

Part II

Institutional and Political Reforms

Chapter 7

How to Reform the “Reformers”?

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There is a well-known and often-cited Darendorf maxim that states it takes six months to formally replace a political system, six years to transform an economic system, and 60 years to bring about social change that establishes a participatory political culture and civil society. After more than twenty years, it seems that Bosnia and Herzegovina (BiH) has not advanced much in instituting changes that lead to a participatory and democratic political culture, and as a consequence, economic transition has remained trapped in a limbo of populist-clientelism. Foucault’s interpretation of the famous Clausewitz dictum “politics as the continuation of war by other means” best reflects the situation in BiH, almost twenty years since the state-building process was started. The reforms that were implemented have proved unsustainable, whereas the power vacuum created after the international community pulled out of the operational management of the country was quickly filled by kleptocratic ethno-political elites driven exclusively by their own interests.

There is an almost general consensus to be found among pundits familiar with the situation in BiH and in the findings of various studies, which states that the democratic, EU-oriented reforms in BiH have been reduced to a mere form, with the majority of its citizens effectively excluded from decision-making processes. While the vast majority of citizens have continuously expressed their support for the country’s membership in the EU, the very few options available for influencing the decision-making process have prevented them from exerting any significant influence on political elites.

The relatively low electoral turnout, decision-making processes that take place away from the public eye, and decisions adopted in urgent parliamentary passage procedures in half-empty assembly halls, are but symptoms of a dysfunctional democracy. The recent developments surrounding the adoption of laws envisaged under the Reform Agenda are just the latest in a series of caricature examples of how reforms are approached in the country.

If one is to understand the political dynamics of the country, it is necessary to bear in mind the very structure of these political elites as key actors. The current political elite in the country emerged in the early 1990s, with the introduction of a multiparty system in BiH. A considerable portion of this political elite was formed during the war and post-war ethnic strife, a period that was marked by utter chaos and an absence of the rule of law. This allowed the elites to amass enormous wealth through direct budget transfers, black-marketsteering, and illegal privatization of state property.

In this regard, it is important to note a relatively new form of corruption, namely “state capture,” which occurs together with the process of transition and is conceptually defined precisely on the examples of East- and South-east European countries. The state capture phenomenon differs from corruption in a key feature: “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.”¹

This particular form of corruption is exactly what occurred following the collapse of what was a strong socialist country with robust centralized institutions, when emerging actors used the power vacuum to form new rules for their own benefit. These ethno-political elites, emerging immediately before and during the armed conflict in BiH, and amassing enormous amounts of wealth by controlling the movement of strategic resources, would ultimately become the key actors in the process of state capture.

If we analyze this further, we can easily identify political parties as one of the key generators of this situation. The absence of minimal democratic standards within political parties resulted in a situation where such undemocratic party practices are replicated in state institutions. If parties are internally undemocratic and operate with the primary intention of seizing treasures in the form of public resources, which are then shared among the party leaders and membership, it results in a replication of the same model in state institutions. The hypertrophied power and influence of political parties has also hindered the development of a classic tripartite separation of power into legislative, executive and judicial branches. The institutions remain mere shells, while the real power is concentrated in

¹ Joel Hellman and Daniel Kaufmann, “Confronting the Challenge of State Capture in Transition Economies,” *Finance and Development*, September 2001, Volume 38, Number 3, p. 2. <https://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm>.

the hands of a few political leaders who, through clientelism, ensure effective control over all three branches of government.

This has led to a situation where the public sector, instead of being subjected to radical reforms, became an end in itself, continuing to grow abnormally, incessantly creating new administrative procedures and giving large and uncontrolled discretionary powers to all levels of government. This has created new opportunities for corruption.

A huge portion of GDP is distributed through various administrative levels (over 50 percent of GDP), without basic transparency, and without citizen participation in decision-making processes, completely subverting the order of priorities and placing the public interest well below the interests of a narrow circle of ethno-political oligarchy. When comparing the level of public spending across Western Balkan (WB) countries, only Serbia is at the same level as Bosnia and Herzegovina, while the level of public spending in other WB countries is significantly lower.²

If we look at the phenomenon of state capture as a closed circuit, the influence of political elites and powerful oligarchs is manifested in the adoption of laws that suit their own interests, while political influence and administrative corruption have prevented law enforcement agencies from identifying and prosecuting illegal activities. Furthermore, political influence on the judiciary hampers the prosecution of major corruption cases, and the media completes this vicious circle as a tool for numbing the public and presenting a completely distorted list of social priorities.

In this regard, one has to keep in mind that the primary interest of the omnipotent political pseudo-elites is only to maintain the status quo. Any change threatens their unlimited power, exposing them to the risk of criminal prosecution.

As for the conditions and initiatives stemming from the EU, political pseudo-elites in BiH have learned their lessons. They go through the motions and simulate reforms long enough until the EU comes up with a new initiative or agenda, completely forgetting the previous requirements. The examples are numerous, ranging from the reform of the police, constitution, public administration, to the reform of the judiciary. In the vast majority of those reform processes, the pattern has largely been the same—after endless discussions and under strong pressure from the inter-

² *Public Expenditure and Institutional Review (PEIR) for Bosnia and Herzegovina*, World Bank, February 28, 2012.

national community, even if a consensus on adoption of reform legislation has been reached, the implementation of this legislation is thwarted by the failure to secure necessary budget funds or by the inability to agree on the appointment of the management, i.e. establishment of political control over the institution. Such was the case with the police reform and the establishment of state police institutions, as it was with provision of funds for the functioning of the state judiciary, the establishment of the state-level anti-corruption agency, etc.

Transformation of this specific “captured” political system is by no means easy, but it is a prerequisite for sustainable reforms, ranging from the economy and education system, to the rule of law. Since the key problem is at the political level, solutions are needed on the same level and have to entail key actors in political system: political parties and political elites. The change of this situation implies that the political parties and elites would need to relinquish their accumulated power and acquired resources, i.e., agree to a different division of powers in favor of the silent and apathetic majority who does not vote or participate in elections. Something like that has, of course, never and nowhere happened as a result of the good will of political parties or leaders and without strong pressure from the silent majority, and it will most certainly not happen here either.

A process that would lead to this kind of change should include changes that would unfold in two directions: the introduction of internal party democracy, and the introduction of compulsory voting.

The introduction of basic intraparty democracy standards, is the first step in breaking ossified structures and clientelism in political parties which operate with the sole interest of dividing resources among their membership. To change the current political logic and dynamics, it is necessary to introduce a “one member—one vote” principle in the election of party leadership and selection of candidates to electoral lists. The way in which political parties currently operate, where leaders elect delegates at the party congress and these in turn vote for them so that they can later be included in the electoral list or be given a sinecure in a public institution or enterprise, only perpetuates the clientelism and the fundamentally undemocratic practices of political parties and, by extension, the entire political system. Therefore, the introduction of a legal obligation for political parties to introduce intraparty democracy would be an important step forward.

The second direction of change—introducing compulsory voting—would be twice as important. This step would undoubtedly lead to increased citizen participation in decision-making. Furthermore, it would contribute to greater accountability of political parties to voters. Instead of using anachronistic methods of wooing voters who rely on benefits from the public administration (through a job in the public sector or other sinecures), this change would mean that political parties would have to appeal to a far broader range of potential voters as well as offer much better political programs if they want to win their support.

Studies done in countries where such a system is in place have reported undoubted positive democratization trends. Although the system currently exists in only 22 countries, debates about its introduction are increasingly gaining traction.³

The current power relations in BiH’s political system are reminiscent of a hostage crisis, where the ruling elite uses accumulated powers to keep hold of all the levers of control over state institutions and resources, completely excluding the public and civil society from decision-making. The feigning of reforms and fulfilment of EU conditions has reached perfection.

Given the ruling pseudo-elite’s interest in maintaining the status quo, i.e., maintaining unlimited power and control over public resources and institutions, the impetus for this type of process in the form of conditions and requirements would have to come from the outside, primarily from the EU. No matter how discontented the silent majority is, their demands for change have been deftly blocked by the ruling pseudo-elites through methods of manipulation and deception aimed at drawing attention to ethnically homogenizing themes, and the overt use of force.

³ There are many advocates for instituting compulsory voting, including well-known scientists like Arend Lijphart.

