are made to preserve the legitimacy of rule by creating the illusion of the rule of law, and vertical and horizontal accountability. The legislature, which naturally enjoys statutory primacy over the executive, has been reduced to a debate club, with no greater influence on the final shape of legal regulations than that of the institutions which publish these regulations in official gazettes.

Law enforcement agencies with their policing powers and uniforms convey the impression of maintaining public order, whereas in actual practice they are deployed in the service of preserving the regime and persecuting its critics, and are in return allowed to sponsor organised crime. Mimicry is, therefore, the optimal strategy for furthering the interests of the ruling elite, but not only for them. Both the middle and lower echelons of the loyal in the public sector also find ways to serve their interests in such a constellation. To ensure loyalty, the ruling elite also allows for the capillary spread of corruption that benefits both middle and lower echelons of supporters, either by allowing top managers in public institutions to take commissions in bidding procedures that are not large enough to attract the attention of predators from the top of the power pyramid or, in the case of low-ranking public servants, by tolerating petty corruption.

To overcome this situation, there is hardly any other recipe than the elections themselves, whereby public dissatisfaction would generate a change of government. Very often, however, instead of having the logically expected outcome of bringing about the change of government, public dissatisfaction, paradoxically, results in the democratisation of kleptocracy. Despite the widespread perception of all-pervasive corruption in the country, the corrupt elites keep winning popular support in elections. Regular election cycles with international verification of results make sure that the incumbent elites remain in power. The mimicry of the electoral process, which creates the illusion of fair and open elections, enables an outcome that suits the will of the rulers. Behind the façade of democratic, fair and open elections there is a whole gamut of highly innovative and virtually inexhaustible fraudulent techniques and methods: from vote-buying, to somewhat more sophisticated techniques of securing support by giving out jobs and awarding public procurement contracts to supporters, to threatening and intimidating opposition parties and their sympathisers, often in the form of physical assaults, to media manipulation and asserting full control over the administration of elections through clientelistic appointments to the election commission and polling station committees, all with the aim of securing the desired electoral outcome through manipulations at various stages of the electoral process (compiling the voters register, ballot counting, etc.). In the end, a substantial proportion of the electorate (usually between a third and a half) choose to voice their disapproval or, more often, apathy and disbelief in the possibility of change, by abstaining from the election.



### 3. Elections without a choice

It is with the dilemma about what was the point of holding the first post-war election in BiH in 1996 if it were to bring to power backward-looking forces, contemplated at the time by Richard Holbrooke, an American diplomat and the main architect of the Dayton Peace Agreement, that Fareed Zakaria opens his article in which he coined the subsequently oft-used term 'illiberal democracy' (Zakaria, 1997).<sup>3</sup>

Holbrooke wonders whether elections make any sense if there is no rule of law and a functioning institutional framework, and whether they invariably lead to the capture of democratic processes, i.e. the state itself, by unscrupulous and corrupt elites, and the establishment of illiberal democracy or a hybrid regime. Of course, this dilemma is by no means a novel one, but as yet there seems to be no general consensus on how to approach it. For decades it has sparked a heated academic debate, where the winning side seems to be the one arguing that a lot more successful have proven to be those states that have put in place at least basic institutions and capacity to enforce laws, i.e. the rule of law, before democratisation as exemplified by multi-party elections (Huntington, 1968). This places special emphasis on the rule of law as an essential pillar upon which democracy rests, i.e. the rule of law is seen as a fundamental prerequisite for the effective functioning of the democratic process, in order to ensure political rights, accountability mechanisms and equality (O'Donnell, 2004).<sup>4</sup>

In any case, BiH seems to be an example that confirms that the conduct of multi-party elections (so-called premature democratisation, i.e. democratisation that takes place before the basic foundations have been laid in terms of functioning institutions and elementary capacities of the state to uphold the rule of law) leads to the capture of the democratic process and the state by unscrupulous elites, whose enormous power has its roots in wartime conflicts. This situation is strongly reminiscent of the privatisation that unfolded against a similar backdrop of ill-functioning institutional framework, with laws designed to favour non-transparent models of capital transformation (such as direct bargaining), resulting in state capture coming from a different direction but producing the same outcome.

Conventional wisdom, however, has it that the chief cause for the current state of play in BiH is a construction error, i.e. the constitutional setup that

arose as a result of the Dayton Peace Agreement, while the issue of "premature democratisation" has remained largely overlooked.

It is beyond doubt that the existing constitutional setup does not contribute to or create conditions for the development of a well-functioning state, but it is by no means the only important factor as evidenced by the fact that even the lower administrative units within the state, which have had all the necessary prerogatives and been free of potentially obstructionist mechanisms, have failed to develop appreciable institutional capacities, i.e. increase the quality of governance.

The absurdly high level of corruption, wholesale violations of human rights and tragically poor quality of public service delivery seem to be more significantly linked to "premature democratisation", which has resulted in the capture of the democratic process and the state.

While arguing that the democratic process and the state were brutally captured as far back as the first post-war election, one should not overlook the fact that since then there has been no change of government in any of the ethnopolitical subsystems (the very short periods in which power was exercised by other parties did not bring about a substantial change in political dynamics, and were made possible by strong international intervention). The exception is the Serbian ethnopolitical subsystem, where the international community used the so-called Bonn powers to oust the incumbent political power-holders by coercive methods, while investing heavily in the then opposition party. However, even such a change, if it can be considered a democratic change of government at all, was further dampened by the fact that the political option that took power after the ousting completely took over the old *modus operandi* as well as a large number of previous power-holders. It therefore seems warranted to conclude that the country remains quite far from fulfilling so-called Huntington's "two-turnover" test of a consolidated democracy (Huntington, 1991).





## 4. Hybrid regimes and corruption

Since the end of the Cold War, research into hybrid regimes has garnered considerable attention in academic circles, which has grown in parallel with the steady increase in their number. The defining characteristic of hybrid regimes is that they combine elements of democratic institutions, such as elections, with those of authoritarian regimes, such as human rights violations and the absence of a functional rule of law (Diamond L.J., 2002).

Depending on the approach taken, hybrid regimes are characterised in different ways, *inter alia* as competitive autocracies, precisely because of their characteristic to be competitive, as they do not formally restrict multipartyism, and at the same time authoritarian, as in real life the opposition is faced with multiple challenges. Competitive autocratic regimes are those in which formal democratic institutions are the primary means of coming to power, but in which violations of human rights and freedoms, misappropriation of public resources and control of the media are widespread to such an extent that they cannot be characterised as democratic (Levitsky & Way, 2010).

Concurrently with the growing interest in researching hybrid regimes, it has been posited that such regimes should be understood as a special form of political system, and that it is actually wrong to view them through a transitional paradigm (Carothers, 2002). Moreover, thinking about them in the context of transition is counterproductive and is, in fact, only in the interest of the elites in those states, who feign reforms to create the illusion of transition in an attempt to legitimise their rule.

Hybrid regimes are seen as more corrupt and clientelistic than both consolidated democracies and full-fledged autocracies, and as such deliver considerably lower quality of governance and, consequently, poorer quality of public services (Persson & Rothstein, 2019). Corruption is in fact the *modus operandi* of hybrid regimes. It is therefore impossible to understand hybrid regimes without looking at them through the lens of corruption, as corruption constitutes the underlying logic of their functioning.

Corruption occurs in a myriad of different forms. Of particular importance for understanding the functioning of hybrid regimes is the consideration of political corruption. Corruption is rendered political by those who par-

ticipate in it (political power-holders) and/or by the very goal of corrupt activity (gaining or maintaining political power). Hence, we can distinguish two subtypes of political corruption: the first aimed at amassing wealth in the hands of political power-holders, and the second aimed at gaining or maintaining political power. This is actually a textbook division used for the purpose of understanding the use value of corruption in hybrid regimes, but in practice these two are very often intertwined.

Most definitions of corruption contain “abuse of power for private gain” as the least common denominator. Therefore, in order to devise strategies for curbing and preventing corruption, the majority of corruption research focuses on the different ways in which power, once gained, can be abused.

As logical as it may seem to focus on ways of abusing power<sup>5</sup>, one should not overlook the important question of how power is gained and distributed given its explanatory potential in the context of hybrid regimes.

The modern understanding of power distribution in the context of good governance implies that power is entrusted in a proper procedure, based on pre-established criteria and an evaluation of candidate's personal characteristics against the defined criteria. This understanding is based on the relationship of trust, i.e. understanding that the one to whom power is entrusted really possesses the required qualities (knowledge, skills, experience) and that he/she will use the entrusted power responsibly and be accountable to those who entrusted him/her with power. The cycle of entrusting power begins with election, where voters entrust the power to run public affairs to political parties, which, once elected to parliament, entrust executive power to the government, which further distributes power across the public sector.

*Differentia specifica* of corruption in hybrid regimes lies precisely in the fact that the electoral process itself is essentially warped by corruption. Using various corrupt methods of securing support, be it vote buying, or giving out jobs in the public sector to supporters of ruling parties, or cronyism in awarding public contracts to companies with close ties to the ruling elites, which in turn provide various forms of support to ruling party campaigns, is how incumbents make sure that they stay in power. Effective control over the public sector is maintained by appointing people of trust to managerial positions, who in turn give employment to party supporters and siphon off budget funds through public procurement procedures geared to suit companies with close ties to the party leadership.

Hence, it might be interesting to look at the relationship between two post-Cold War phenomena – competitive autocracies and state capture. The state capture phenomenon arose with the collapse of strong socialist states with a robust centralised state apparatus, when new actors used the power vacuum to enter the scene and establish rules that are placed solely at the service of their own interests (Hellman, Jones, & Kaufmann, 2003).

Conceptually distinguishing the state capture phenomenon from corruption, and essentially defining it, Hellman and Kaufmann emphasise that “while most types of corruption are directed toward changing how existing laws, rules, or regulations are implemented with respect to the bribe payer, state capture refers to corrupt efforts to influence how those laws, rules, and regulations are formed” (2001).

State capture is therefore defined as the systematic activities of an organised group aimed at influencing decision-making and implementation in a way that favours a particular interest to the detriment of the general interest (Omelyanchuk, 2001).

Therefore, it is clear that in the context of weak states and underdeveloped civil society, such forms of influence have a strong impact on the speed and direction of reforms, on the creation of economic and political institutions and, finally, on the general quality of governance in transition countries (Hellman, Jones, & Kaufmann, 2003).

One of the defining characteristics of competitive autocracies is the uneven playing field between the incumbent and the opposition, as manifested in the abuses of power by the incumbent and the severely limited opportunities for the opposition parties to compete in elections on an equal footing. Three aspects of an uneven playing field are of particular importance for understanding the fairness of the political playing field: access to resources, media, and justice and law (Levitsky & Way, 2010).

It is important to note that state capture creates legal preconditions for the incumbent to exert their dominance, which is a fundamental characteristic of competitive autocracies. Thus, for example, as far as access to resources is concerned, the laws governing political party financing may be very lax in that they do not proscribe the use of public resources in the incumbent’s campaigns. Or, the law on privatisation of state-owned capital may provide for the possibility of selling by direct agreement, without

a public call, which leaves plenty of scope for the incumbent to decide at their own discretion on to whom and at what price to sell certain assets. As a counter-service, the buyer then appears as a financier of the incumbent.

As regards access to media, laws may guarantee the highest degree of media freedom, but the state’s dominant role in the economy with a broad portfolio of public enterprises and the government’s position as the largest buyer of goods and services through public procurement may create a broad network of pro-government media through advertising income from public institutions or the companies close to the incumbent.

While access to justice may be guaranteed by laws guaranteeing judicial independence and fundamental human rights and freedoms, their selective application may ensure that the politically loyal in the judiciary prosecute only those perceived as a potential threat to the incumbent.





## 5. Theoretical assumptions of corruption

The dominant understanding of the phenomenon of corruption is founded on the theory of the relationship between principals and agents, around which regional and national corruption prevention strategies have largely been developed. The basic premise of this model is that the principal delegates to the agent certain powers to exercise in his interest. This theory explains the phenomenon of corruption through the positions and relations of principals and agents, identifying asymmetry in the access to information between the two groups, as well as their conflicting interests and goals, as the root cause of corruption, which occurs when the agent ceases to represent the interests of the principal subordinating them to his own interests (Klitgaard, 1988).

Thus, for example, in elections citizens (the principal) delegate power to political parties (the agent) to form a government and run public affairs for the common good, i.e. in the interest of citizens. Corruption occurs when political parties, i.e. the incumbent, disregard the public interest in favour of particular interests. Similarly, when the perspective is shifted, the country's leadership, i.e. political parties, may appear as the principal and the bureaucracy as the agent, with the latter, in the case of corruption, giving precedence to its own interests over broader or public interests.

The shortcomings of this theoretical template are reflected, *inter alia*, in the idealised understanding of the roles and relations of the principal and the agent, where all the blame falls solely on the agent abusing power, while the principal is understood as committed exclusively to the public interest, whereas the actual problem lies in insufficient control over the agent by the principal caused by disparities in the access to information between the two. Hence, the question to which this theoretical concept has no answer is – what if the agent gained power by fraudulent means, i.e. abused his power to such a degree that there is no longer an effective way in which he can be influenced by the principal.

The collective action theory, which has been gaining traction in the interpretation of corruption in recent years, posits that all actors, be it the elite or ordinary citizens, are chiefly interested in maximising their own benefit, and their behaviour is determined by the assumption or expectation of how other actors will behave in particular circumstances. Therefore, for a rational actor, who primarily seeks to further his/her own interests, regard-

less of his/her position in society, the expected behaviour of other actors is the main reference point for his/her own behaviour. In case of members of the political elite, whose primary interest is to preserve the *status quo* (i.e. to stay in power and keep benefitting from all the attendant privileges), in a context in which they see other actors as corrupt, they will engage in corrupt activities themselves as the only behaviour that enables them to further their interests. Similarly, if citizens expect and recognise corruption as the dominant behaviour in others, they too will resort to corrupt means in the pursuit of their interests.



## 6. Bosnia and Herzegovina – between uniqueness and being stuck in an endless loop

This paper does not by any means intend to accentuate and exploit the specifics of BiH for explanatory purposes, because the nature of the phenomena occurring in the country is not unique in any way. However, what deserves special consideration is the distinctive development path the country has taken since the end of the war, which results in the existing hybrid regime, as well as the key actors – ethno-political elites whose interests and interest-based cartel have predominantly shaped the physiognomy of the political system.

### 6.1 State under construction

State-building in BiH started after the end of the war, and from the ground up given the complete institutional discontinuity with the pre-war situation. The process was based on direct foreign intervention, as a result of which the key institutions, notably those at the state-wide level, were created and shaped. The role of international actors has shifted over time from directly running the country, i.e. imposing and implementing legislation, to adoption of the so-called *conditionality* approach by the EU, which is also applied to other countries that aspire to full EU membership.

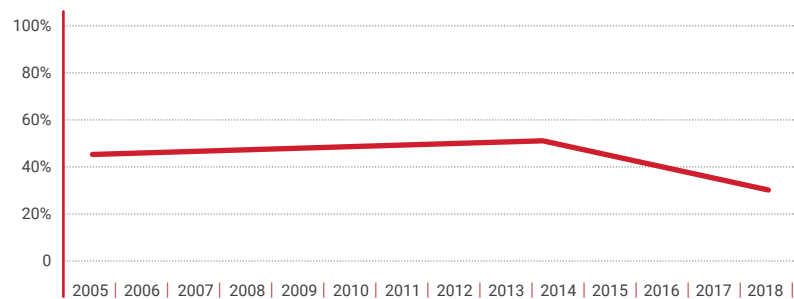
The post-war period in BiH can be divided into several phases based on the political dynamics and the roles of key actors. Immediately after the signing of the peace agreement, given the scale of the country's devastation, complete institutional discontinuity, absence of the rule of law and systematic human rights violations, the first and logical priority, besides physical reconstruction, was the implementation of the peace agreement and establishment of the basic legal and institutional order – state-building. Characteristic of that period was the fact that the Office of the High Representative (OHR) directly ran the country with the help of other international or *ad hoc* institutions, passing, imposing and implementing legislation and setting up institutions, which is why this phase is known as the phase of authoritarian state-building.<sup>6</sup> Although it is difficult to clearly demarcate the different phases of state-building in BiH, the year 2000 features prominently as one of the pivotal years in the process. It was in 2000 that the EU first affirmed its commitment to admitting the Balkan countries to its membership upon fulfilling the necessary conditions (EUROPE-

AN COUNCIL, 2000). Furthermore, the year 2000 is also important in that it marks a turning point, as a year when the EU started applying its conditionality policy towards BiH as a common model of relations with countries that aspire to EU membership. In 2000 the EU presented a Roadmap that had to be implemented if the country was to be ready to start negotiations on a Stabilisation and Association Agreement. What is interesting about this phase is that for the first time in the history of EU integration, the conditions that the EU set for a country were implemented through imposition. The conditions, which primarily concerned the strengthening of institutions and the creation of new ones at the state-wide level, were mainly imposed by the OHR, using the so-called Bonn powers. This phase can therefore be characterised as an intermediate phase, i.e. a combination of the authoritarian state-building approach and the member-state building approach. This phase, in which a substantial number of state-level institutions were created and systemic laws adopted, lasted until 2005/2006. In 2005 the Peace Implementation Council (PIC) decided to replace the OHR, together with its broad Bonn powers, with the EU Special Representative, which would have a solely European agenda based on voluntary acceptance of conditions. The term of the High Representative Paddy Ashdown, marked by widespread use of authoritarian powers, also ended in 2005. The constitutional reform, which came to be called the April Package, in which the international community invested significant efforts, failed to receive support in the BiH parliament in 2006, under very controversial circumstances, which further convinced the international actors that external running of the country had to be abandoned.

Although the use of Bonn powers continued beyond 2005 and 2006, this has been to a much lesser extent, and consensus on their use has been almost impossible to reach within the Peace Implementation Council (PIC).

In mid 2000s international actors pulled out of the operational running of the country creating a power vacuum, which was completely filled by the ruling elites, putting under their effective control the entire institutional framework, thus completely capturing the state and the democratic process.

The year 2005/2006 marked a key turning point, also captured by almost all surveys and indices, after which the country started to stray off the right track in almost all measurements of the quality of governance and, in particular, corruption.



**Figure 1.**  
Governance indicators: Corruption control; World Bank Institute  
(Worldwide Governance Indicators)

The World Bank's governance indicators clearly show that since 2006 the country has seen worsening scores in the corruption control category, and the same has been true of other relevant indicators, such as the Corruption Perceptions Index (CPI) developed by Transparency International. According to the CPI, over the last decade BiH has been on a continuous downward path in terms of both the scores as well as the ranking.<sup>7</sup>

## 6.2 Cartel policy

The use of the term 'cartel' is not unheard-of in the depiction of political phenomena, although its modern recognition stems from the domain of economic relations, organised crime and drug smuggling, which has resonated in popular culture through films and series revolving around these topics.<sup>8</sup>

Returning to the domain of political science, Lijphart, interestingly, uses the term 'elite cartel' in his definition of consociational models, defining it as government by elite cartel designed to turn a democracy with fragmented cultures into a stable democracy (Lijphart, 1969). In using this term, Lijphart refers to Dahrendorf, who used it with a somewhat different connotation as a cause of political stagnation, and even a tendency towards authoritarianism, unlike Lijphart, who uses it in the context of democratic governance (Dahrendorf, 1979).

The political system of BiH was established by a peace agreement as a

consociational (power-sharing) model of organising the country. The veto and ethnic quota mechanisms, built into the legal system, besides guaranteeing equality and equal representation, also establish the consensus of the three ethnic groups as the only possible decision-making modality, while giving enormous power to the highest representatives of the ethnic groups. The concentration of power in the hands of ethnic leaders is reflected in the decision-making mechanism, where informal meetings of political leaders represent the most important instance at which decisions are made, which, if and when agreed, are referred to formal procedures for verification. It is common for such meetings to agree on division of post-election spoils, key legislation, or other important issues for the country.

The interest-based grouping of ethnic political elites, unchallengeable in their respective ethnic groups, actually makes them a cartel through which they distribute ethnic quotas across institutions. This kind of association cannot be termed a coalition because it is not formed around any shared programmatic platform or agenda. The shared interest of such a cartel, which is to preserve the *status quo*, makes it even stronger than typical coalitions, which may fall apart as a result of differences in public policy views and priorities. The absence of a programme and indifference to ideological affiliations render the cartel immune to this type of challenge. It is only the *status quo* that guarantees political elites almost unlimited power and control over institutions and public resources, so everything is deployed in the service of preserving it as a matter of paramount importance. An important determinant of the *status quo* is the continued perpetuation of interethnic tensions by finding ever new causes that generate an unceasing smouldering crisis, which puts ethnic groups in a permanent state of being confronted with crucial challenges of survival and equality, thus making them homogenised. This in turn allows ethnic political elites to take on the role of unwavering defenders of vital ethnic interests. Beneath the surface of these politics as a continuation of the war by other means (Foucault, 2004) lies the shared interest in the distribution and effective control of public resources and gearing them towards the particular interests of the incumbent. Instead of creating mechanisms of vertical and horizontal accountability, i.e. the accountability of the government to the voters and the mutual accountability among the separate branches of government, such a state of affairs gives rise to so-called perverse accountability (Stokes, 2005), where, in a perverse twist of social logic, voters become accountable to their ethnic political elites, while the system of ethnic quotas imposes ethnic criteria over merit for all public office hold-

ers, effectively abolishing the separation of powers and transferring the accountability of everyone from one ethnic quota to the political elite of that ethnic quota as the only true interpreter and defender of vital national interests.

*The raison d'être* of such a cartel is ensuring effective division of and control over public resources and placing them at the exclusive service of the particular interests of political elites. Hence, it can be argued that such a regime is actually kleptocratic in nature. Explaining the logic behind kleptocratic regimes, Acemoglu and Robinson identify the specific strategy that these regimes use, which comes down to the old adage 'divide and rule' (Acemoglu, Verdier, & Robinson, 2004). They maintain that this divide-and-rule strategy has been widely used by autocrats in countries with a low degree of institutionalisation to preserve power. Given that a change of kleptocratic and autocratic regimes requires collective action, i.e. cooperation of different social groups, making use of the divide-and-rule strategy has proved to be extremely successful. BiH is a textbook example of how this strategy is used by the cartels of ethno-national elites, as so vividly evidenced every time they face a threat to their hold on power, artfully accentuating ethnic differences and fabricating fear from other ethnic groups to create an atmosphere of disquiet and ensure ethnic homogenisation. True, the very arrangement founded on the power-sharing model creates ideal conditions for the ruling ethno-national elites to use this strategy. Such artful manipulation and use of the divide-and-rule strategy has completely precluded any collective action that transcends ethnic lines and made a change of government virtually impossible.

Thus, it is beyond doubt that everything other than the *status quo* is coupled with great risks to the elite cartel. Undertaking substantial reform under the formally proclaimed EU integration process would not only entail significant restrictions on ethnopolitical elites' power, but would also possibly expose them to criminal prosecution. Therefore, feigning reform is the optimal strategy whereby they secure external and internal legitimacy as well as access to much-needed international finance. Escalating the crisis is also not an option because, apart from the unpredictability of the outcome, it can hardly deliver any benefits for the ruling elite's cartel.

The explanatory power of the cartel phenomenon does not end here. The cartel party theory, well known in political science, is based on the premise that modern political parties use the resources of the state to stifle political competition and ensure electoral success (Katz & Mair, 2009).

Such parties are to a much greater extent entities with separate particular interests to which they subordinate broader public interests or the proclaimed interests of social groups to which such parties subscribe only rhetorically. Rather than advocating and representing social interests, they actually act as agents of the state in society, blurring the line of separation between party and state structures (Croatian Encyclopaedia).

According to the above criteria, political parties in BiH are indisputably cartel-based in their character, but what distinguishes them from similar parties in developed western democracies is that they are also catch-all or big tent parties which attract different sections of population within a single ethnic group. The position of parties as the key arbiter in the distribution of state resources and employment makes them a dominant actor in society, so the extent to which individual rights can be exercised is directly proportional to party affiliation. A separate section on the functioning of political parties will discuss certain aspects of their activities in more detail.





## 7. Dimensions of state capture

In order to understand state capture, it is necessary to take into account the means and manner of capture, but also the object of capture itself – the state, i.e. its central resource – power. Mann thus makes a very useful distinction between two types of state power – despotic and infrastructural (Mann, 1984). Despotic power comes down to coercion, while infrastructural power could be defined as the ability or capacity of the state to inclusively develop and implement policies in the public interest.<sup>9</sup> While the power of coercion, but grounded in the rule of law, is characteristic of liberal democracies too, in the context of hybrid regimes it becomes an important tool for maintaining power, which actually makes it despotic. Deploying the coercive apparatus in the service of maintaining power is therefore an important defining feature of hybrid regimes.

Hence, Levitsky and Way see the capacity of the state to enforce coercion as key to competitive autocracies, differentiating between high-intensity coercion and low-intensity coercion. The former refers to visible acts of repression such as violent suppression of protests, threat to physical integrity or the imprisonment of key figures perceived as a threat by the authorities. Seeing that such manifestations of repression are associated with huge risks such as the loss of the international reputation and credibility of the regime, they are not so common in competitive autocracies, and are undertaken sporadically.

The other type of repressive approach, the so-called low-intensity coercion, is much more appealing and, as such, more widespread. It essentially involves the use of various surveillance and wiretapping techniques, threats, harassment, or provoking incidents at events organised by organisations or groups perceived as a threat. Also, it includes various types of administrative harassment, prosecution for staged offences, selective misdemeanour penalties or denying access to administrative services, and public defamation (Levitsky & Way, 2010).

In this context, it is interesting to note that such repression mechanisms also rely on different groups that can be characterised as organised crime organisations. The nexus between the security-intelligence apparatus and organised crime is not an unknown phenomenon. Very often, collaboration between organised crime and the security-intelligence apparatus is a win-win situation, in which the shared interest makes the two spheres

interdependent, and sometimes even fully integrated with each other. The use of organised crime groups to repress perceived opponents of the regime makes it possible, in the event of widespread public outrage over such events, to contextualise the incident as gangland feud, rather than what it actually is – regime-orchestrated repression.

Analysing hybrid regimes and competitive autocracies, Levitsky and Way identify four arenas in which key processes that can change political dynamics take place, or where autocratic incumbents can assert their dominance by effectively capturing processes within these dimensions. These four arenas are: the electoral process, the legislature (parliaments), the judiciary, and the media (Levitsky & Way, 2002). While the importance of these arenas in the context of securing dominance and/or potential change in political dynamics is self-evident, for the purposes of this analysis two more dimensions have been introduced, namely political parties and the public sector, as they can provide a significant insight into the causal link between hybrid regimes and corruption, i.e. the mechanisms of state capture. Consideration of political parties is of consequence for several reasons: parties are specifically important because in competitive autocracies power is still exercised through nominally democratic forms, and political parties are in this context a means whereby power is transmitted from political leaders to the state. Also, political parties are worth considering because even if a change of government occurs, the logic of the regime will remain unchanged because political parties that come to power in unchanged settings will most likely choose to take over their predecessors' *modus operandi* to consolidate their power. Implementing substantial systemic reform would be very costly in terms of voter support immediately after the implementation of reform, while potential positive effects would become apparent, ideally, in the medium term. On the other hand, the public sector is essential in considering the functioning of hybrid regimes because it actually represents the key power base of incumbents (Weber, 1991).

### 7.1 Political parties

Political parties as key actors in the political system with the primary goal of coming to power (i.e. maximising political power) play very important roles: representation, articulation, integration and competition. Hence, the important issue that has a decisive influence on the fulfilment of these roles is how political parties are organised and operate, and how internal election and appointment processes are implemented, which reflects the

position of the parties towards the state and society. These processes and the way in which they are implemented are essential for the functioning of the political system as a whole.

Some schools of thought see intra-party democracy as an unattainable ideal, and as such it should not be of interest to the general public, as long as the invisible hand of the “democratic market”, following the economic logic of a competitive liberal market, allows citizens to choose in a fair electoral contest among different options offered by political parties (Michels, 1990). However, the importance of political parties as one of the central pillars of the political system, especially in unconsolidated democracies and countries in transition, provides scope for argument that parties need to be analysed from the inside in order to fully consider the realisation of their *raison d'être*, as well as their interaction with other actors in society.

To discuss intra-party democracy, one must first introduce the definition of the term, while taking full account of the contemporary debates on the definition of democracy in general. For the purposes of this analysis we will adhere to an extensive understanding of democracy – or liberal democracy, as most contemporary authors would characterise it, which, besides the formal conduct of elections at regular intervals, also implies the rule of law and the protection of the full spectrum of human rights and freedoms, not only by guaranteeing them formally in constitutions and laws, but also by ensuring their consistent implementation by functional and independent institutions (Diamond L., 2008). Following this logic, intra-party democracy, too, cannot be reduced solely to the inclusion of party membership in decision-making and implementation processes. In this regard, one of the key elements that needs to be taken into consideration in defining intra-party democracy is the attitude that prevails in the political party and its operational work in regard to human rights and freedoms and the rule of law. However, the crucial element of the definition of intra-party democracy is undeniably the degree and quality of involvement of party membership in decision-making and implementation processes. In this sense, there are three key dimensions against which to gauge intra-party democracy, namely: inclusiveness, centralisation and institutionalisation. Inclusiveness looks at how wide the circle of key political decision makers is within a political party. The wider the circle, the more inclusive the party is, and vice versa. At one end of the inclusiveness spectrum are parties in which key decisions are made by a single individual or a small group, and at the opposite end are those where key decisions are taken by the broad-

est membership, by direct ballot. Centralisation concerns how and where decisions are made. Thus, in highly decentralised parties central bodies would only coordinate the work of the lower ones and decide on major issues with the participation of lower decision-making levels. Conversely, in centralised parties, central bodies would take all key decisions alone, while the work of lower levels would be reduced to implementation and reporting back. The third dimension – institutionalisation – looks at several important aspects, including how independent the party is of external actors and how developed its internal organisational structures are, while in a narrower sense institutionalisation refers to the degree and manner of formalisation of decision-making and how the party is structured (Scarrow S., 2005).

The operation of political parties in the country is governed by appropriate laws at each administrative level, however with no legal framework at the state-wide level.<sup>10</sup> The legislation remains highly unharmonised across jurisdictions. Thus, in FBiH the relevant legislation was taken over from socialist BiH, while RS and BD passed new laws on political organisations. Attempts to harmonise the legislative framework through adoption of a single state-wide law have not been successful. The majority of the current political parties emerged immediately after the introduction of multi-party system, while those that came into being during the post-conflict period were mostly formed as offshoots breaking away from existing parties. According to the Central Election Commission, as of the end of 2018, there were 147 political parties in BiH (CEC, 2019). Almost all major parties that continuously win seats in one of the parliaments in the country contain the word ‘democratic’ in their names, although these seemingly generally accepted democratic beliefs are dampened by the fact that some of them bear the names of their leaders.<sup>11</sup>

It is interesting to note that public opinion polls consistently identify political parties as the most corrupt pillar of society (Transparency International, 2017). This shows that citizens are very much aware where the root of the problem is when it comes to the (non)functioning of the political system.

Analysis of the key parties in BiH against the above dimensions of inclusiveness, centralisation and institutionalisation suggests that, except in their names, democracy in political parties exists only in trace amounts. When it comes to inclusiveness, only one political party elects its leadership based on the one-member-one-vote principle, which was introduced

only in 2015.<sup>12</sup> All other parties elect their leadership indirectly, at party congresses or conventions, using largely non-transparent methods of electing delegates, with the dominant influence of the party leadership. This way of electing delegates is actually the key problem of the functioning of the political system. Political leaders influence the election of delegates, who in turn elect those leaders at congresses or conventions, who then include them in lists for parliaments or appoint them to public office in public institutions or public enterprises. Clientelistic networks created in this way permeate public institutions, which are run informally and extra-institutionally by the leaders of political parties.

The situation is no better within the dimension of centralisation. For the most part, party structures are highly centralised, with a very narrow circle of decision-makers at the top of the party pyramid. Decisions made by the leadership are merely relayed to lower party echelons for implementation. Examples of such practices are the frequent instances where party leadership dissolves lower organisational structures in political parties or directly changes and/or influences their decisions.

When it comes to institutionalisation, as has been explained earlier, political parties operate within an inconsistent and unharmonised legislative framework. According to the BiH Law on Political Party Financing<sup>13</sup>, financial audit of political parties is performed by the Auditing Office of the Central Election Commission (CEC). This oversight function has been compromised to a significant extent by the insufficient capacity of the Auditing Office, lax regulations and token sanctions, and ultimately political interference in the work of the CEC. The virtually non-existent capacities within political parties to develop policies and programmes based on analyses and research actually unmask their true clientelistic face.

Analysis of parties' attitude towards the state and society reveals that the ruling parties managed to impose themselves as dominant actors, putting state institutions under their effective control and virtually emptying them of any decision-making power. According to how they operate, they represent cartel parties, whose important characteristic is putting state resources in the service of staying in power (Katz & Mair, 2009). On the other hand, they have elements of catch-all or big tent parties because they attract different sections of population within a single ethnic group. While there are no reliable data, estimates based on the data provided by the parties suggest that every fifth citizen in the country is a member of a political party, which indicates that BiH is not only far above the European

average (3.5%) in terms of party member numbers, but also at the very top in Europe (Scarrow, Webb, & Poguntke, 2017). This data should certainly be viewed in light of the fact that BiH is a predominantly clientelistic society, where without party affiliation it is close to impossible to get a job, do business successfully, or even access justice.

Summarising the situation in political parties against the above dimensions of inclusiveness, centralisation, institutionalisation and attitude towards the state and society, it can be concluded that political parties have managed to seize enormous power in society. Organised as an extremely rigid clientelistic structure, they are largely detached from the roles that political parties are expected to play in liberal democracies. This, coupled with the very nonchalant attitude towards the rule of law and human rights, reveals a full picture of BiH political parties as one of the main obstacles to implementing reforms aimed at overall socio-economic development.<sup>14</sup>

## 7.2 Electoral process

The existence of an electoral process is a necessary precondition for a country to be considered democratic, at least in a formal sense. In order to consider the extent to which it actually enables the expression of citizens' preferences, i.e. the exercise of vertical accountability, it is necessary to look at a wider range of factors including the aspect of human rights and the functioning of institutions.

The unique constitutional setup based on the power-sharing model, with its mechanism to ensure representation of the three largest ethnic groups, recognises these ethnic groups as "constituent peoples", guaranteeing each of them representation in government. Such a constitutional arrangement has created *de facto* three ethnic electoral subsystems in which political parties compete to represent each of the three ethnic groups.

This setup is advantageous to the political parties with an ethnic prefix, but leaves those that base their platforms on topics other than ethnic representation almost without a chance, as has been consistently evidenced from one election cycle to another. Also, given the foregoing, in practice it is effectively impossible to form a coalition based on programme orientation because, as a rule, the leading political parties of each of the ethnic groups have diametrically opposed views on almost all issues essential for the country's functioning.

Over the last two decades electoral turnout in BiH has generally ranged between 50 and 55 percent. The election cycle in BiH, save for the city of Mostar,<sup>15</sup> occurs every two years, with alternating general and local elections.

Deficiencies in the electoral process, which are in fact a manifestation of the uneven playing field between the opposition and the incumbent, can be divided into two groups: those related to the electoral process in a narrower technical sense, i.e. the conduct of elections, and broader shortcomings stemming from the environment and caused by structural factors.

Shortcomings in the narrower sense concern the functioning and independence of electoral administration, i.e. the conduct of elections. Under law, the Central Election Commission (CEC) is an independent institution, but in practice it has invited extensive criticism, from allegations of undue political interference in its work to direct accusations that it had been involved in organised election fraud (IFIMES, 2018). The behaviour and certain actions by the CEC members justify such criticism. One such example is CEC president's participation in a party rally (KLIX, 2020). During the election of CEC members, the media reported that one of the elected members had been a candidate on the electoral list of a political party on multiple occasions (AVAZ, 2020). Audit reports also have drawn attention to shortcomings in CEC's work. For example, auditors found that the terms of two CEC members expired at the time of the 2018 election, and one member was eligible for retirement. Also, the audit found that there were no adequate internal controls over the management of the electoral material. Furthermore, one audit report revealed that only one bid had been submitted to a call for the printing of ballots (BiH Audit Office, 2018).

The work of the lower-level electoral administration, i.e. the municipal election commissions (MECs) and polling station committees (PSCs), was also associated with no less numerous challenges. In accordance with the law, MECs are appointed by municipal councils as permanent bodies, while PSCs are appointed by MECs for each election based on the proposal of political entities. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) observation mission notes in its report major problems in forming the PSCs because a significant number of members changed due to resignations or the fact that they were party candidates in previous local elections. The mission also states that it is aware of a number of credible allegations of trade in PSCs seats aimed at asserting control over PSCs by political entities. The mission concludes that such irregularities need to be dealt with as a matter of urgency in order to prevent

corruption in the electoral process (OSCE ODIHR, 2018).

Also, the 2018 election saw problems with the voters registers, as widely reported by the media citing the figure of as many as 8,000 dead individuals on the voters register (RSE, 2018).

During the 2018 election campaign there were instances of explicit threats directed at voters by the highest political power-holders, which were not sanctioned in any way (TI BiH, 2018). There were also attempts to influence the will of voters through the payment of one-time financial assistance to pensioners in RS by the Government during the election campaign, accompanied by a warning that whoever fails to vote for the incumbent will have to return the money (Oslobođenje, 2018). Similarly, during the election campaign the ruling party called upon its supporters to find out if any voters employed in public institutions or enterprises voted for the opposition so that they can have them dismissed.

The shortcomings in a broader sense which have affected the integrity of the electoral process, i.e. the ways in which incumbents assert dominance over the opposition, are also very numerous. For example, the total value of public procurement increased by 40 percent in the 2018 election year compared to the preceding non-election year (Public Procurement Agency, 2018). Such an increase can only be explained by the incumbent's attempt to influence the will of the voters.

There is also the practice of distributing so-called intervention funds, where in just one month of the 2018 election campaign over BAM 90,000 were apportioned from the budget reserve of the budget of Bosnia and Herzegovina to religious communities, various associations and charities, which is twice as much as in the same period in the preceding year (TI BiH, 2018). The generally widespread practice of party-sponsored employment in the public sector is ramped up in election years, as reported by the media which published photos of official letters from political parties ordering public authorities and institutions to give employment to individuals from among the party faithful (Guerrilla Info, 2018).

Overall, the electoral process does not take place in a vacuum. All the weaknesses that characterise the work of institutions, from insufficient capacity to undermining their independence, are also characteristic of the electoral administration. Coupled with the effective control by incumbents over public resources that are deployed in the service of election victory,



the very purpose of the electoral process to enable citizens to express their will and consume vertical accountability (i.e. exercise their judgement about the incumbent's performance) is significantly diminished, making the legitimacy of elected officials highly questionable.

### 7.3 Parliaments

In democracies there are three basic functions performed by parliaments: representation, law-making and oversight of the executive.

The representative function means that members of parliament are elected by citizens in direct elections. This function of the legislature is greatly diluted by the dominant role of political parties, which in fact reduces parliaments to the representation of political parties, which again, due to the absence of internal democracy and complete centralisation, are actually exponents of particular interests of leaders. There are several key ways in which political parties ensure this type of monolithic thinking, i.e. the reduction of the role of MPs. Political parties enforce absolute loyalty from their MPs, going as far as expecting them to altogether relinquish their own opinion and conflate it with the position of the party, through a combination of two approaches: on the one hand, by contractually obliging MPs to loyalty, and, on the other, by incentivising them with promises of additional material gains on top of their already very high MP salaries by either appointing them to managerial positions in the public sector or making arrangements to ensure that public procurement contracts are awarded to the MPs' private companies.

It has become widespread practice for political parties to require candidates on their MP election lists to sign loyalty contracts, in complete disregard of the fact that by law the mandates belong to elected MPs and not to political parties. The aim is to contractually bind MPs to solely represent the political party, to the detriment of the constituency that elected them. These contracts regulate the obligations of elected MPs towards the party, be it the obligation to return their parliamentary seat to the party, or to pay a certain amount of money if they decide to leave the party after the parliamentary election or to flout party's order in voting. Even though such contracts appear to be in clear breach of the law, courts have never found it necessary to discuss their legal validity.

Operating through this combination of contractual obligations and additional material incentives has proven to be very effective for incumbent political parties in asserting complete control over their MPs, who effec-

tively lose any individuality and autonomy of opinion and/or action.

Incumbent political parties have established the practice of "buying" opposition MPs, as perfectly exemplified by the so-called 'two dorks affair' in RS. Namely, a recording of a telephone conversation was leaked to the media, where the RS prime minister-designate talked about "buying" the support of opposition MPs for the formation of a new government after the election. Eventually, the recording was confirmed as authentic after the new government was elected with the help of the votes of the two MPs mentioned in the recording. Despite extensive media coverage, the case failed to attract the interest of the prosecutors, and has remained an illustrative example of widespread practice of trafficking in MPs' support (RSE, 2016). During the 2014-2018 mandate period, out of 42 MPs in the House of Representatives of the BiH Parliamentary Assembly, seven changed their political party during their term of office (CCI, 2018).

Legislative function of the parliament is its most important function as it is the only institution, i.e. the branch of government, which enacts laws. Legislative process in BiH parliaments is fraught with difficulties and stumbling blocks, and remains highly unproductive insofar as the number of enacted laws is concerned. During the course of its 2014-2018 mandate, the BiH Parliamentary Assembly enacted a mere 14 new laws and 45 amendments to existing laws (CCI, 2018). Also tellingly, a considerable number of laws are fast-tracked for passage in parliaments (71 percent in RS, 58 percent in BiH, 38 percent in FBiH), which effectively reaffirms the executive's dominance over the legislature, seeing that in expedited legislative procedures the executive's proposals are enacted without having to undergo detailed and in-depth consideration as in the regular procedure (SIGMA, 2017).

The parliament's function of overseeing the executive and its policies is essentially a mechanism of ensuring horizontal accountability of the executive to the legislature. In BiH, there is no practice of reporting to parliaments on law implementation (SIGMA, 2017). The usual instruments whereby the legislature exercises its oversight and control function, such as parliamentary questions, interpellation, parliamentary enquiry or public galleries, are virtually non-existent in practice, with the sole exception of parliamentary questions. In the few segments where they are present, these mechanisms fail to fulfil their primary purpose, which is to establish liability. An important aspect of the parliament's exercise of the oversight role concerns the use of independent mechanisms such as public sector audit. This function has also been significantly diluted, either as a result

of government interference in the work of the supreme audit institutions through patronage appointments, or due to the fact that audit reports are almost never considered in parliaments, resulting in virtually no implementation of recommendations.<sup>16</sup>

The near-complete abolition of the basic functions of parliament is but an indication of one of the fundamental problems afflicting BiH, namely the clearly broken system of separation of powers, as evidenced by the distinct dominance of the executive branch, used by political leaders as a conduit for exerting their will over other branches of government. This is further demonstrated by the failure of the state and entity parliaments to implement eight judgements of the BiH Constitutional Court which declared unconstitutional a number of very important, systemic laws affecting the exercise of fundamental human rights and freedoms, including the Election Law and the Law on the Intelligence-Security Agency (OSA) (RSE, 2019). At all levels of government parliaments are essentially subordinated to the executive and have been virtually emptied of any meaningful power, having their ambit reduced to mere verification of extra-institutional arrangements.

## 7.4 Judiciary

The justice system in BiH is comprised of four subsystems mirroring the administrative-territorial organisation of the country, with the High Judicial and Prosecutorial Council acting as an umbrella institution responsible for appointing judges and prosecutors and conducting disciplinary proceedings.<sup>17</sup> The BiH judiciary faces a number of challenges, arguably the most serious of which is having its independence eroded and jeopardised by undue political interference. This perception is shared by the European Commission, independent think tanks and the highest judicial officeholders alike.<sup>18</sup> The EC Strategy for the Western Balkans insightfully identifies the presence of elements of state capture at all levels of government, including the links with organised crime in all Western Balkan countries (EC, 2018).

With a score of 2.8 in terms of judicial independence (on a scale of 1 to 7), according to the Global Competitiveness Index 2017-2018, BiH is ranked 117<sup>th</sup> on this index dimension out of a total of 137 countries included in the survey (WEF, 2018).

Available analyses of corruption prosecution and trends are based on of-

ficial HJPC statistics.<sup>19</sup> The EC Strategy for the Western Balkans insightfully identifies the presence of elements of state capture at all levels of government, including the links with organised crime in all Western Balkan countries (EC, 2018).

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Available analyses of corruption prosecution and trends are based on official HJPC statistics.<sup>20</sup> Thus, for the purposes of the analysis, the perpetrators are classified into three groups according to the positions they occupy: high ranking, mid-level and lower level perpetrators. The analysis showed that, out of a total of 512 surveyed, low-ranking perpetrators made up the overwhelming majority of those prosecuted, as many as 86 percent (439 individuals), while only 14 percent (73 individuals) were middle-ranking perpetrators. In the analysed sample there were no high-ranking perpetrators of corruption, i.e. holders of elected or appointed positions in legislative, executive or judicial branches at the entity or state levels of government, where they hold highest offices or have the highest degree of responsibility or authority.

Taking the above findings about corruption prosecution as an important indicator of judicial independence, and seeing that individuals involved in corruption wield enormous political clout and possess considerable wealth, the lack of any substantial progress in the prosecution of (especially political) corruption bears eloquent testimony to the effective political interference with the judiciary.

The key mechanisms for asserting political influence over the judiciary are effectuated through the appointment process. Formally proclaimed principles of independence and merit are practically non-existent in practice (BIRN BiH, 2015). The extent to which the appointments of judges and prosecutors have been compromised by the complete absence of any criteria, going so far as giving appointments to persons convicted of serious criminal offences, is dramatically illustrated by the fact that several heads of key international organisations in BiH and ambassadors of countries supporting the judicial reform have sent letters to the HJPC with appeals to put an end to such practices (N1, 2019).

Another important aspect to bear in mind is self-censorship. In the context of the judiciary, self-censorship means avoidance by judicial officeholders to act as required by law for fear of possible repercussions or in anticipation of certain benefits, without direct interference or pressure from the other party. The risk of self-censorship is generally much more pronounced when those being prosecuted are high public and political officeholders and/or corporate moguls. Importantly, both those groups have money and wield enormous power and influence, so self-censorship may be motivated by the expectation that they would not use the money, power and influence for personal requital, but rather by way of reward, either pecuniary or in the form of advancement up the career ladder.

Self-censorship is more likely to occur in countries where there is a legal culture of subordination of judicial institutions to political power, which arises from the dominance of informal rules that, to a considerable extent and in different ways, shape the actions of formal institutions.<sup>21</sup> In such states, corruption is systemic, widespread and deeply entrenched.

As self-censorship is about the internal attitude of judicial officeholders towards prosecuting certain cases or wrongdoers, it is extremely difficult to objectively gauge its presence. Hence, the level of presence of self-censorship can be measured only indirectly. One way to do it is by measuring the perception of either the general or professional public. It actually is possible to indirectly assess the presence of self-censorship by measuring how proactive prosecutors are in pursuing cases on their own motion in *ex officio* capacity. Another potential indirect indicator of self-censorship is how efficiently and thoroughly corruption offences are prosecuted depending on the wrongdoer's status or function. Also, consistency of approach, or the absence thereof, as well as the length of the procedures, may be indicative of possible self-censorship.

A perception survey conducted among the professional public (judges, prosecutors, court and prosecutorial staff, lawyers and law enforcement officers) points to self-censorship as an important factor influencing the behaviour of judicial officeholders in general, with nearly 60 percent of the respondents citing "no-confrontation policy towards financially or politically influential persons who could block further career promotion" as an important motive in their behaviour. Other motivation includes "avoiding antagonising the superior for fear of 'sanctions' (adverse performance evaluations, mobbing, etc.)", "fear for personal safety and safety of close persons" (around 25 percent), or "fear of sanctions of any kind" (about 15

percent) (USAID, 2015).

The main mechanism of instrumentalising the judiciary is apparent in the abuse of virtually unlimited prosecutorial discretion in deciding whether to initiate investigations, but also in how the investigations are conducted. Relevant international specialised bodies warn that the greatest risk in terms of prosecutorial accountability (or rather a lack thereof) occurs in so-called negative prosecutorial decisions, i.e. decisions not to prosecute or to cease investigation, given that the rest of the prosecutor's powers are subject to scrutiny by courts of law during the proceedings.<sup>22</sup> There are numerous cases, widely reported by the media and CSOs, with highly credible evidence of the involvement of top political officeholders, which were not investigated by prosecutors, or, even when investigated, were miraculously terminated, most often in the investigation phase.<sup>23</sup>

The justice system, effectively captured by political interference which is primarily achieved through appointment processes, is an important lever of power for incumbents, employed not only to prevent their own prosecution, but also to prosecute all those who are perceived as posing a threat to the established regime.

## 7.5 Public sector

BiH is a country with an overly large public sector. With a level of public spending of about 41 percent of GDP, it is the largest in the Western Balkans region. To a significant extent, this is due to the extremely complex and decentralised political-administrative setup of the country (IMF, 2015). In addition, the size of the public sector was influenced by the dominant understanding of its role among political elites and the very character and manner of how the political system works. Throughout the post-conflict period, the incumbent political elites, driven by their particular interests, used the public sector as prey to achieve two goals: to stay in power and for private gain. The first goal is achieved in three ways: **by giving out public sector jobs** to party members and supporters through clientelistic appointments to managerial and other positions, thus creating the party's power base, i.e. a voting machine (of the total number of those employed, almost every third person works in the public sector) (RCC, 2018); **through cronyism in the awarding of public procurement contracts** by public sector institutions to firms close to the leaders of political parties, thus ensuring the syphoning of public funds for the needs of political parties; and the **buying of social peace**, where, in the context of high unemployment, the

public sector plays an important social function as a large employer, while also eliciting the support of various groups through targeted cash transfers and social benefits, rather than using these for their intended social protection purpose (BiH spends about 4 percent of GDP on a number of non-insurance social protection cash transfers, of which only 18 percent goes to the poorest quintile, while the richest quintile receive as much as 27 percent) (World Bank, 2010).

Incumbents have not shown a willingness to reduce the range of public sector functions. Quite the reverse, they even seem to have consciously expanded it to include some very sophisticated and intricate functions such as investment banking, despite the sector's conspicuous lack of capacities even for the most basic functions. The obvious logic behind it – the wider the range of public sector functions, the more opportunities there are for incumbents to further their own particular interests.

At the rhetorical level, governments in BiH have repeatedly affirmed their commitment, be it through reform documents, or through arrangements with international financial institutions, to 'rightsizing' the public sector and pruning down the public sector wage bill.<sup>24</sup> But, in practice, the exact opposite has happened. For incumbents, rationalising and reforming the public sector would mean giving up a key lever of power, and such extremely unpopular measures would also mean a certain loss of electorate support.

Besides the macro-perspective, which concerns the scope and breadth of public sector functions, to get a comprehensive insight it is also important to take account of the meso-level, i.e. policy development and implementation. In this regard, there are two important preconditions that need to be in place for a functioning system of government policies, namely the capacity of institutions to develop and implement policies, and ensuring inclusiveness in their adoption and implementation. Lamentably, neither precondition have been met in the past period. Neglect of merit, i.e. negative selection of staff in the public sector as a result of nepotistic and clientelistic appointments and employment, could not by any means build an appropriate base of staff that could provide the necessary quality of policy-making processes in response to the numerous problems facing the country. Furthermore, the financial resources needed for the reforms were almost exclusively provided by international donors, while the government budgets in BiH generally prioritised measures that provide only short-term 'social peace' benefits.

The other important precondition for the development and implementation of successful government policies – inclusiveness, is also not prioritised because the focus is not on citizens, but on the furtherance of particular interests. Therefore, unsurprisingly, the World Economic Forum's Competitiveness Index, which measures the competitiveness of countries along 12 pillars, ranks BiH as low as 132<sup>nd</sup> in terms of transparency of government policymaking, out of 138 countries included in the survey, with a score of 2.9 (on a scale of 1 to 7), which undoubtedly has implications for the quality of government policies and their implementation (WEF, 2017). On the other hand, when policy implementation is concerned, reports of the public sector audit offices point to widespread irregularities and egregious violations in budget spending, and performance audits reveal inefficiency of utterly caricatural proportions, most notably in public procurement (BiH Audit Office, 2017).

Public procurement is recognised as an area that is highly susceptible to corruption, even in countries with functioning rule of law systems and institutions. The OECD estimates that the price of procurement of goods and services increases by 20-25 percent as a direct result of corruption, while the indirect consequences are practically impossible to estimate (OECD, 2016). Undoubtedly, this percentage is significantly higher in countries with rampant corruption, such as BiH. The performance audit report on public procurement in state-level institutions by the Audit Office of the Institutions of BiH found violations of the Public Procurement Law, non-compliance with contractual obligations and/or inability to establish all the facts related to the implementation of contracts in over 85 percent of examined contracts (BiH Audit Office, 2018). According to the Public Procurement Agency, the total value of public procurement in the country is just over BAM three billion per year (KLIX, 2019). If we take the aforementioned audit report as representative for the entire public procurement market, it becomes glaringly apparent that the losses to the public budgets and, conversely, the gains for incumbents, are to the tune of hundreds of millions of BAM annually.

The presence of public enterprises in BiH remains significant in a large number of sectors, most notably in rail transport, energy, forestry, utilities, and waste management (the total number of public enterprises in the country is about 550, with close to 80,000 employees) (IMF, 2019). Public enterprises dominate in most of these sectors, so it is safe to say that they have a monopoly, or possibly oligopoly, position.



Public enterprises are to a considerable extent exposed to additional challenges because legal provisions that govern certain aspects of the functioning of public administration in the narrow sense (recruitment, accountability mechanisms, etc.) are not present in the legislative framework governing the operation of public enterprises. Various studies, surveys and analyses show that clientelism plays a substantial role in appointments to managerial positions in public enterprises. One such study, conducted by Transparency International in BiH, points to a widespread practice of appointing managers in public enterprises on the basis of coalition agreements between political parties (TI BiH, 2018). It is common practice for political parties, when negotiating on the coalition agreements and allotment of portfolios in the executive branch, to also hammer out a backroom deal on the share and distribution of managerial positions in state-owned companies (SOEs). Once finalised, such deals are unabashedly presented to the public in press conferences with wide media coverage (ATV, 2018). Managerial positions in public enterprises are thus divided as spoils among parties in incumbent coalitions. One of the main tasks of such clientelistically appointed management is to assert control over the distribution of jobs in public enterprises in order to ensure the employment of party members and supporters.

The performance audit "Transparency of recruitment practices in public enterprises in FBiH" is very illustrative in this respect. The audit found that in the 2014-2016 period, nine public companies in the audit sample employed a total of 2,282 new staff, of whom 1,674 (73 percent) had been recruited without any competitive call for job applications or vacancy advertisement, and thus with no publicly available criteria. The audit further showed that in the observed period public enterprises in FBiH had intensified the recruitments and that the management typically opted for less transparent recruitment procedures. The most frequently used and internally prescribed recruitment procedures were the employment of candidates on the basis of individual job applications received and direct selection of the candidate "known in advance" (FBiH Audit Office, 2018). At the micro-level, where citizens have direct contact with public administration services, the quality of public services provided by the administration remains extremely low as a consequence of the inefficient public sector. The rigid and cumbersome administrative procedures, in addition to having considerable financial implications for service users, are further compounded by frequent and lengthy wait times for accessing rights or services (SIGMA, 2017). In such a context, the widespread prevalence of administrative corruption is an inevitable phenomenon.

In general, the relationship between the public sector and political parties is, in many respects, symbiotic. The bloated public sector, along with the extremely wide range of the functions it performs, is a direct result of the interests of the ruling cartel. Fully subordinated to the cartel's interests of remaining in power and maximising private gain, the public sector rests on clientelism and cronyism, effectively lending itself to being easily controlled.

## 7.6 Media

The deep ethnic divisions in the country, in tandem with the extremely strong hand of the state in the economy, continue to significantly shape the media landscape in BiH. The government's control over the media has almost entirely migrated from the sphere of direct political influence to the sphere of indirect influence, through economic pressures that have proven equally effective. Although these are fundamentally different methods of unduly interfering in media freedom and independence, they are still different ways of achieving the same goal – putting media at the service of realising the interests of the ruling ethno-national elites.

There are four key sources of media financing in BiH: allotment of funds from public funds and budgets (for public-service broadcasters, local media outlets and some commercial outlets); broadcast receiving licence fee (for public-service broadcasters); advertising industry; funds from international donors (Turčilo & Buljubašić, 2020).

At all levels of government, according to available data, allocations to public media are steadily increasing, having reached close to BAM 31 million in 2018 (a 44-percent increase over 2014) (TI BiH, 2019). Revenues from broadcast receiving licence fee hover at about BAM 35 million annually (FBiH Audit Office, 2018). When it comes to the size of the advertising market, there are no exact data, but according to estimates it ranges between BAM 70 and 100 million (Braunwasser, Turčilo & Marko, 2016). Given the share of the public sector in the economy (about 550 SOEs with close to 80,000 employees and owning 40 percent of total assets in the economy) (IMF, 2019), the state can be said to have an important impact on and a significant degree of control over advertising (more than 50 percent of the advertising market, according to estimates) through management in SOEs. Furthermore, the private companies that aspire to partake in the public procurement market (whose total worth is valued at about BAM three billion) (KLIX, 2019) are sure to think twice before deciding to

advertise in investigative journalism outlets that are critical of government. Thus, a rough calculation of the sources of media financing in BiH indicates that about  $\frac{3}{4}$  of the funds used to finance the media are under the direct control of the state.

The logic of the commercial media thus comes down to the choice between trying to achieve minimal editorial independence and putting oneself openly and unhesitatingly at the service of incumbents. Subordination to the ruling oligarchy brings material stability, given the state's weight in the economy. A large number of companies are state-owned, but a great deal of private companies are also closely tied with the ruling elites. This effectively means that conforming to the required matrix and playing by the rules will get you a transparent inflow of funds from incumbents and their close circles. Conversely, choosing to pursue an independent editorial policy, i.e. adopt a critical stance towards the incumbent, means foregoing the largest portion of your advertising income from SOEs or private companies close to incumbents, and exposing yourself to the constant looking for the smallest irregularities by state control bodies and, ultimately, even to the risk to your physical integrity. Incumbents have at their disposal several other highly effective ways of controlling or influencing the media, such as granting tax exemptions to compliant outlets or providing direct cash transfers to editors and/or journalists (Blagovčanin, 2007).

Public-service broadcasters, and public media in general, fall victim to even greater and more direct control by the government, as enforced through political appointments to managerial positions and editorial boards. All this consequently shapes editorial policy such to satisfy the preferences of the incumbent, effectively turning public broadcasters into the executive's PR services. In this respect, self-censorship appears to be a very strong determinant of editorial policy. Self-censorship occurs when journalists or editors circumvent, or do not adequately cover, or do not pay due attention to "sensitive topics" such as major corruption scandals, links between incumbents and organised crime, etc. Thinking pragmatically for fear that their job or even physical integrity might come under threat, journalists see self-censorship as a way for presenting themselves as cooperative to incumbents and powerful lobbies, thus securing material benefits and opportunities for moving up the career ladder.

In the post-conflict transition period, the media landscape has seen the emergence of media moguls, whose wealth originated in the hazy years of war and post-war, although there is evidence that donor funds from the

international community, too, played an important role in the emergence of their empires.

Besides the criminal law context, this phenomenon is also interesting from other points of view. First, the common feature of such media outlets is the intertwining of editorial policy with the private interests of the owners, because it was the acquired wealth that enabled the tycoons to autonomously create and implement their own interests in the first place. Media empires demonstrate their power by openly 'witch-hunting' anyone they consider a potential enemy or an obstacle to pursuing their own interests. Media magnates overtly express their aspirations to influence key decisions in the country, and in this undertaking they either need to maintain an alliance with one of the political parties or get politically active themselves.

To all of the foregoing, for the sake of a broader picture, one must add that the media in BiH are clearly ethnically recognisable. Furthermore, in order to be self-sustaining or profitable, they must be politically pragmatic and ethno-nationally branded. The deep division of the BiH society and absence of even minimal consensus as to various social issues is plainly mirrored in the media landscape, with the media outlets' audiences coming predominantly from within only one ethnic group.

In general, the media also play a significant role and serve a useful function in consolidating the incumbent's power. Through, on the one hand, open propaganda at the service of ruling politicians and parties and, on the other hand, unscrupulous persecution of all those who recognise the incumbent as a potential threat, most media outlets in BiH have become an indispensable factor in cementing the power of the ruling ethnic regimes. The critical edge of a certain number of the media outlets focusing on government corruption, primarily those online-based and supported by international donors, is effectively blunted by media harangue and intimidation, and, not infrequently, threats to the physical integrity of such journalists.



## 8. Concluding remarks

BiH is triple-captured by the ruling cartel, resulting in the establishment of a unique hybrid regime – competitive autocracy. The first level of capture – the capture of the democratic process, is manifested in the deployment of all public resources and institutions in the service of maintaining power. This level of capture emerged as far back as the first post-war election, when there was practically no democratic change of government. The second level, the capture of the institutional framework, means that the separation of powers is virtually abolished in practice, and the institutions are largely emptied of any meaningful power or instrumentalised such to serve the particular interests of the cartel. The key moment for this level of capture was the change in the nature of the international presence in BiH after the international community pulled out of the operational management of the country, creating a power vacuum. The cartel was certainly quick to seize such a welcome opportunity and ensure absolute domination and control over the institutional framework. The third level, namely the capture of economic flows due to the state's enormous share in the economic sphere and the unfavourable business environment, means that any economic activity implies the cartel's patronage.

### 8.1 (Im)possibility of change or boomerang strategy

As BiH is, at least formally and legally, in a position where the international community still has almost unlimited powers, but even more because of the country's dependence on international actors, the (im)possibility of changing the existing state of play should be considered from at least two angles: the possibility of change from above (generated by international actors) and the possibility of change from below (generated by internal factors).

As has already been discussed above, the nature of the international community's presence in the country has gone through various phases, from direct management of the country, to playing the role of the final arbiter, to being an observer and possibly mediator interested in preventing the crisis from escalating into a full-scale conflict. The ways and means by which the international community made its presence felt in the reform process have changed in the same vein, from imposing legislation and removing reform-obstructing political powerholders from office, to imposing conditionality on the EU integration process, to being a kind of mediator in

setting reform priorities, or, so-called reform agendas.

The international community's orientation towards so-called socio-economic reforms arose after the 2014 public protests and the international community's, at least temporary, abandonment of the focus on constitutional changes triggered by multiple failures in working out a compromise solution.

This shift in the international community's approach, i.e. reliance on socio-economic reforms via the so-called reform agenda, strongly informed by the priorities of international financial organisations, has so far failed to deliver significant results. The may be due to a large number of factors, ranging from the procedural issues surrounding the adoption of the agenda to the essential issues concerning its content. First of all, it seems that this approach did not take account of the key fact, namely the interest of the ruling cartel in maintaining the *status quo*, combined with the almost unlimited power it wields. Second, an orientation towards socio-economic reforms against a backdrop of virtually complete absence of the rule of law can hardly lead to sustainable progress. Part of the problem with the reform agenda concerns the way in which it was adopted – in circumvention of an inclusive and participatory democratic process, on an *ad hoc* basis, and outside the existing institutional planning system in the country.

On the other hand, when it comes to the country's EU integration process, in 2019 the European Commission adopted the opinion on Bosnia and Herzegovina's EU membership application identifying 14 key priorities in four areas (democracy, rule of law, fundamental rights and public administration reform) that the country needs to fulfil in order to progress with EU approximation (EC, 2019). These are well-known priorities set before BiH long time ago, but this time with a renewed focus on thoroughgoing constitutional reform (including implementation of the Sejdić-Finci ruling of the ECHR, redistribution of competences across levels of government, elimination of veto rights in the decision-making on implementation of the *acquis*, and establishment of the highest-instance judicial body in the country). Of course, the question of all questions that remains hovering since the publication of the opinion is whether it is realistic to expect the implementation of these 14 priorities and how this can be done, given the multiple failed attempts over almost two decades. What has fundamentally changed in the meantime?

In trying to answer this question, one cannot fail to notice that in parallel with the change in the nature of the international community's presence in

BiH, there has also been a change in its interests.

It appears that the interests of the international community have actually reached a point of near-full convergence with the interests of the ruling cartel, at least insofar as the maintenance of the *status quo* is concerned. The *status quo*, which, as already noted earlier, remains undoubtedly the paramount interest of the ruling cartel, also offers attractive prospects for the international community. Social change would require greater involvement of international actors, for which there is simply not much interest in their capitals already faced with numerous other challenges. The EU integration of the Western Balkan countries is facing strong internal resistance and doubts within the EU, not least from some EU capitals. This has inevitably led to the EU making moves that have significantly eroded its credibility in the Western Balkans.<sup>25</sup>

Also, any escalation of the crisis would cause the mobilisation of resources and would impact strongly on the internal situation in those countries. Therefore, the international community's policy, essentially reduced to the EU integration running on autopilot, with the rhetorical support to the country's EU integration and the BiH authorities taking over responsibility for reforms, which in practice means the maintenance of the *status quo*, is currently optimal for international actors and is also associated with by far the least cost.

Of course, such a policy is optimal for the interest of the international community in the short run. The fragile structure of the cartel-led state of Bosnia and Herzegovina will leave the country unable to respond to the external and internal challenges that lie ahead. External challenges, such as the influx of migrants or the spread of the pandemic, or other similar challenges in the future, will lead to an overstrain of the very modest capacities of state institutions ruined by pervasive corruption and mismanagement. Such future challenges, especially if some of them happen concurrently, may lead to the collapse of the institutional framework and humanitarian catastrophes. On the other hand, with respect to crises caused by internal dynamics (regardless of the ruling cartel's strong interest in the *status quo*), one should not lose sight of the impact of external factors, too. Changes in the balance and distribution of power among the great powers, with projections of interests that do not necessarily support the country's EU integration, may lead to an escalation of the crisis. Finally, it bears noting that the Western Balkans operates on the principle of interconnected vessels, and addressing or, for that matter, failing to address outstanding

issues in other parts of the region may send reverberations through BiH.

From the foregoing it is clear that time is by no means an ally in the process of reforming the country, especially having in mind the growing exodus of the country's population to Western Europe. Hence, the key question for the international community, in particular the EU, when it comes to its attitude towards the Western Balkans as a whole, remains the choice between exporting stability and importing instability.

Looking at the possibility of bottom-up change from citizens' perspective, the demand for social change appears as the first necessary precondition. The demand for change consists of two segments: dissatisfaction with the current situation and an articulated demand for change.

There is certainly widespread dissatisfaction with the current situation, as clearly detected by public opinion polls in almost two-thirds of the population and evidenced by the mass exodus of the country's population to Western European countries.

In contrast, the *status quo* forces, led by the elite cartel, hold almost unbridled power with a very strong interest in maintaining the *status quo*. Recent history teaches us that even the much more authoritarian regimes were subject to change, were overthrown or collapsed on their own. However, an essential prerequisite for regime change is collective action, and it is precisely this prerequisite that has always been lacking due to the systematic homogenisation of the three ethnic groups by ethnic elites. The logic is very simple and boils down to the previously mentioned divide-and-rule strategy. By stirring up and perpetuating ethnic tensions and pitting the ethnic groups against each other, incumbents effectively pre-empt any collective action that has the potential to transcend ethnic divisions. Therefore, the demands for social change have kept bouncing off the ramparts of the strongly fortified interests of the ruling cartel.

Indeed, the demand for social change has suffered from a consistent lack of articulation. Also, it has appeared only sporadically, as an expression of dissatisfaction with individual moves by the renegade ruling clique, and has been largely based on emotional reactions provoked either by brutal killings in which the authorities were involved or which they systematically covered up, or by the incumbents' failure to act when human lives were in question.<sup>26</sup> Therefore, it is no wonder that such a weak and inconsistent demand for change has been an easy prey for the cartel's repressive

and ideological-propaganda apparatus. Through a combination of legal means such as detentions, misdemeanour charges and penalties, and illegal means such as threats, surveillance abuse and physical assaults, the repressive apparatus would crack down on the leaders of demands for change, rendering them easy prey. Using lapdog media outlets, the ideological-propaganda apparatus would present such demands as destructive, directed against either the ethnic group or the constitutional order, supported from abroad and in the service of foreign powers that be, and would present their leaders as enemies and exponents of foreign interests. The aim is to delegitimise any criticism or expression of protest and create a climate where the expression of dissatisfaction or protest is not treated as a legitimate consumption of human rights and freedoms, but as a conspiracy against the existing order.



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## Endnotes

**1** Triple transition in this context refers to three types of processes:

- towards liberal democracy;
- towards a market economy;
- institution building.

**2** Acemoglu and Robinson distinguish between two types of institutions – “extractive” institutions, in which a small group of individuals exploit the rest of the population, and “inclusive” institutions, in which the majority of the population is included in the process of governing.

**3** According to Zakaria, governments elected by the democratic process may be “inefficient, corrupt, short-sighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good”, which may make them undesirable but not undemocratic. Constitutional liberalism, unlike democracy, does not concern the selection procedure, but the goals of the government and, according to Zakaria, implies that people have inalienable rights and governments must limit their own powers by passing laws that will secure those rights.

**4** O'Donnell uses the term democratic rule of law, which, in addition to the generally accepted elements of the rule of law, includes the establishment of accountability mechanisms that guarantee equality of citizens and prevent abuses of power.

**5** In this context, power is understood in a formal sense, i.e. as power that derives from powers arising from the constitution and laws.

**6** The OHR's mandate evolved significantly during the implementation period. Among the most important milestones in the peace implementation process was the Peace Implementation Council's Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement DPA, the Peace Implementation Council conferring on the High Representative additional powers (so-called Bonn powers), authorising him to remove from office public officials who obstruct DPA implementation, and to impose key laws if Bosnia and Herzegovina's legislative bodies fail to do so.

**7** The Worldwide Governance Indicators (WGI) is a project of the World Bank Institute that reports on indicators in six dimensions of governance for 200 countries and territories, downloaded from:

<http://info.worldbank.org/governance/wgi/#home>

Transparency International: Corruption Perception Index

<https://www.transparency.org/research/cpi/overview>

**8** “Cartel [is an] association of independent firms or individuals for the purpose of exerting some form of restrictive or monopolistic influence on the production or sale of a commodity. The most common arrangements are aimed at regulating prices or output or dividing up markets. Members of a cartel maintain their separate identities and financial independence while engaging in common policies. They have a common interest in exploiting the monopoly position that the combination helps to maintain.” *Encyclopaedia Britannica*

“A **drug cartel** is any criminal organization with the intention of supplying drug trafficking operations. They range from loosely managed agreements among various drug traffickers to formalized commercial enterprises. The term was applied when the largest trafficking organizations reached an agreement to coordinate the production and distribution of cocaine. Since that agreement was broken up, drug cartels are no longer actually cartels, but the term stuck and it is now popularly used to refer to any criminal narcotics related organization.” *Wikipedia*

**9** In making the distinction, Mann actually emphasises that despotic power is the power that the elite assumes without consulting civil society (by civil society he means all actors who are not part of the state as such)

**10** Law on Political Organisations (“Official Gazette of SR BiH”, No. 27/91 – taken over in FBiH), Law on Political Organisations of RS (“Official Gazette of RS”, No. 15/96) and Law on

Political Organisations (“Official Gazette of Brčko District”, Nos. 12/02, 19/07 and 2/08)

**11** The Alliance of Independent Social Democrats and the Democratic Front are examples of parties that contain the name of the leader in their name.

**12** The Social Democratic Party of BiH introduced internal party elections for the party leadership based on the one-member-one-vote principle in 2015.

**13** Law on Political Party Financing (“Official Gazette of BiH”, No. 95/12)

**14** Violations of the law, failure to abide by the judgements of the Constitutional Court and the European Court of Human Rights, and the practice of nominating and appointing persons with criminal history are common and widespread actions of political parties.

**15** The last election for the city government in Mostar was held in 2008, because in 2010, when deciding on the appeal of the Club of Croatian MPs in the House of Peoples of the BiH Parliament, the Constitutional Court of BiH declared some of the Election Law provisions related to the election process in Mostar unconstitutional.

**16** One telling example is the FBiH Parliament's Commission for Reviewing Audit Reports, which has not met for more than two years <http://revizije.info/poboljsan-ginisov-rekord-federalnog-palamenta-26-mjeseci-nerada-komisije-za-reviziju/> Another example is the forced resignation of the Auditor General in 2017, under pressure from the incumbent due to dissatisfaction with the audit report.

<https://www.nezavisne.com/novosti/bih/Dusko-Snjegota-podnio-ostavku/441139>

**17** Law on the HJPC BiH (“Official Gazette of BiH”, Nos. 25/04, 93/05, 48/07 and 15/08)

**18** See: BTI 2018 | Bosnia and Herzegovina Country Report, The Bertelsmann Stiftung's Transformation Index (BTI)

“Politicians put pressure on the judiciary”

By Mladen Dragojlovic/ Independent Balkan News Agency Published on: 01-02-2018

<https://balkan.eu.com/politicians-put-the-pressure-on-the-judiciary/>

**19** See: Report on Monitoring the Prosecution of Corruption by Courts and Prosecutor's Offices in Bosnia and Herzegovina 2017, Transparency International BiH, Sarajevo 2018 Monitoring the Judicial Response to Corruption in BiH: 2017-2018 Report, Analitika, Sarajevo 2018

**20** Analysis of the Prosecution of Corrupt Crimes in Bosnia and Herzegovina through a Review of Selected Judicial Practice, USAID Judicial Project in BiH, December, 2017. The analysed sample includes a total of 614 court rulings in corruption-related cases issued by courts in BiH over a three-year period (2013, 2014 and 2015)

**21** See: Helmke, Gretchen, and Steven Levitsky. 2004. “Informal Institutions and Comparative Politics: A Research Agenda”.

Siri Glöppen, “Courts, Corruption and Judicial Independence”, in Corruption, Grabbing and Development Edited by Tina Søreide, Aled Williams, Edward Elgar Publishing

**22** See: CDL-AD(2010)040, Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, §45

**23** Examples of investigations against political leaders in BiH are highly illustrative in that respect. The undisputed political leader of RS has been the subject of more than 15 investigations in the last fifteen years. (<https://zurnal.info/novost/20791/izazivanje-nacionalne-mrznje-napad-na-ustavni-poredak-organizirani-kriminal-pranje-novca>)

The investigations related to the most serious criminal offences ranging from inciting racial and religious hatred, attacks on the constitutional order, to organised crime, money laundering, bribery, abuse of office, etc. The outcome of all these investigations was the same – they were terminated very early on despite the evidence reported by the media. During certain investigations, Milorad Dodik made repeated fierce verbal attacks against judicial officeholders and threatened to organise a public referendum on the competences of the state-level judicial bodies over RS.

An equally high number of judicial proceedings were taken against HDZ BiH leader Dragan Čović, who was even convicted in one of the cases by a first-instance verdict, only to be acquitted in the appeals process. (<https://www.telegram.hr/price/plenkovic-se-ozbiljno-inve->

stirao-u-izbore-u-bih-i-preko-covica-dozivio-prvi-veliki-izborni-poraz-sto-sada/)

There are many examples of investigations, such as the cases of the two aforementioned political leaders, which ended in ways indicative of undue interference. Also worth noting is the fact that a large number of scandals widely reported by the media have never been the subject of official investigation.

**24** BiH's letter of intent to the International Monetary Fund from 2016 contains the commitment of the entity governments to cut down the public sector wage bill.

**25** The non-opening, i.e. postponement, of negotiations with North Macedonia even after all the conditions have been met is a blatant example of such a practice.

**26** Protests that were sparked by the brutal murders of two young men, David Dragičević and Dženan Memić, in Banja Luka and Sarajevo, and the so-called JMBG protests sparked by the non-adoption of the law on the unique personal identification number, due to which newborn children could not obtain ID and travel documents, even those that required urgent medical treatment abroad.





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