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## THE INFLUENCE OF INSTITUTIONAL DESIGN ON THE DEMOCRATISATION IN BOSNIA AND HERZEGOVINA

Gordana Iličić - Peter Smeriga\*

### ABSTRACT

The development of democratic transformation theories, put special emphasis on waves of democratisation and the breakdown of autocratic systems of government, which enabled the development of transformation theories and theories of institutional design closely associated to them. Article confirm that the transformational processes of post-communism show specific transformational issues, while in Bosnia and Herzegovina there is a significant deviation from the transformational processes issues of other post-communist regimes. Bosnia and Herzegovina faces a deeply rooted background of divided society, war consequences, different views on state constitution by the members of three constitutive national groups, outside solutions on political system constitution and therefore it has minimal democratisation possibilities at disposal. Inefficient structure of political institutions and lack of equality are mutually intertwined, and are therefore blocking the entire political system. Through several examples, the authors depict the impairment of legitimacy as a political issue dealing with the question of how a certain arrangement gains or loses public trust, and is connected to the most significant form of democratic confirmation, election process.

**Key words:** Bosnia and Herzegovina, consolidation, political system, democracy

### Introduction

Transformation of communist regimes is so differentiated from the overall third wave of democratisation that some authors do not consider that issue as a part of the same group. **M. McFaul** thinks that this is the case of decommunisation within the ex-communist regimes, that is why he leaves the

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possibility of a new, fourth wave of democratisation open. (McFaul, 2002, p. 213) **W. Merkel**, one of the most respected German theorists of transformation research, also separates the transformation of communist regimes from all system changes in the first and second wave of democratisation (Merkel, 2011, p. 307-413). It is considered that there is a consensus within the theory of democratic transformation that the transformation processes of East European post-communist countries represent specific transformational issue. **Merkel** defines transformation as a substantial, true change of political regime through a triad, the end of the old system, democratisation and consolidation of the new system. (Merkel, 2011, p. 54-55) **S. Huntington** in his prestigious analysis *The Third Wave: Democratization in the Late Twentieth Century* shows that democratisation was historically developed through three waves, along with their counter waves. He defines the wave of democratisation as a group of transitions from non-democratic to democratic regimes, occurring in the same time period, and which significantly exceeds the transformations in the other direction. (Huntington, 1991, p.15) According to him, during the first wave of democratisation, which occurred between 1828 and 1926, almost 30 countries introduced the minimum democratic institutions of government. The first long wave of democratisation was stopped by the authoritarian counter-wave, which began by Mussolini's accession to power in Italy in 1922 and it gained force by the rise of fascism, communism and military dictatorships. (Huntington, 1991, p. 17) The second, short wave of democratisation started during the World War II and continued until 1960s, starting the development of democratic institutions and processes of government across the world. At the same time, while democratisation of non-democratic political regimes took place in the rest of the world, totalitarian communist regimes started blooming upon the Eastern part of Europe. In the early 70s, the third wave of democratisation began by the ending of the right wing dictatorships, firstly in Portugal, then in Greece followed by Spain. It continued its ascent at the beginning of the 80s in Latin America by the fall of military regimes, and it caught some Asian countries. However, what was the most significant aspect of the third wave was the downfall of communism in the Soviet Union and Eastern Europe. The transformational challenges the post-communist countries faced were the political issues related to the autocratic tradition and economic problems caused by a non-liberal government.

The dissolution of autocratic government systems enabled the development of transformation theories and its closely connected theories of institutional design. Institutional design is a special branch of political sciences, which

questions how political institutions act as a means of conflict management in divided societies, and if they can be constituted in order to contribute to overcome conflicts and to democratise the society. (Kasapović, 2004, p. 102)

Up until the middle of the last century, when authors such as **A. Lijphart** appear with theses that presented some sort of turning point of political thought, especially in the area of democratic institutional arrangements adapted to divided societies, a majority or general model of democracy meant for relatively homogenous societies was dominant. That is why even **J. S. Mill** was not connecting democracy with heterogeneous societies.<sup>2</sup> When in the middle of the last century schemes contrary to the majority model of democracy appeared, institutional forms contrary to the majority model were designed which had its roots in patterns of pluralistic or divided societies.<sup>3</sup> Those divided or pluralistic societies, no matter on what social rift<sup>4</sup> their segmentation occurred, seek specific institutional models for the organisation of complex political relations between the segments. Amongst the institutional models created from the necessity to resolve conflicts in societies intercut with great rifts consociation pattern of democracy is especially highlighted, whose incurrence and development is connected to the one previously mentioned **Lijphart**.<sup>5</sup> He has, with the four core institutional arrangements, later additionally developed and expanded, big coalition, veto, linearity in

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<sup>2</sup> „Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion necessary to the working of representative government cannot exist.“ (Mill, 1991, p. 428)

<sup>3</sup> Pluralistic or divided societies are societies divided into more social segments, which are created through multidimensional and overlapping rifts. The concept of pluralistic society was first introduced by J.S. Furnivall in 1939 in books *Netherlands India*, and 1948 *Colonial Policy and Practice*, defining pluralistic societies as those which consist of “two or more social segments that live side by side without interfering in a unique political community“. (Rabushka, Shepsle, 1972, p. 10)

<sup>4</sup> The theory of social rifts was covered and analysed in detail by Lipset and Rokkan by connecting ideological preferences and creation of political parties, along with the process of shaping national states and industrial society. By development of different interests, social rifts were created (centre-periphery, state-church, agriculture-industry, town-village). On the other hand, Rae and Taylor point out the rifts according to ascribed features (class, age, ethnicity, and education), attitudes (ideology) and the type of political participation (type of participation or not participating in politics). (Lipset, Rokkan, 1967; Rae, Taylor, 1970)

<sup>5</sup> Besides consociation democracy for regulating relations within heterogeneous society other mechanisms were recognised such as non-territorial autonomy, federalism (which is included in consociation democracy) with especially important role of upper house as a representative body which represents specific interests within divided societies etc.

representation in executive and legislative power and autonomy of segments with federalism, he proved that it is possible to manage divided societies through negotiation, compromise and inclusion. The first institutional form among all is a big coalition of political leaders of all significant segments of one society. Prerequisites for its creation are the existence of moderate views and readiness for compromise. The second important feature of consociation democracy is veto, as an additional protection of minority's vital interests, which at the same time offers an assurance of political protection for every segment. Third element is linearity with two important variations: intentional overrepresentation of minor segments and parity in public affairs. (Lijphart, 1992, p. 43-47) While the fourth represents the autonomy of segments and federalism, which implies a great level of independence of each segment when it comes to decision making considering internal issues. *"About all things of common interest, the decisions should be made in joint decision of all segments whose influence should, when possible, be proportional. However, with all other issues decisions and their implementation may be entrusted to particular segments."* (Lijphart, 1992, p. 48) The weaknesses attributed to consociation democracy are reduced to the lack of democratic character and low efficiency in achieving stable and efficient political power, lack of opposition, and predominance of the elites with strong political apathy, which does not favour democratic vitality. (Andeweg, 2000) Furthermore, its critics claim that not only that these arrangements lead people to determine for a joint identity but they can also strengthen the separation between the segments and can therefore deepen divisions in society. (Horowitz, 2002) On the other hand, the advocates of this model claim that these consociation arrangements serve best for reduction of conflicts in deeply divided societies, considering that they enable all segments to participate in government, which helps to achieve political stability as a core precondition for democratisation of society.

On the other hand, the advocate of centripetalism D.Horowitz does not ask what the best design for divided societies is, but how that design is applicable in practice. He believes that in consociation arrangement the leaders of majority communities do not have an interest for division of power because they can obtain power without minorities. Contrary to **Lijphart**, he points out that political leaders of the segments of divided society do not have to be more tolerant than those they represent, and that making compromise across ethnical borders of division has a very high price and causes a strong

resistance amongst the counter-elites.<sup>6</sup>

Despite the criticism, consociation form of democracy has shown its applicability even before wider scientific-theorist discussions, in Holland from year 1917 to 1967, in Austria from 1945 to 1966. In Belgium this model still represents the only effective pattern for differences management, considering that through six state reforms in 1970, 1980, 1988-89 (Senelle, 1989), 1993, 2001 and 2011<sup>7</sup>, from a state union in decay Belgium has evolved in an efficient consociation. (Fitzmauritze, 1996) While Switzerland, which lies on the broad autonomy of cantons and limited power of central authorities, which is supported by the institute of referendum, represents the example of functionality of divided society within democratic standards. (Chopard, 1963; Linder, 1994; Sciarini, Fischer,Traber, 2015) Consociation form of democracy has also institutionalised its arrangements in Lebanon since their independence in 1943 until the start of the civil war 1975, as well as in 1989 with Ta'if Agreement. In Malaysia, from 1955 until 1969, Nigeria, from 1957 until 1966, in Northern Ireland from 1998, with Good Friday Agreement, and in Macedonia, with Ohrid Agreement 2001, enabling the creation of outlines of consociation democracy. Countries with mixed forms of majority and consociation model are semi-consociations, such as Canada and Israel.

## **1 Post communism transformation in Bosnia and Herzegovina**

While the transformation of post communist states differentiates from other system changes in the first and second wave of democratisation, the transformation of Bosnia and Herzegovina is different, through its uniqueness, from other post communist states. Due to the fact that transformation processes of post communist states were developing under special challenges, which first

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<sup>6</sup> „When leaders compromise across ethnic lines in the face of severe divisions, there is usually a high price to pay. Counter-elites arise who make an issue of the compromise, referring to it as a sell-out. Consociational theory assumes the existence of ‘group leaders’, but, even when groups begin with a single set of leaders, compromise across group lines is likely to show those leaders to be merely party leaders opposed by leaders of other parties seeking the support of the same group. The centrifugal competition for group allegiance is an enormous constraint on compromise across group lines, and it renders the grand coalition, under conditions of free elections, a contradiction in terms.“ (Horowitz, 2002, p. 21)

<sup>7</sup> An agreement named Butterfly Agreement defined the shape of a sixth state reform with two main decisions relating to the issue of transferring authority from state to federal levels, and a preparation of revision of allocation of funds (Di Rupo, 2011).

and foremost arose from the context of autocratic systems (in most cases totalitarian), that is why the transformation materialised on three levels: political (the transfer from dictatorship to democracy); economic (the change from planned to market economy); and as a state transformation (transformation which was specially emphasized as meant the founding of a new country). (Merkel, 2007)

In countries formed by the breakdown of Yugoslavia the key challenge was the issue of statehood, which, in addition to wars, significantly slowed down the process of democratisation. The problem of statehood was burdened by "*the nature of multiethnic societies*" (Kasapović, 2007, p. 142) proven by the fact that all the countries, especially those unitarian, which did not have that issue, successfully executed the transformation. (O'Donnel, Schmitter, 2006; Merkel, 2007) In addition to the issue of statehood, the key issues were which patterns of democracy to use, of majority or of consensus, and which governing model to choose, governmental, presidential or semi-presidential. Therefore, in the process of shaping democracy, the successors of communist parties were apt to majority pattern, while non-communist opposition were favouring consensual democracy. (Kasapović, 1997) Here it is important to emphasize that the majoristic form of democracy is only suitable for homogenous societies, with common national identity, which encompasses uniform cultural content, while model of consensus, with federalism as its key feature, is suitable for culturally fragmented societies, especially those multi ethnic. (Lijphart, 2014) That is why multi ethnic societies within the transformational process in Central and Eastern Europe had to take a stand of clear tendency focused on stability, legitimacy and efficiency of public policies. (Mair, 2013) Bosnia and Herzegovina took a considerable step away from the issues of transformational processes of other post communist regimes. Not only that it had minimal democratisation possibilities at disposal, but it was also faced with deeply rooted basis of a divided society, war, and outer solutions of political system arrangements.

## **1.1 Historical preconditions of the causes of government system instability**

Specific and complex geopolitical historical turmoil on the territory of today's Bosnia and Herzegovina are filled with conquering and "*subjects' affection*" (Malcolm, 1995, p. 11) and they enabled an ethnical-religious segmentation of society into three dominant ethnic-religious identities. By the schism within the

Christian community in the 11<sup>th</sup> Century a Catholic and Orthodox religious identity came about while a Muslim identity started taking shape due to Ottoman invasion, around 1463, when a period of islamization and creation of a new identity began. During the Austro-Hungarian era, the processes of national identification began, ending the long period of classical confessionalism (Džaja, 2002, p. 24) which then took form of national movements within which Croats and Serbs shaped their sole national identities in the South Slavic area. At the beginning of the 20<sup>th</sup> Century, Bosnia and Herzegovina was a part of the Kingdom of Serbs, Croats and Slovenians, and after Kingdom of Yugoslavia. During World War 2 it got a status of a federal unit within a Yugoslavian country (Bilandžić, 1979) so according to the first constitution of Federal People's Republic of Yugoslavia it became one of six people's republics along with Serbia, Croatia, Slovenia, Macedonia and Montenegro. Confederal Yugoslavian constitution from 1974, brought, mostly as a reaction to Croatia's Spring,<sup>8</sup> a guarantee of sovereignty and independence with republic's rights for its own constitution creation. With that constitution, the Muslims got their confirmation as a nation for the first time. During the whole period of Yugoslavian governance, repressive state apparatus restrained all efforts of reform. Croatian, Serbian, Slovenian, Macedonian, Montenegrin, Albanian and Muslim nationalisms were only repressed. At the end of 80s and at the beginning of the 90s of the last century, at the peak of the third wave of democratisation, comes the breakdown of multinational Yugoslavia, new countries started to form from it, and on the territory of Croatia, and Bosnia and Herzegovina bloody wars took place, which completely jeopardized the process of democratisation. During that period, the Muslims began the process of national unification, which Croats and Serbs already finished at the beginning of the century. And while national identity of Serbs and Croats was composed of heterogeneous and multilayer structure, the Muslim, from 1993 Bosniak, identity was reduced to religion as its dominant focus (Filipović, 1996, p. 127) and their, up until then, moderate religious views, turned into religious extremism and tendency for a national

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<sup>8</sup> It was a Croatian reformation and national movement which arose as a consequence of a crisis of Yugoslavia's socialist system. Besides the oppression of Croatian identity, the reason for the reform lied in unjust economical allocation and below average representation of Croatian personell in government bodies, overall national inequality but also the oppression of Croatian standard language. Publishing of Declaration of name and position of Croatian literary language in 1967 and events connected to it was an introduction for overall emancipation movement in the following years. (Goldstein, 2008, p. 532-533)



homogenisation. That even deepened the rift between three different religious and cultural identities, which enhanced the social divisions between three ethnic-religious groups, Serbian-Orthodox, Croatian-Catholic and Bosniak-Muslim.

## **2 Political system of Bosnia and Herzegovina**

War in Bosnia and Herzegovina, from 1991 until 1995, was primarily marked by conflicting national interests of three nations and finding territorial solutions of national questions. That is confirmed by suggestions of country's organisation supervised by international community during the peacemaking process with the respect of territorialisation by national key. (Tuđman, 2005) Despite that, through international peace agreement from Dayton, Bosnia and Herzegovina was territorially divided on an unusual principle for divided multiethnic societies. Two numerically uneven ethnic segments, Bosniak and Croatian, formed one federal unit, Federation of B&H consisting of 70,4% Bosniaks, 22,4% Croats and 3,6% Serbs. While the other Republic of Srpska consists of dominantly one, Serbian segment, Serbs 81,5%, Bosniaks 14% and Croats 2,4%.

The constitution of Bosnia and Herzegovina has become one of annexes of International peace agreement, it was never officially translated to domestic languages nor it was ever adopted in a parliament procedure and the country was given an institution of international High Representative, which was not a part of that constitution, so the theses that the country is not sovereign country and that it is a protectorate are proven by numerous solid facts. For instance, High Representatives have enacted and changed laws, entity constitutions, superseded elected representatives etc. The scope of international jurisdiction in Bosnia and Herzegovina puts in question a democratic principle of sovereignty of the people by which the laws are adopted by a body chosen by the people. That is why the principle of sovereignty is deprived of form if there is a body that is above it. It is important to add the composition of Constitutional court, which consists of nine members, three of which are foreign. Four are elected by House of Representatives of Federation, two Parliament of Srpska, and three are elected by the president of European court for human rights. International interventions in Bosnia and Herzegovina and control of all segments of political processes including the election system,<sup>9</sup> as the most

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<sup>9</sup> The leader of OESS mission in B&H Robert Barry enforced the change of election law right before general elections in 2000, which enabled that the representatives in House of Peoples of

important element of constitutional engineering (Kasapović, 2005, p. 184) brings to question the sovereignty of a country which often looks like colonial governance in which the most important decisions and all important reforms are forced by international decrees. (Knaus, Martin, 2003) The thing that highlights almost all activities of international actors in Bosnia and Herzegovina is the lack of knowledge about building a nation in general, about their specific shape in Southeastern Europe and their insufficient adeptness when it comes to institutional designs, which manage conflicts in multinational countries. The justification can be reckoned on the premise that international officials, who come from countries in which the shaping of nations was in most cases finished multiple centuries ago, are not adept enough in historical, political and social context of Bosnia and Herzegovina. (Iličić, 2015)

In those circumstances the implementation of elections usually results in voting and concentrating of voters around national political parties, which further confirms the thesis that members of all three constitutive nations do not consider national question to be resolved. Serbs are gathered by the idea of preservation and strengthening of the status of the Republic of Srpska along with secessionism, Bosniaks are gathered by an idea of establishing a unitary country with their dominance, while Croats are gathered around the idea of establishing their federal unit and achieving an equal status of a constitutive nation within a country's structure.

## **2.1 Unequal status of Croats**

National tensions can be released by solving the question of equality, representing all three constitutive nations in an equal way. Croatian political and intellectual elites invoke numerous indicators, which prove their unequal status due to the fact that there is no constitutional solution which would secure their full institutional equality. Here are some of them. After general election in 2000, by international election manipulations it was made impossible to the legitimate

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Federation B&H may be nominated and elected by all representatives of canton assemblies of Federation B&H, no matter the nationality, which completely changed the essence of that house's function, and that was at first to protect political rights and political representation of constitutive nations. High Representative Wolfgang Petritsch brought a total of 36 amendments to the B&H Constitution, which changed the way representatives are elected to House of Peoples of Federation B&H which was valid in constitutions as parts of Washington and Dayton peace agreements, most of the decisions were at the least numerous Croats' expense.

Croatian political parties to participate in government because members of other nations had right to nominate and elect their representatives for Upper House of Federation B&H parliament. That is absurd because it is through Upper Houses that it is assured that different groups are represented specially in a political system, that way their balance assures that a political system prevents tyranny of power of one upon the others. (Tselis, Money, 1997) The changes in a federal constitution enforced by a High Representative in 2002 took away Croats' possibility of blocking government's decisions, their strong method of political influence until then, and a necessary prerequisite of protection of the least numbered nation. A paragraph of Federation's constitution which enabled that government' decisions concerning a vital national interest of any constitutive nation are brought by consensus, was removed. Violation of equality was confirmed by dismissal of Croatian members of the presidency, first in 2001, when a High Representative suspended Croatian member of the presidency, elected by more than half of Croatian voters, only to put an aspirant in his place, chosen by six votes in Parliament of B&H, five Bosniak and one Serbian vote. Croatian member of the presidency was dismissed again in 2005 when a candidate with nine Bosniak and two Croatian votes was selected in his place. Even more absurd situation occurred in 2006, 2010 and 2018, when Bosniaks both nominated and elected two members of the presidency Bosniak and Croatian, using their dominance in numbers. For example, in 2010 Željko Komšić got 337.065 votes, which is more than Serbian or Bosniak candidate, despite the fact that the Croats are a nation with the lowest population in the country.<sup>10</sup> The same pattern was repeated in 2018. That is why in these cases the institution of a collective leader of the country without a legit representative of one of three constitutive nations is against the constitutional principles of a country. The negative consequences of that selection firstly result in reduction of loyalty to the state community of Croatian people and strengthens their aspirations for their own autonomy. Furthermore, the High representative enabled that the official from minor political party, which had only two members in Federal parliament out of 98, became elected for an entity president by dominantly Bosniak votes and that as such he appointed the government in 2011. In the long line of elements, which support the fact that Croats are not treated equally is that Croats as a constitutive nation do not have a channel in their own language within a national radio-television system.

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<sup>10</sup> In a place called Kalesija, where 35 Croats live, he got 7033 votes.

## 2.2 Ineffective structure of political institutions

The institutes of ethnical linearity and parity are formally enabled within the structure of political institutions, with decision-making by consensus or qualified majority, with the possibility of veto. Despite installed basic elements of consociation democracy, through the possibility of big coalitions, veto, proportionality, autonomy of segments, which is damaged, the system is completely ineffective. Besides the clear dominance of Bosniak segment over Croatian on the level of Federation B&H, there is no minimal consensus in Bosnia and Herzegovina "*of members of all three constitutive national groups about state union*". (Kasapović, 2005, 162) What presents another problem is the unfounded effort of some international factors to refute national identities and by doing so create a common political community under the principle of a citizen melting pot model of identification, which coincides with the unitarian tendencies of Bosniak political elite.

That is why a diffuse support of political system, which touches basic issues focusing on the entire political system and a specific support of political system, focusing on effectiveness of the system, is completely questionable. In certain circumstances, it is possible to compensate the lack of effectiveness by generally accepted support of political system and vice versa. However, if the political system lacks both types of support, diffuse and specific, the system does not fulfil its purpose and becomes unstable because it is not able to produce desired effects expected from it. (Merkel, 2011, p. 45) The criteria of statehood, which is concerned by the question of people of state, territory, government and managing capability of state bureaucracy, is also damaged, which disables the consolidation of democracy, the final phase in transformation triad, the end of an old system, democratisation and consolidation of a new system.

Within a complex political system in Bosnia and Herzegovina, a central level operates the jurisdiction in relation to an outer policy, custom policy and monetary policy, financing institutions and international obligations, migration policies, implementation of legal regulations, transportation policies.

A state parliament is a two-house parliament, consisting of lower house, House of Representatives, and upper house, House of Peoples. House of Representatives consists of 42 members, two thirds of which are elected from Federation and one third, 14 of them, from Republic of Srpska. The members of the House of Representatives are elected directly from their entities. Each

house chooses one Serb, one Bosniak and one Croat as the chairman of house, with the obligation of rotation so that one representative is president, and two are vice-presidents. The selection of representatives of is done by direct election by the principle of ethnicity with a task of representing interests of all citizens. Upper House, House of Peoples, counts 15 representatives, two thirds of which are from Federation B&H, five Croats and five Bosniaks and five Serbs from the Republic of Srpska. Croat and Bosniak representatives from Federation are chosen by Croatian and Bosniak representatives in the House of Peoples of Federation B&H. Representatives from Republic of Srpska are chosen by National Assembly of Srpska. That way House of Peoples has a role of preserving ethnical interests, to be more precise of three constitutive nations, Serbs from Republic of Srpska and Bosniaks and Croats from Federation B&H. For laws to be adopted, which is applied for all laws, it is necessary for both houses of parliamentary assembly to reach an agreement. Both House of Representatives and House of Peoples have almost the same legislative authority, which presents a rarity in federal political systems. Upper house in this case fulfils a special role of a federal state, which is reflected through the expression of a linear ethnical representation. However, the main difference between these two houses lies in the mechanism of protection of vital national interest House of Peoples possesses. So, a certain decision of Parliamentary assembly may be pronounced as harmful for vital national interests of one of three constitutive nations in case that the majority of representatives of that nation declares it to be. For such decision to be adopted, a majority of Bosniak, Croat and Serb representatives have to vote for it.

The head of state is a joint Presidency, Bosniak and Croat from the territory of Federation, and a Serb from Republic of Srpska. Presidency makes decisions by consensus, while a member who voted against some decision can make a statement that the decision is harmful for vital interests. In case that a member of Presidency vetoes a certain decision it will then be decided by entity parliaments. The right of veto does not belong to entity but constitutive nations. The decision about harmfulness of one decision is not made by Parliament of Federation B&H as a whole, nor by House of Peoples, but only Bosniak or Croatian representatives. In Republic of Srpska, National Assembly decides through majority of its members who are mostly representatives of Serbian people. Member of the Presidency of Bosnia and Herzegovina have various jurisdictions at their disposal. These include governing foreign policy, appointing of ambassadors and other international representatives, representing Bosnia

and Herzegovina in international and European organisations and institutions in which Bosnia and Herzegovina is not a member, they manage negotiations about making international agreements for Bosnia and Herzegovina, cancelling and, with confirmation from Parliamentary assembly, ratification of such agreements, execute the decisions of Parliamentary assembly, propose, upon recommendation of Council of Ministers, an annual budget to Parliamentary assembly, they submit reports to Parliamentary assembly about the expenses of presidency, coordinate with international and nongovernmental organisations.

A federal government is a Council of Ministers. The presidency names a chairman of Council of Ministers, who takes his role after the confirmation of House of Representatives. The chairman of Council of Ministers names the ministers, who take their duty upon the confirmation of House of Representatives. Linearity is also emphasized here, as there cannot be more than two thirds of all ministers from the territory of Federation B&H. The chairman names assistants of ministers who cannot be from the same constitutive nation as their ministers.

Constitutional court of Bosnia and Herzegovina counts nine members. Four are chosen by the House of Representatives of Federation, two by Assembly of Republic of Srpska. The remaining three members are chosen by a chairman of European civil rights court, with a condition that they cannot be citizens of Bosnia and Herzegovina nor a neighbouring country. The court of Bosnia and Herzegovina was, by enforcing a law of Court of Bosnia and Herzegovina, established by High Representative in 2000, as a part of justice system reform. By its founding, a juridical institution was formed which was not envisaged by Annex 4 of Peace Agreement which represents a Constitution of Bosnia and Herzegovina, which only enacted an existence of Constitutional court of Bosnia and Herzegovina.

On Federation B&H level, a mechanism of ethnic linearity is established in all important political institutions. Legislative power is exercised by a two-house parliament House of Representatives and House of Peoples. House of representatives is directly chosen from an entire area of Federation B&H from 2002, and consists of 98 representatives. By High representative's enforcement of an amendment to Federation's constitution in 2002, on grounds of a decision of Constitutional court of nations' constitutionality, the number of representatives was reduced from 140 to 98. The House of Representatives has a chairman and two vice-chairmen, who cannot be members of the same constitutive nation. House of Peoples of Federation B&H consists of 58 representatives, 17

of each constitutive nation and 7 others. Originally, the House of Peoples consisted of 30 Bosniaks and 30 Croats, as well as certain number of representatives of other nationalities, which was a guarantee for Croats' high level of institutional equality with Bosniaks on Federation B&H level. According to the original Constitution of Federation B&H, when choosing a president and vice-president of Federation, parliamentary group of Bosniaks and group of Croats in House of Peoples each nominated one person, and both officials needed the approval of both House of Representatives and House of Peoples, including a majority of votes of both Bosniak and Croatian representatives in the House of Peoples. International community changed the rules one month before general elections of 2000, so all representatives in House of Peoples are chosen by all representatives of County assemblies instead of Croats choosing Croats and Bosniaks choosing Bosniaks. Since then, Bosniak majority can determine the results of elections for Croatian representatives of that house. That way one Croat is elected to parliament group of Croats in House of Peoples from Bosnian Podrinje Canton where 24 Croats live just as from Posavina Canton, where around 40.000 Croats live. That way Bosniaks have a hundred percent majority in Bosniak parliamentary group, two-thirds majority in Serbian and they can elect one third of representatives for Croats group. In addition, with just one third in those groups, according to the election law, they can elect president and vice-presidents of Federation B&H and federal government, which happened twice so far. On sittings of House of Representatives and House of Peoples of Parliament of Federation B&H in March 2011, a president and two vice-presidents were elected, followed by Government of Federation B&H for which a third from each 17 members of parliamentary group of House of Peoples was necessary, even though Croat group was not complete at that moment (it had five representatives who supported the constitution of government). That decision was overruled, according to the Election law and Constitution of Federation B&H, by Central Election Committee, but it was eventually allowed by High Representative with an explanation that five out of 17 representatives is one third. At the end of 2016, Constitution court of B&H reached a decision that Election law was not in accordance with the B&H constitution and ordered Parliamentary assembly of B&H to coordinate Election law with the B&H Constitution. Bosniak parties obstruct that decision and the law was not changed because that way numerically dominant Bosniaks can have full control over House of Peoples and singlehandedly name president and vice-presidents, as well as all 16 ministers

and Prime Minister of Federation B&H. In the process of lawmaking, the equality of both houses is applied. The laws submitted to the House of Representatives are adopted in House of Peoples. If a certain law is liable to judgement whether it has an issue of national importance incorporated in it, it is enlisted in agenda of House of Peoples under the formulation of an issue of vital national interest. A vital national interest is considered to be: realisation of rights of constitutive nations to be adequately represented in lawmaking, executive and legal authorities, identity of a constitutive nation, constitution amendments, organisation of public authorities, equal rights of constitutive nations in the process of decision making, education, religion, language, fostering culture, traditions and cultural heritage, territorial organisation, public information system, and other issues which could be treated as questions of vital interest if two thirds of one parliamentary group in House of Peoples consider it to be. Executive power is held by president of Federation and the government. President has two vice-presidents, members of other two constitutive nations. President and vice-presidents are chosen by national parliamentary groups in House of Peoples of Parliament of Federation B&H, while the government is led by president and 16 ministers. Eight ministries belong to Bosniak people, five to Croats and three to Serbs. A government is selected in a way that president and vice-presidents of Federation select it, after which a voting in House of Representatives has to confirm their mandate. In a case that the president of Federation determines that House of Representatives and House of Peoples cannot settle over some law, he, along with his vice-presidents has a possibility of dissolution of one or both parliament houses. The same can be done in the case of not being able to agree on a budget.

Judicial power in Federation is held by Constitution court of Federation B&H, Supreme Court and cantonal and local courts.

The Republic of Srpska was originally founded in 1992, unlike federal structure of Federation B&H which was constituted by Dayton and Washington agreements, it is not a product of international intervention. It is based on a concept of unitarian state of Serbian people. Elements of national parity and ethnical linearity were implemented by forced decision of High representative in 2002 after which Nations Council was founded. Therefore, the legislative power of Republic of Srpska consists of the National Assembly consisting of 83 representatives along with the previously mentioned Nations Council, which does not function as the second parliament but its assignment is to put different sorts of pressure on National Assembly considering the questions of vital



national interests. Representatives of Nations Council are elected by national parliamentary groups of representatives in National Assembly and every constitutive nation has 8 representatives along with 4 representatives of others.

Executive power is held by the president of Republic of Srpska along with the government, which is elected by National Assembly. The president of Republic of Srpska with two vice-presidents, members of other two constitutive nations represents the Republic of Srpska.

Judicial power is held by, the highest court in Republic of Srpska, the Supreme Court, Basic court and five District courts.

Besides the state and entity levels, the fourth element in the state is the District of Brčko. District was founded due to the inability to reach an agreement about the dividing line between the entities. District of Brčko is under exclusive sovereignty of Bosnia and Herzegovina. Legislative power is held by an Assembly, executive power is held by the government consisting of the major and his deputies, who are chosen by the Assembly, government is also dissuasive to the Assembly. Legal power is held by Basic and Appellation court.

### **3 Damage of democracy**

It is important to emphasize that ineffective structure of political institutions and the lack of equality are intertwined and are therefore blocking an entire political system. Bosnia and Herzegovina is a complex country consisting of two federal units, unitary Republic of Srpska with the dominance of Serbs and federal and multinational Federation B&H, with numerically dominant Bosniak people and fewer Croatian people, and one district. Federation B&H, founded by Washington agreement which ended Bosniak-Croat conflict, is a political entity consisting of two national segments, ten cantons, five with majority of Bosniaks, three with majority of Croats and two mixed cantons.

Within the organisation of political institutions, institutes of ethnic linearity and parity are enabled, with decision making by consensus or qualified majority with the possibility of veto. Despite the existence of consociation democracy, possibility of big coalitions, veto, linearity, segments autonomy and federalism, which is the most appropriate model for managing deeply divided societies, the system is highly ineffective. Besides the expressed dominance of Bosniak segment over Croatian segment on the level of Federation B&H, there is no common reconstruction of political system in Bosnia and Herzegovina. Another problem is an unfounded attempt of some international actors, firstly American

administration, that under the principles of citizen melting pot model of identifying with the state, legal and state sovereignty, dispute national identities and therefore create one common political community. In Bosnia and Herzegovina, there are no minimal preconditions, which would enable the fusion of ethnic communities into one nation, and it is questionable which ethnic group would serve as a dominant model in shaping that one nation. Due to the lack of specific support, political system is unstable and does not provide preconditions for achieving consolidation of democracy.

**W.Merkel** disputes the term of democratic consolidation considering the questions of which social and political institutions need to stabilize and in which time period it is to be achieved and how. He believes that a political system is *"positively consolidated"* once it is legit and *"when there is no alternative not only in the eyes of the elites but also when the patterns of views, values, and behaviours of citizens reflect the stable belief in the legitimacy of democracy"* (Merkel, 2007, p. 11). That is not the case with Bosnia and Herzegovina. The election of Željko Komšić through votes of Bosniaks has greatly deepened Croats' frustrations and lack of belief towards the institutions of Bosnia and Herzegovina. Thereat, Croats do not dispute its legality but its legitimacy. Legitimacy as a term is close to the term of power and is usually used when talking about the system of government as a whole. When a certain form of power is widely accepted from those who are subdue to it is considered to be legit. Legitimacy is a lot more than pure legality, which is more of a technical question and says more about whether a certain law was adopted according to regular procedures. While legitimacy is the exact political question and it deals with providing the answer to question, how a certain power order gains or losses thrust of the public and it is connected to the most significant form of verification of democracy, election procedure. In the case of election of Željko Komšić for Croatian member of B&H presidency, it can be said that the election was legal but not legit, considering that he was not elected by Croatian electorate. Election law of Bosnia and Herzegovina states that a voter from the area of Federation B&H may vote either for a Bosniak or a Croat. That is how a numerically dominant Bosniak electorate elected both Bosniak and Croatian member of B&H member of presidency, and by doing so, they disabled Croats to be represented in the institution of a collective state's presidency. In this case, constitutional regulation neglected the all-important fact that in Federation B&H Bosniaks are far more populated than Croats and that the member of presidency should be elected by voters who are members of the nation who should be represented in that governing body.

This way through constitutional consolidation, consolidations of representation and political culture are distorted. Only when all levels are consolidated, one can talk about a democracy resistant to crises that can endanger the stability of political system (Merkel, 2007, p. 10-11).

**Table 1. Status of democracy in Bosnia and Herzegovina**

	Democracy Status	Stateness	Political Participation	Rule of Law	Stability of Democratic Institutions	Political and Social Integration
2018	6,10	7,0	7,0	6,5	4,8	6,0
2016	6,30	7,0	7,0	6,5	5,0	6,0
2014	6,35	6,8	7,5	6,5	5,0	6,0
2012	6,40	6,8	7,5	6,8	5,5	5,5
2010	6,50	7,0	8,0	6,8	5,5	5,3
2008	6,70	7,0	8,5	6,8	6,0	5,3
2006	6,80	7,0	8,5	6,5	7,0	5,0

Source: BertelsmannStiftung 2018: Status Index of Democracy..

Prominent Bertelsmann's foundation through five political criteria: statehood, political participation, rule of law, stability of democratic institutions, political and social integration, estimates a level of status of democracy through the range: from 8,5 to 10 highly advanced but not the best democracy, but only the best within the framework of legal state; from 7 to 8,5 advanced; from 5,5 to 7 limited; from 4 to 5,5 very limited; and from 0 to 4 failed transformation. On a world level, Bosnia and Herzegovina comes in at 54<sup>th</sup> place, while on a level of Eastern European region from 17 analysed states it comes in at penultimate place with the indicators of limited transformation. That confirms the thesis of a deep crisis, failed democratisation and a desperate need for political system reconstruction, which would eliminate inequality among the nations, and inefficiency of political institutions.

## Conclusion

According to the latest census from 2013, there are only around one percent of citizens in Bosnia and Herzegovina who were not self-determined on an ethnic and national level, but they connect their identity solemnly from the category of a citizen, a citizen of Bosnia and Herzegovina, Therefore, it is clear that one can only speak of Bosnia and Herzegovina as a divided society. The reconstructed Dayton institutional design is not able to secure equality of

nations nor the functionality of the system with its mechanism, while through institution of High Representative, which is according to the constitution a neutral factor, puts in question the sovereignty of the country. The existing institutional non-equality of the least represented, Croatian people, as one of three key society segments, puts in jeopardy their existence but also the existence of the entire political system. Such dysfunctional institutional design effects the overall democratisation of society. First of all, the conclusion that must be reached is that it is necessary to deal with society's basic weaknesses, and with regard of political reality of Bosnia and Herzegovina, that is an ethnically segmented and divided society. That the basis for the crisis solution may be the models of institutional solutions of conflicts in other deeply divided societies. On the other hand, despite the key attributes of consociation democracy, the political system is not working because its key element, autonomy of segments with federalism, is damaged. Two entities were founded for three constitutive nations, while on Federation level there is an adverse structure of two numerically different segments. Republic of Srpska is a Serbian entity and Federation is considered to be a Bosniak entity because they dominantly control all processes within it. At the same time, the Croatian community's request for their own territorial autonomy is disputed. This political system does not lie on wide support of the masses, a resource that is a precondition of efficiency and legitimacy, the diffuse and specific support of political system is distorted, so the consolidation of democracy is blocked and democratisation of the system is in its starting phase. For the elimination of political crisis, it is necessary to reach consensus between political elites of all three nations about the state organisation with consideration of both of the issues, non-functional institutional structure and the lack of equality. The preconditions of a stable consolidation of democracy, the final phase of democratisation, is the consolidation of basic political institutions, consolidation of formal actors, political parties and interest groups, consolidation of non-formal actors and finally the consolidation of a civic culture. In Bosnia and Herzegovina all variables are damaged, with the lack of compromise of political elites about basic democratic principles and values on which political procedures are based. Inability of political system to create legit structures is certainly not helpful for consolidation of democracy.

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