

1. Introduction: main features and challenges of the political system

“Western Balkans”, a phrase which originated in the vocabulary of the EU, refers to the six countries that have so far been left out of European integration. The states of this region (Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia) have never formed a single cluster either politically nor historically. This multilingual and multi-religious area is highly heterogeneous, but the countries in it also share many features and face similar challenges.

The historical roots of the countries in the area are common. They share the destiny that after the fall of independent medieval Christian states (Serbia and Bulgaria) with large-scale but uncertain borders, the entire Balkans came under Ottoman rule during the 14–15th century. After the fall of the Ottoman Empire, the emerging power vacuum turned the Balkans into the “powder-keg” of Europe, partly because of the aspirations for independence of the Slavic peoples living there and partly because of it constituting a conflict zone between the great powers. Since there were no clear historical borders that could have been reverted to after the overthrow of Ottoman rule,¹ after a short period of independent statehood in the 19th century, the major driving force became the new South-Slavic Alliance (the Serbian-Croatian-Slovenian Kingdom, later Yugoslavia). For a short time after World War II, it seemed that Albania might also join, but later it chose its own path of isolation.

Some of the six states can look back on a longer independent history (Serbia, Montenegro), while others only gained national recognition and autonomy later, within the framework of the South-Slavic Alliance. North Macedonia, Kosovo and the Bosniak people, who, although without their own independent state, enjoyed wide autonomy. Linguistically, South Slavic languages dominate the region and a Serbian presence is especially prominent: excluding Albania, a large portion of Serb population can be found in every country. The Albanian population is also significant outside of Albania, especially in neighboring countries. The religious structure is highly diverse: although (eastern) Christianity is predominant, Islam is the second largest faith and the major religion of Bosniaks and Albanians. This diversity has resulted in armed ethnic conflicts in various eras, most recently in the 1990s. The settlement of these confrontations – assisted by external actors – provided for the basic conditions of peaceful coexistence, but did not further the democratic development of the new autonomous states. This is

1 Heka, László: A délszláv államok alkotmánytörténete [Constitutional History of South Slavic States], Szeged, 2002, 14.

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the main reason why the primary goal of the political actors in the region – European integration – remains a distant prospect.

In terms of political systems, three main challenges face the Western Balkans: a delayed constitution-making process, often driven by external factors, ethnocentric rules that override democratic values, and the failure to establish a modern justice and administration system based on the rule of law and the division of powers. These parallels and common challenges will be highlighted in the following sections.

1.1 Delayed development of constitutions and forms of government

Constituent power has often been exercised by an external actor in the countries of the Western Balkans. During regional state- and constitution building, external powers often exerted a greater influence than internal processes. A constitution was forced upon Serbia by the Ottoman Empire as a *firman* (Sultan's decree) in 1838. Later, the great powers (Russia, Great Britain, France, Austria-Hungary, Italy and Germany) decided the fate of the region during the 1878 Berlin Congress. The next major (re)arrangement was also the result of decisions made by the great powers, when settling the outcome of WW I. Moreover, Bosnia-Herzegovina's 1995 constitution and Serbia and Montenegro's State Union constitution of 2003 were *de facto* forced constitutions. The oversight of the great powers, especially the US, played a key role in many internal crises: the 1998 Albanian Constitution and 2001 Kosovo/Ohrid settlement were also created with American mediation.

International organizations have also played an important role in building democracy and the market economy in the Balkans. Examples include the UN Development Program under the auspices of the United Nations, the United States' own development program, USAID, the OSCE, the World Bank and the EU. Despite these external donors and advisory and state-building projects, spectacular success – the stable functioning of the democratic institutional system based on the rule of law – remains elusive for the time being. In the case of Kosovo and Bosnia-Herzegovina, even state symbols (coat of arms, flag), expressing the states' multinational existence have been created with support of – in case of Bosnia and Herzegovina, they were imposed by – the international community. These are not bound to any ethnic group, but are neutral, artificial symbols, that suggest diversity. These two countries have some similarities in their constitutional system: the representation is based not on democracy, but also on ethnocracy.

During the last two decades of democratization, a separate constitutional process has begun on a parliamentary path. Serbia adopted a new constitution in 2006 while Montenegro adopted one in 2007. The constitution of North Macedonia (adopted in 1991, the first in the region) was amended significantly under the Ohrid Framework Agree-

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ment) in 2001 and was again amended in 2018 when the country's name dispute with Greece was settled via the Prespa Agreement which opened the path of the Euro-Atlantic perspective of that country. Bosnia-Herzegovina – the only country in the region, whose constitution, a document attached to an international peace agreement, has never even been ratified by its own parliament – alone did not enact any constitutional reforms, although an attempt in 2006 came close to finally achieving the change, but the necessary majority was not attained.² In order for these states to join the EU, further amendments will be needed.

More than a decade ago, in 2008, Reinhard identified the development of justice and parliamentary structures, alongside the economic constitution, as the most important constitutional tasks facing the Western Balkans.³ The intervening time has brought some improvement in the functioning of the judiciary (anti-corruption measures, increasing independence) and in parliaments (new house rules, increasing publicity), but the effectiveness of legislation and the acceptance of constitutional values in political culture – especially in ethnically divided societies – remains unsatisfactory. While constitutional changes are ongoing in some countries (36 amendments in North Macedonia, 24 in Kosovo and 16 in Montenegro)⁴, there has been no amendment of the Serbian Constitution since its adoption, until 2022, when, as part of the EU-accession process, some constitutional provisions mostly on the judicial system, were amended.

The constitution of Serbia, consisting of 206 sections and 10 chapters, was passed in 2006 and subsequently confirmed by a referendum by a majority of 96% with a 54% turnout. The constitution, especially its section on fundamental rights – besides deficiencies to be discussed in later chapters – was welcomed by the international community. European values have appeared in the constitution satisfactorily. After its adoption, all judges and constitutional court judges were reappointed, since “replacing” judges and prosecutors was deemed incompatible with European norms by the European Commission.

The Montenegrin constitution dates back to 2007, with a constitutional amendment consisting of 16 chapters being adopted in 2013 on mostly minor issues (expansion of the office holders elected by parliament and increase of election ratio of constitutional court judges to two-thirds). The preamble to the 1991 North Macedonian constitution states that the citizens of the Republic of North Macedonia are the Macedonian people,

2 For a general assessment of the reform see Marko, Joseph: Constitutional Reform in Bosnia and Herzegovina 2005–06, *European Yearbook of Minority Issues*, Vol. 5:1, 207–218.

3 Priebe, Reinhard: Beitrittsperspektive und Verfassungsreformen in den Ländern des Westlichen Balkans, *Europarecht.* – 43:3. (2008.) 310–319.

4 Szabó, Zsolt and Küpper, Herbert (2021). Legislation and Legislative Process in Eastern Europe, *International Journal of Parliamentary Studies*, 1(1), 73–108.

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as well as citizens living within its borders (Albanians, Turkish, Vlach, Serbian, Romani, Bosnian and others). Therefore, since the Ohrid Framework Agreement and the corresponding Constitutional Amendments, the constitution does not declare the country as a nation state. The Kosovo constitution defines the country as a multi-ethnic society made up of Albanian and other communities rather than a nation-state.⁵

Another common feature of the region is the role of referenda in the struggle for independence. This is how the people of Bosnia-Herzegovina⁶ (1992), North Macedonia (1991) and Montenegro (2006) decided on their independence. At the same time, the involvement of the people in the constitution-making process was much more modest, with only Serbia and Albania putting the constitution to a referendum. In Serbia, in 1990 and 2006, the Milosevic-inspired and current Constitution was also confirmed by a referendum. In Albania referenda have been held on the constitution twice, in 1994 and 1998, but only the latter was successful.

Direct democracy is generally weak in the region. A referendum must be held in Serbia at the request of the majority of all the representatives or 100,000 citizens, with excluded topics including international obligations, human and minority rights, financial laws and the budget. In Montenegro, parliament is not obliged to order a referendum, it can be held without such a mandate if the cabinet, the head of state, 25 representatives or 10% of citizens with the right to vote request it. In North Macedonia, the parliament may order a referendum by a vote of the majority of its members, which must be done if it is initiated by 150,000 citizens. The result of the referendum is obligatory for the parliament and the decision is valid if half of the electorate participates.

In spite of their different historical and ethnic backgrounds, the constitutional arrangements and institutions of the six states have many parallels. The predominant form of government is parliamentary: the constituent power is the legislature, with the executive responsible to it and requiring its constant political support. The head of the cabinet is elected by the parliament in all the states. The direct election of the head of state in Serbia, Montenegro, North Macedonia and Bosnia-Herzegovina (3-head Presidency), pushing the states of predominantly Serbian language towards a semi-presidentialism, does not contradict this. In North Macedonia, the president had more political powers before 2001, when the Ohrid Framework Agreement stripped all executive authority of the head of state.⁷

5 Constitution of Kosovo, art. 3.

6 The referendum was completely boycotted by the Serbs, representing 33% of the total population of the country.

7 Renata Treneska – Deskoska: Is the Organization of Power in the Republic of Macedonia Semi-Presidential? – *Pravni Zivot* 12/2014, Beograd, 585–594.

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The president is not a separate branch of power (the definite outlines of presidentialization are only present in Serbia), and he has more influence on political than legal grounds. Despite the differing methods of election, there are no significant differences in the legal status of the head of state, with a limited (one-time-only) legislative veto being characteristic of the whole region (with the exception of Bosnia-Herzegovina, where this veto is limited to matters within the competence of the Presidency, such as foreign policy and defense). The weakness of the veto right of the head of state is illustrated by the fact that laws requiring a qualified majority and constitutional amendments in Albania and North Macedonia cannot be returned to parliament at all. In Kosovo and Montenegro, the parliament can accept the returned law by the original majority. In Albania, North Macedonia and Serbia, however, the Parliament can adopt the returned law by an absolute majority instead of a simple one.

A kind of spontaneous integration in the electoral system has also occurred: by the end of the 2000s, the election system in the Western Balkans had become predominantly proportional. In North Macedonia (6 districts) and Albania (12 districts) citizens can vote for regional lists, in other states for national lists. Preferential elements are not included in the electoral system, i. e. the parties have a decisive influence on the nominations.

In five of the six countries, the parliament consists of only one chamber, except the parliament of Bosnia and Herzegovina and one of its entities, the Federation, where it is bicameral. Bosnia and Herzegovina – uniquely in the region – has two levels of legislation: the state and the two entities (the Federation of Bosnia and Herzegovina and the Republic of Serbia). The Federation of Bosnia and Herzegovina is further decentralized: it consists of ten cantons, which all have their own parliaments and exercise their own legislative powers (these cantons are beyond the scope of this book, however). The parliament of the Federation is a bicameral legislature, while that of the Republic of Serbia is unicameral.⁸ In both Bosnia and Herzegovina and the Federation the two chambers are symmetrical: they have the same rights in legislation. All the parliaments of the region are chosen for a 4-year period, and their legislation is reviewed by constitutional courts in each of the countries.

Bosnia and Herzegovina is a federal state, even if not in the classical sense. It is a two-level state, where both levels of government have their own state organizations, constitutions and constitutional courts. In the literature, some define the system as a “complex

8 The Council of the Peoples, introduced by the High Representative in 2002, exercises quasi-upper house power. It does not participate in the legislative process, but controls *ex ante* the laws and other legislation adopted by the parliament of the Republic of Serbia to determine whether the law, decree or other legislation adopted violates national minority interests.

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state”.⁹ In practical terms it is a confederation, where the state level is responsible for external affairs, commerce and custom politics, monetary politics, immigration, air and international travel, while everything else belongs to the scope of authority of the entities. Moreover, the central constitutional institutions of Bosnia and Herzegovina would appear to form a federative system. The country consists not of federal states, but of “entities”, as they are held together by the “federation” of the parties, but the Dayton Agreement.¹⁰

Other argument against Bosnia and Herzegovina being a federal system is that a federation makes it possible for member states to exit, which is not a right granted to the entities in the case of Bosnia and Herzegovina, based on Dayton. The type of government at the central, state level is semi-presidential, which is unique in the region, characterized by a collective body of the head of state, the Presidency. Its members rotate as heads of state every eight months, two of the members are directly elected in the Federation, and one in the Republika Srpska. The Presidency appoints the president of the council of ministers (the cabinet), while the prime minister appoints the ministers in such a way that “at most two-thirds of the members of the cabinet” shall come from the territory of the Federation.

The two entities have different forms of government: Republika Srpska has a centralized system, while the Federation of Bosnia and Herzegovina is highly decentralized, as it is divided into 10 cantons, which have their own elected parliament with a responsible government and independent public administration. The president of the Federation of Bosnia and Herzegovina, who is also the leader of the executive branch, and two vice-presidents, are elected from the joint list by a majority vote in the House of Representatives and the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina. Thus, they are not elected directly by the people. The president and the vice presidents of the Republika Srpska are elected directly. Presidents and vice presidents in both the Republika Srpska and the Federation of Bosnia and Herzegovina may not be of the same constituent peoples, i. e. if a Serb is elected as a president in the Republika Srpska, two vice-presidents are a Croat and a Bosniak.

The scope of authority of the central state extends to only ten fields, including foreign affairs, foreign trade, customs and monetary policy, refugee affairs, inter-entity matters

9 Woelk, Jens and Sahadžić, Maja: Cutting the Gordian Knot in Bosnia and Herzegovina: The High Representative Imposes Constitutional and Legislative Amendments on Election Eve, *VerfBlog*, 2022/10/07.

10 It is to mention that the Brčko District, or officially, the Brčko District of Bosnia and Herzegovina is a self-governing administrative unit in north-eastern Bosnia and Herzegovina. Officially a condominium of the Federation of Bosnia and Herzegovina and Republika Srpska, it was formed in 1999 to reflect the multi-ethnic nature of Brčko and the surrounding – strategically important – areas and their special status within the country. The seat of the district is the city of Brčko.

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and air travel. In all other matters the entities have their own scope of authority.¹¹ In the 2000 s, in order to improve the functionality of the state, the High Representative, without any explicit amendment of the constitution, expanded the scope of state authority on the central state level. The reform predominantly affected the judiciary, the prosecutor's office and the police force, thanks to which these fields function more or less uniformly in Bosnia and Herzegovina. Initially, administering the state budget caused several problems: the central state was solely financed by the entities and had no tax revenue of its own, only receiving the right to levy taxes from the state in 2003.¹² The outcome of the legislative process required to join the EU is also questionable, as there is barely a single area of the law related to the *acquis* that falls within the competence of the central state as instead it is predominantly at the level of the entities or cantons. The state constitution is hardly amendable: this restriction exists only with regard to the clauses on fundamental rights; other sections may be amended by local actors with the agreement of the two houses, and a two-thirds majority of the lower house.¹³

The functioning of the state has not stabilized after twenty years of the Dayton Agreement due to vetoes along ethnic lines and political loyalties. Frequent government crises, the result of the inefficient decentralization, mainly hinder the functioning of the Federation. One way to avoid these in political practice is for party leaders to obtain precautionary resignation statements from ministers in advance, which can be used at any time in the event that their loyalty is in question. The Venice Commission addressed this issue in its opinion¹⁴ on such a case, stating that, although this practice does not conflict with internal or external law, it is contrary to the principle of democracy and good practice, mainly because it gives the appearance of voluntary renunciation, which undermines public confidence.

The necessity of a constitutional reform in Bosnia and Herzegovina is justified because certain provisions of the fundamental law were found by the European Court of Human Rights to conflict with the European Convention on Human Rights, as the ratio of certain positions (such as members of the upper house) must be filled equally by the three "state-forming nations", thereby excluding the representatives of other ethnic minorities from representation and the exercise of power (more details about the decision will be provided in the chapter about the parliamentary interrelations of a multi-ethnic existence). A constitutional development process has started in Bosnia and Herzegovina with the formal amendment of the constitution, with the High Representative of

11 Steiner and Ademović (eds.): *Constitution of Bosnia and Herzegovina Commentary*, Konrad Adenauer Stiftung e. V. Rule of Law Program South East Europe, Sarajevo, 2010.

12 Tomić (2008) 11.

13 Constitution of Bosnia and Herzegovina Art. X.

14 Opinion of the Venice Commission 691/2012.

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the UN driving the initiative. This has enabled the creation of a unified judiciary and prosecutor's office and the constitutionality of the process has also been confirmed by the state constitutional court.

Turning to the situation of political parties, it is obvious that their status is not yet fully settled in the region, although they have a powerful influence on the operation of institutions and the process of nominating public office holders. The financing of parties is opaque, while the institutions of democracy tend to be formal or even downright dysfunctional. While the rules on parties look impressive on paper, the institutions often work ineffectively in practice. This doubly applies to the work of parliaments: it is quite common for opposition MPs to walk out from or boycott legislative sittings and occasionally brawls break out or even tear gas is used (e.g. in Kosovo). The culture of political compromise is underdeveloped and aggressive reflexes dominate daily political life. There are hardly any parliaments in the region where the opposition has not declared a full boycott of parliamentary work yet or where the work of parliament has not been paralysed by a political stalemate. Following elections, the formation of a new parliament and government is often delayed by political wrangling, which can temporarily paralyse public institutions. Due to the recurring crises and political stalemates – which are consequences of the instability of the political system – the voters of the region have grown sceptical about their ability to make an impact on the political scene, which is dominated by the region's strongmen. In contrast to the high voter turnout that marked the undemocratic elections before the political transition, nowadays electoral turnout is very low.

In Kosovo and Bosnia and Herzegovina, parliament's legislative competence is limited by the presence of the international community, albeit to a decreasing extent. In Kosovo, since 2014, international organizations only serve on an advisory basis, while in Bosnia and Herzegovina, the remit of the High Representative has remained, although it has not practised its right in the last decade. Another sign of international supervision is the fact that three of the nine members of the Constitutional Court of Bosnia and Herzegovina are appointed by the European Court of Human Rights, from a pool of internationally recognized foreign lawyers.

1.2 Ethnocracy as an overall guiding principle

The ethnic heterogeneity of the region and the resulting conflicts entangle the entire public sphere, especially in Bosnia-Herzegovina, Kosovo and North Macedonia. Several different models of power-sharing between ethnic groups are in place.¹⁵ In Bosnia and Herzegovina, the equal treatment of "constituent peoples" (Bosniak, Croat, Serb),

15 For a detailed analysis and international comparison, see the following chapter.

and their mutual veto rights are intended to ensure power-sharing, while in Kosovo and North Macedonia proportional representation of minority groups is the model used. The latter two states also differ in certain respects: while in North Macedonia, the Albanians received such rights because they had demanded them, the Serbs, who did not recognize the statehood of Kosovo, did not claim such rights, but received them nonetheless, to allow the young country to meet the expectations of the international community. Montenegro is an interesting example from this point of view, being a multi-ethnic, heterogeneous state, where politics is polarized not only on the basis of ethnicity, but also on the basis of the approach taken to fundamental issues, such as relations with Serbia or a common Montenegrin identity. For this reason, the party system is not as ethnicized as it is in other multinational states, like in Bosnia and Herzegovina, Montenegro or Kosovo.¹⁶

In Montenegro, minority parties can obtain a parliamentary mandate with a preferential quota, while in North Macedonia there is no threshold for minority parties. Albania is the only country which does not support minority representation in any way: indeed, the establishment of ethnic parties is forbidden and minorities are not guaranteed parliamentary seats.

The most obvious way of sharing power on an ethnic basis is in the ethnic composition of state institutions. This seems to happen most consistently in Bosnia and Herzegovina: certain positions and a fixed quota, regardless of the outcome of the election, is secured for the constituent peoples. These ethnic proportions are “set in stone” and cannot be changed – pure democracy is overridden by consensus-based politics and ethnocracy. There are some similar rules in Kosovo: the Serbian minority, irrespective of the election results, is entitled to 10 seats in the parliament, and a quota of other minorities is also defined.

North Macedonia, however, supports ethnic representation through parliamentary voting rules, the double or so-called Badinter majority (named after the French legal expert, Robert Badinter), that aims at protecting the ethnic minority from being outvoted by the ethnic majority and the abolition of the electoral threshold for ethnic parties standing for election. The Venice Commission, examining this solution, stated that the dual majority in parliament (simple majority and majority among minority representatives) can only work if it is not possible to change ethnic affiliation at any time. Otherwise, the ethnic majority rule could be circumvented by a situation where a faction or political group persuades its members to declare themselves as members of another

16 Tomic, Caroline Hornstein: *Interethnische Beziehungen in Südosteuropa – Ein Bericht zur Lage in Bosnien-Herzegowina, Kosovo, Kroatien, Mazedonien, Montenegro und Serbien*. Konrad Adenauer Stiftung, 2008.

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ethnic group. The Venice Commission therefore argues for registration as an indispensable element of the dual majority rule. In contrast to Kosovo, there is no legal quota for minorities in North Macedonia, i. e. minority representatives are introduced into parliament not by legal but by political logic. For this reason, it is not impossible for members to claim to be ethnically different from their real ethnical origin, in order to manipulate the results of the vote.

The need for constitutional reform in Bosnia-Herzegovina is primarily due to the fact that certain provisions of the constitution have been criticized by the European Court of Human Rights: certain positions have to be filled equally by representatives of the three constituent nations, excluding representatives of other nationalities. However, regardless of this stalemate, and without formal constitutional amendment, a constitutional development process was launched, driven by the UN High Representative. As a result, in the past few years, a unified justice and prosecution system has been built up in the country, and the constitutionality of this process was confirmed later by the State Constitutional Court.

1.3 Deficiencies of power sharing and the rule of law

State institutions may be relatively efficient even at times when rule of law does not prevail. Yugoslavia, based partly on the traditions of the Austro-Hungarian Monarchy, had a relatively well-developed judicial and administrative capacity in its own era: administrative jurisdiction was developed, and, from 1930 onwards, the administrative procedure was codified at federal level. This code was taken over by all the successor states and, in the 2000s, it was modified according to their own needs or replaced by their own procedural codes. The Yugoslav Constitutional Court also looks back on a long history: in 1963, a benchmarking body was set up in all the republics as well as at federal level. It is true that its powers did not extend to striking down laws, but only to an indication of their unconstitutionality. Despite these rich common roots, it would not be justified to speak of a common legal or administrative culture in the Western Balkans today.

Nowadays, the trust in the state and its political institutions is low, and much higher in individuals. The formal political procedures are not fully respected: there is scarcely a parliament in the area where the opposition have not announced a boycott of parliamentary activities. After the parliamentary elections – which often take place with a very low rate of participation – the formation of parliament and government is often delayed due to political disputes, sometimes leading to a temporary total paralysis of the institutions. The opposition has rightly recognized that empty benches and a lack of political discourse in these countries ahead of European integration, is an effective

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means of applying pressure on the majority in parliament. Although it is not a domestic requirement, the EU institutions are sensitive to this – boycotting parliamentary work is always a top priority issue in the Union’s yearly monitoring reports. These actions usually end up with some concessions being made to the opposition, without durable results. The European Union has assumed the role of mediator on several occasions between governments and opposition parties.

Establishing the rule of law remains a key challenge in the Western Balkans. Progress in the region, while it varies between countries, is generally slow.¹⁷ The Venice Commission’s recommendations and the annual progress reports from the EU reveal a number of shortcomings in the same areas in many countries in the region, including free elections, the legal status of parties, the functioning of parliaments and the independence of the judiciary. The EU Commission’s new enlargement strategy emphasizes that the rule of law must be strengthened significantly, which is not only an institutional issue, but also one which requires societal transformation in the countries and the incorporation of specific fundamental values into their everyday culture.¹⁸

Therefore, strengthening the rule of law and democracy is primarily an external constraint: since 2011, chapter 23 (courts and fundamental rights) and 24 (truth, freedom, security) of the pre-accession negotiating chapters are pre-classified ahead of others by the European Commission, and the implementation of fundamental reforms in these areas is a condition for opening other chapters. European integration is a key item of the legislative agenda in every state. The process is evaluated by external actors, and its implementation and development are made possible by external sources. As a result, the process becomes controlled from the outside, and internal motivation is outweighed by a willingness to meet external conditions and to earn financial and political incentives.

European integration also has negative side-effects on democracy and the rule of law: in parliaments, accelerated procedures are increasingly used during the legal harmonization process. In multi-level Bosnia and Herzegovina, the competences to implement the *aquis* are divided between the different levels of state (state, entities, and cantons), which found in the beginning cooperating difficult in practice. In order to improve the accession process, an operational and institutional system of internal coordination and decision-making in the process of the European integration was established in 2016, based on the principles of compliance with the existing internal legal and political struc-

17 Haider, Huma (2018). Rule of law challenges in the Western Balkans. In: K4D Helpdesk Report 464. Brighton, UK: Institute of Development Studies. 2.

18 Hoxhaj, Andi (2018). The new EU Rule of Law Initiative for the Western Balkans. In: Rule of law in the Western Balkans: Exploring the new EU enlargement strategy and necessary steps ahead, 21–26. 16–19 April. Alt Madlitz.

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ture, ensuring visibility and accountability of all levels of government for timely and effectively fulfilling of obligations and commitments in the European integration process within their scope of powers.¹⁹

Parliamentary investigation of the executive is still generally weak and lacks weight (parliamentary questions, committees of inquiry), and ministers are often simply absent from parliamentary investigations. Corruption investigations have paralyzed several institutions (in 2019, only two of the nine-member Albanian Constitutional Court were cleared by such an investigation).

Another major challenge is strengthening judicial independence. Politics still has a decisive influence either indirectly, by the appointment of judges, or directly through the parliamentary election of judges. Both public administration and the judiciary frequently lack professional staff, and low wages only contribute to the high level of corruption in these areas, despite the ongoing fight against it.

The legacy of the 19th century and the socialist administration is extensive, reflected in uncompetitive bureaucracy, with insufficient resources and little democratic legitimacy. The shortcomings in public affairs and corruption further worsen the already low efficiency. A stable, predictable, transparent public administration is the most frequently identified problem in EU progress reports, although there is no “administrative” accession chapter and there are no specific indicators and standards for the functioning of individual bodies. Instead, political criteria appear. In view of the credible conditionality and the lack of operational instruments, criticism of the EU may appear justified. At the same time, however, public administration reform processes are not consistent and insufficiently strategy-driven, but instead person-dependent and isolated. A study has shown that there is no common administrative reform model²⁰ in the region, and the development of individual sectors sometimes happens on a random, ad hoc basis. Public administration reform is progressing however, albeit slowly, and important laws have been adopted, but the administrative culture is still in need of thorough reform. The EU promotes the Weber model of administration, with stable, professional, well-paid staff, the creation of which is not going smoothly in the Western Balkans. However, there are encouraging signs: the codification of the modern administrative procedure and the strengthening of the e-administration system have taken place in recent years.

19 Odluka o sistemu koordinacije procesa evropskih integracija u Bosni i Hercegovini [Decision on the System of Coordination in the Process of European integration in Bosnia and Herzegovina], Službeni glasnik Bosne i Hercegovine [Official Gazette of Bosnia and Herzegovina], No. 72/16, 28 September 2016.

20 Bouckaert, Geert, et al. (eds.): *Public Management Reforms in Central and Eastern Europe*. Bratislava: NISPAcee, 2008.

The administrative staff is also gradually becoming more professional, with the launch of many positive initiatives in training.

1.4 Summary

The West Balkans is a heterogeneous region, in terms of its history, culture, religion and law. This diversity has resulted in armed ethnic conflicts at various times in its history, for the last time in the 1990s. The settlement of these confrontations – assisted by external actors – provided for the basic conditions of peaceful coexistence, but did not help the further democratic development of the new autonomous states. This is the main reason why the primary incentive for political actors, European integration, constantly remains out of reach. The impetus to develop democracy and the rule of law is not an internally generated desire, demanded by the people, but an external pressure, formal rather than rooted in reality, and does not bring about systemic changes.

The consolidation of the political system is hindered by three main challenges. On the one hand, constitution-making is often delayed and is driven by external factors. On the other hand, democratic representation is overwritten by ethnocratic rules, especially in Bosnia-Herzegovina, North Macedonia and Kosovo. Thirdly, the establishment of an effective, modern justice and administration system, based on the rule of law and the division of powers, is delayed and largely formal in nature. Trust in political institutions is generally low, which is also reflected in low electoral participation rates. Charismatic leaders dominate the political arena, which is often rife with populism and corruption. The perspective offered by the EU is attractive, but whether this will be enough to take these countries beyond their internal debates and crises remains to be seen.