Chapter 2
Smoother Judicial Reforms in Slovenia and Croatia: Does the Legacy of the Past Matter?

The feature shared by judicial reforms in Slovenia and Croatia is that in both countries, although they became EU member with very different timings, the EU-driven reforms in the judicial sector—especially the structural reforms—were adopted and implemented without particular conflict among political and judicial actors. The path of judicial reform in these two countries shows in particular that, in comparison with other countries such as Romania and Serbia, they were particularly rapid and efficient in solving problems to do with establishing an adequate institutional framework and guarantees of judicial independence.

The chapter focuses on this particular feature (less conflict on judicial reforms), seeking to evidence the explanatory factors that may account for it. To this end, the chapter first analyses common features of the socialist judicial systems and then focuses on the main steps of judicial reform in Slovenia and Croatia, considering in particular the period just after the transition. Both countries belonged to the Former Yugoslavian Federation; therefore, although with some differences, they share the common experience of the Socialist Republic and the influence of the Soviet model of justice. The two countries will then be analysed separately by describing their respective pre-accession processes and the interplay with the EU. Subsequently, the two paths of judicial reforms will be analysed by focusing on the main steps and the results.

2.1 Background Conditions: Justice System During the Socialist Yugoslavia

In the Balkan peninsula,[1] the Roman civil law tradition was introduced only after centuries of Ottoman domination, especially in the countries of the Southern Balkans. Although Slovenia and Croatia were the two regions least affected by

[1] Although definition of the northern borders of the Balkans region has always been subject to different interpretations, the geographical definition of the Balkan peninsula comprised all the

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the Ottoman domination, their strong Hungarian traditions and usages prevented the full penetration of Roman civil law into the area until the beginning of the nineteenth century (Benacchio 1995). Moreover, during the nineteenth century, the unstable socio-political systems of those countries delayed the common development and modernisation of the political and administrative institutions (Hosch 2006). The initial development of the judiciary in the region was influenced most by the legal traditions of Austria, Germany, and France, which were introduced by young scholars who returned after completing their educations at prestigious European law schools.

After 1918, the new State of Serbs, Croats and Slovene (in 1921 it became Yugoslavia) was formed. The legal organization of this state was highly differentiated, in that it drew partly on Austrian and Hungarian sources and partly on Italian law. The organization of justice and the status of judges were never uniform because the region was divided into six "legal areas" (Uzelac 2000). The first common codified legislation was enacted only in 1929 (Code of Civil Procedure). Thus, when the region fully entered the Soviet sphere of influence, a fully institutionalised judiciary system did not yet exist. For this reason, the most significant and long-lasting influence on the judiciary was the legacy of the 40-year-long communist rule in Socialist Federal Republic of Yugoslavia (SFRY). Many judicial institutions (Constitutional Court, high courts and tribunals) were in fact created during the Soviet period. Although Yugoslavian socialism increasingly differed from the Soviet model as a result of decentralization and greater respect for local autonomy (Bianchini 1982), the organization of justice in the Yugoslavian model had many features in common with the Soviet one. This model spread across the Eastern Bloc countries in the period following the Second World War and it followed the judicial experience of the Soviet State. Judicial organization drew most inspiration from the principle of the "unity of power" and its corollary. In practice, political interference had been extremely pronounced throughout the entire history of Communist Yugoslavia, whereas the judiciary remained an integral component of the communist power structure. Despite the explicit constitutional provisions which guaranteed judicial independence, judges were not able to rule without regard for the "socio-political system" (Kmezic 2012). Trajkovic (1984, as cited in Kmezic 2012) wrote concerning the extreme importance of the relations between politics and the judiciary in Yugoslav society, explaining that "[a]lthough not a political office, the judiciary is 'the greatest political institution' because it implements and applies the law which is in fact a concentrated expression of politics." (p. 19).[2] The government played an important role in the recruitment of future judges. Furthermore, according to Kmezic (2012), the "moral-political suitability" criterion for the election and re-election of judges provided party members with considerable influence over the judicial bureaucracy;

former Yugoslavia countries plus Albania, Romania, Bulgaria and the European territories of Turkey. See Prévélakis (1994).

[2] Also quoted in Cohen (1989) p. 291.

as a result, membership of the Communist Party constituted a criterion for election. Consequently as reported by Cohen (1985) and Kmezic (2012), in 1979 almost 90 % of judges were members of the party, while the percentage was even higher among the staff of the public prosecutors' offices (93.7 %).

Judges were selected by means of an election system that granted them *pro-tempore* representative powers, thus making them responsible for the body that elected them. Jurymen participated with magistrates in the different instances of judgment. No judicial control was exercised over the constitutionality of government acts. Even after Tito's rejection of Stalinism, in Yugoslavia the organization and function of justice never detached itself from the basis of socialist law (Ajani 1996). The declared adoption of the principles of separation of powers and the independence of the judiciary was formally neglected in the case of "higher state interests", which is a clear sign of the instrumentalization of law by politics.

The Yugoslavian Socialist Republic Constitution of 1974 perfectly matched the principles described above. Although it generically proclaimed the principle of the independence of judges, in practice, from election to confirmation, judges and their work were controlled by the party organization.

However, Uzelac (2003) highlights that, in Croatia and Slovenia, political intervention in the judicial sphere was not as intense as it was during the Stalin era in the Soviet Union. Overall, the judiciary was neglected and marginalized, because the majority of social problems were solved through party mechanisms and other non-institutional channels. Judges' decisions were usually still limited to the dismissal of public officers, and the incrimination of opponents or intellectuals criticising the dominant ideology. Two parallel systems of conflict-resolution were in place during the Socialist Republic: one, at the party level, tended to prevent and resolve every significant dispute by political negotiation; the other, the traditional court system, was in charge of less important matters, such as small claims and land-related issues (Uzelac 2000). Party members and political exponents were granted absolute immunity. In the 1960s and 1970s judges were frequently publicly admonished for not being sufficiently rigorous in cases related to verbal offences against the party. Tito himself delivered a speech on the matter in 1967. Kmezic (2012) quotes a statement by the president Josip Broz Tito that depicts the perfect paradigm of the Yugoslav judicial system: "judges should not keep to the black letter law like a drunken man to a fence" (p. 8). Although party interference operated in a rather subtle and indirect manner during the SFRY, the legal system continued to function as an instrument for the suppression of political dissidence (Cohen 1992). The social status and prestige of judges significantly decreased, with the consequence that they became progressively less professionalized in terms of their qualifications.

Nevertheless, the fact that many of the judicial institutions, like the federal Constitutional Court, the State Constitutional Courts and the State Supreme Courts, were established during those years suggests that, at least at the level of the organizational framework of the judiciary, there were some improvements during the SFRY. Moreover, although judicial independence was formally guaranteed by the Federal Republic Constitution, as well as by the constitution of each republic, in

practice procedures protecting the independence of the institution *vis-à-vis* other political actors were never implemented. During the 1990s, after the desegregation of the FRY, the first major change that each state had to undertake was to establish the primacy of the national legal system, eliminating any references to the federal one. Slovenia and Croatia were the two states that most rapidly began this process. According to Cohen (1992), Yugoslavian desegregation had a significant impact also on the administration of justice. The most important change was the shift in the locus and character of political influence, as well as the creation of new obstacles to the development of an independent and depoliticized judiciary—especially in Serbia and Croatia with the ethno-authoritarian regimes of Tudjman and Milosevic. In these two countries, political interference in the judiciary persisted as the main problem throughout the period 1990–2000, although it was less intense in Croatia than in Serbia.

2.2 Slovenian Pre-accession

Slovenia relied on trade privileges with the former European Community from 1980, when Yugoslavia up-dated trade agreements, protocols and a co-operation agreement in line with the EC's policy of concessions to Mediterranean countries.

The Republic of Slovenia became an independent and sovereign state in June 1991.[3] Slovenia experienced a relatively smooth democratic transition because its independence was the result of gradual political and social changes starting from the 1980s (Toš and Miheljak 2002). As described by Lavrač and Majcen (2006), the economic system was characterized by social ownership and self-management, and a quasi-market economy (where firms were relatively independent and competed on the market), with economic reforms and quite intensive privatization which began in the late 1980s. As one of the smallest Yugoslav republics, Slovenia was also the most developed, with a strong export orientation, particularly towards the EU. Because the border was very open, and owing to the proximity of Italy and Austria, Slovenians could make comparisons and form value judgments with respect to the advantages of the market economy and of the EU (ibid.).

In terms of political actors, Slovenia's transition was entirely similar to that of the CEE countries, in particular Poland, Hungary and Czech Republic. The Demos coalition brought the country to the first practices of multiparty politics; but, just after the transition, different views and values emerged among the diverse factions of the coalition, especially on the issue of the economic transition (Privitera 2007). The liberals and the Christian-democrat groups were more oriented towards a rapid entry into the market economy, conversely, the social-democrats wanted to preserve some elements of social ownership, especially in those sectors in which it was

[3] On 23 December 1990, 88 % of Slovenia's population voted for independence in a referendum, and on 25 June 1991 the Republic of Slovenia declared its independence.

functioning quite well, such as social policy and education (Bieber and Ristić 2012). Immediately after Slovenia's proclamation of independence, a process of engagement with the European Union began. Diplomatic relations between Slovenia and the EU were first established on 13 April 1992. Then a Co-operation Agreement between the European Community and the Republic of Slovenia was signed on 5 April 1993 and came into force 5 months later. Subsequently, Slovenia's formal relations with the EU were enhanced through the Joint Declaration on Political Dialogue, a Financial Protocol, and a Transport Agreement (Hafner 1999).

Political elites were in agreement on the accession within the EU, and very rarely was it disputed in public opinion (Cohen 1992; Boduszynski 2010). Inclusion in the EU was supported by practically all the major political parties (both coalition and opposition). Lavrač and Majcen (2006) argued that the EU accession could be defined as an overall national project based on a very broad political consensus. The only exception among parliamentary parties was a national party which played on populist and nationalist sentiments, but not in a significant way.

Moreover, the accession of Slovenia was strongly supported by its neighbouring EU member states, such as Italy (only after 1996) and Austria (Lavrač and Majcen 2006). Throughout the 1990s, Slovenian governments made impressive organizational efforts to reform the ministries and the state organization rapidly, adapting them to the requirements set by the pre-accession process. In this respect, according to scholars (Fink Hafner 2005), one of the key success factors was the building of an excellent state organization for the management of the negotiations and for communication with the EU. The Europeanization of the Slovenian core-executive is frequently cited as an outstanding example of EU accession management (Fink Hafner and Lajh 2003).

Slovenia was the last of the ten in the first group of candidate countries to sign a European Agreement, which was finally concluded on 10 June 1996, 4½ years after Czechoslovakia, Hungary and Poland, and more than 3 years after Bulgaria and Romania. Slovenia was also the country that had the shortest interval between the European Agreement and its membership application. It applied directly after signing the Europe Agreement, indeed on the very same day (ESIWeb 2012). The European Commission delivered its opinion on Slovenia's application for EU membership in autumn 1997, at the same time as it did for the nine other applicants from CEE. The Opinion gave credit to Slovenia by describing it as a stable democracy, and thus declared that it fulfilled the first two Copenhagen criteria (political and economic). The Opinion also pointed out that Slovenia would have to make considerable efforts to adopt and implement the *acquis*, particularly in regard to the internal market, the environment, employment, social affairs and energy (ibid.). Slovenia was invited to start negotiations at the Luxembourg European Council in December 1997, together with Poland, Hungary, the Czech Republic, Estonia and Cyprus. The country was well-prepared for the negotiations because it could rely on a series of important documents which had already been prepared between 1994 and 1996 (the "Strategy for Economic Development of Slovenia", the "Strategy of International Economic Relations" and the "Strategy for Increasing Competitiveness Capabilities of Slovenian Industry"). It was to a large extent on the

basis of these documents that Slovenia prepared its "Strategy for Accession to the European Union" in 1998.

The chief of the negotiating unit said: "In its earlier stages the negotiating process could [..] more appropriately be called a process of adjustment. In that period, at least in Slovenia's case, the real negotiations took place within the country, with respect to its preparation to undertake the necessary changes not only in principle, but also despite interferences with the existing division of economic and political power." (Potocnik and Garcia 2004, p. 375). Negotiations began on 31 March 1998. Although, as said, Slovenia was the last among the ten countries to start the negotiation phase, throughout that period it was considered as one of the candidate countries best prepared for inclusion in the EU. Negotiations were concluded in December 2002 (Bieber and Ristić 2012).

Before joining the EU, in 2003 Slovenia held a referendum on its EU membership. The referendum revealed a high level of public support for joining the EU (with 86 % of votes in favour of EU accession).[4]

To conclude this section, it may be said that the main reasons for Slovenia's relatively rapid and smooth pre-accession phase were the following: its more advanced economic and social development compared with all the other former Yugoslavian countries, and also some countries of the CEE; the peaceful transition; the widespread consensus among political elites on EU accession; and an excellent administrative capacity[5] which enabled the country's state machinery to transform itself rapidly with a view to accession. The fact that a very efficient structure for the negotiation was rapidly organized is evidence of this high administrative capacity.

For Slovenia, as for the other countries in the CEECs group, the membership prospective was credible since the end of the 1990s (Boduszynski 2010; Börzel 2013).

2.3 Judicial Reform in Slovenia

The Slovene legal system belongs among the continental legal systems under the influence of German law and legal order because the territory was for long part of the Austrian Empire. The legal system was transformed according to the socialist

[4] Public support for the EU was not invariable. Public opinion polls showed that support for the EU changed over time, although not dramatically. (For more details, see Bucar and Brinar 2001). This was due mostly to reactions to concrete developments, such as intensification of certain pressures applied by the EU (neighbouring countries, Italy and Austria, in the first place) at the time of signing the Association agreement.

[5] For a useful overview on the concept of administrative capacity and its operationalization see Addison (2009). Among the various definitions, applied here is the one generally provided by the European Commission, which refers to administrative capacity as "administrative structures and systems, human resources and management skills necessary for the adoption and implementation of the *acquis communautaire*".

model when the territory joined the Yugoslav republic. Some impacts of socialized property, socialist self-management, protection of workers and the lower social class are still apparent in the legal system today (Čarni and Špela 2006).

Some months after independence in 1991, the Constitution of the Republic of Slovenia was adopted, introducing the principle of the separation of powers and defining the tasks of the judiciary. Besides these basic provisions, the constitution determined that judges must exercise their duties independently and laid out principles concerning the organisation and jurisdiction of the courts, the participation of citizens in the performance of judicial functions, the election of judges, the Judicial Council, and other relevant provisions (Dallara 2007). The leverage of the legacies of the communist past was less influential than in the other countries of the region. In fact, a good level of socio-political freedom had already been granted during the Socialist Republic (Boduszynski 2010). Although the party controlled the more sensitive political and social cases, as in all the other countries of the area, the judiciary was able to maintain a good level of autonomy tolerated by the party nomenclature (Dallara 2007). As mentioned, formal provisions relative to the independence of the judiciary were already present in both the Federal and the National Constitutions. Moreover, Slovenia was the only country belonging to the Former Yugoslavia in which a judges association had already been established during the Socialist Republic in 1971.

Cohen (1992) argues that, at the beginning of the 1990s, some cases of what he terms 'ethno-political justice' occurred also in Slovenia. The fact that some Slovenian political leaders were disillusioned communists and former political dissidents persecuted and imprisoned by the communist regime gave rise to cases of unjustified dismissal and replacement. However, this happened to a lesser extent than in the other countries. During the first years after independence (1991–1994) there was no comprehensive reform of the judiciary because it functioned fairly well and its reform was not perceived as one of the more urgent needs for the country. In fact, the Slovenian political elite chose to focus on the restructuring of the national economy. To this end, three important laws were passed: the law on social ownership, the law on nationalization (to return nationalized properties), and the law on privatization. Although these laws were not directly related to the organization of justice, they had a direct impact of the judiciary because, owing to the high political importance of their application, the pressure of the political parties on the judiciary started to increase. The most important laws regulating the functioning of the judiciary were enacted in 1994: the Constitutional Court Act,[6] the Judicial Service Act,[7] and the Courts Act.[8] Still today, these are the laws that regulate the organization and functioning of the Slovenian judicial system. The 1994 Judicial Service Act and the Courts Act introduced important changes,

[6] Official Gazette of the Republic of Slovenia, 2 April 1994.

[7] Official Gazette of the Republic of Slovenia, 13 April 1994.

[8] Ibidem.

especially in organizational terms. The first instance courts were divided between county courts of first instance and district courts of first instance. This separation of the basic courts caused the departure/resignation of many judges because their salaries were drastically reduced. The number of judges decreased, while the number of cases increased because the economic reforms generated a high number of trials and proceedings on economic and financial matters. According to the Judges Association,[9] there began in this period the large judicial backlog which still today is the main problem of the country's judicial system. The representative of the Judges Association also argued that, during this phase of the reform, there were some cases of political interference in economic-sensitive cases (cases regarding enterprise denationalization, restitution of confiscated goods, etc.).

Formally, the Judicial Council, the Ministry of Justice shared the main powers in the judicial system's governance. The court presidents, assisted by the personnel councils, managed individual courts, while the Judicial Council and the Ministry of Justice shared the administrative tasks at national level. According to EU reports, the system proved to be quite efficient and effective, while other sources (see in particular EUMAP 2001) and the representative of the Judges Association stated that, until 2005, the courts were too dependent on the executive for a variety of services (organization and operation of courts, personnel, material and infrastructure support, etc.) and that the Ministry maintained the key role in appointing and removing court presidents.

The 1991 Constitution also established the Judicial Council (Art. 130–131) as an autonomous state body. The Judicial Council was composed of 11 members elected for a non-renewable 5-year term. Five of them were elected by the National Assembly on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers,[10] while the six other members were elected by judges holding permanent judicial office from among their own number.[11] The position and competence of the Judicial Council were defined only in 1994, when the Courts Act was passed. The Slovenian Council was modelled on the Italian "*Consiglio Superiore della Magistratura*".[12] However, unlike the Italian council, more competences remained in the hands of the Ministry or of the National Assembly. From its establishment in 1994, the Council worked fairly well, acquiring a good level of legitimacy in its relations with both the National Assembly and the other political institutions, and with the judge's representative.[13] Only some cases of discord between the Council and the National Assembly on judges'

[9] Interview with the President of the Judges Association of Slovenia, 13 April 2007 April, Ljubljana.

[10] Two professors, two advocates and one lawyer.

[11] One judges of the Supreme Court, two judges of the high courts and three judges of a first level courts.

[12] Interview with the Vice-President of the Judicial Council of Slovenia, 12 April 2007, Ljubljana.

[13] This statement is confirmed also in the majority of the interviews conducted by the author with ten key judicial actors in Slovenia in April 2007.

appointments were reported by the international observer (EU Regular Reports, EUMAP 2001) and by the experts interviewed. The National Assembly rarely rejected the candidatures proposed by the Judicial Council, which is evidence of a certain balance between the Council and the Parliament that had not yet been achieved in other countries. Court presidents were appointed by the Minister of Justice from among the candidates proposed by the Judicial Council. If the candidate was rejected, he/she could request the Administrative Court or the Constitutional Court to review the decision.

Overall, Slovenia achieved significant progress in the establishment of an independent judiciary, as the 1991 Constitution and the above-mentioned legislation incorporated the formal elements necessary to guarantee judicial independence. The Supreme Court was the highest appellate court in the state. It worked primarily as a court of cassation.[14] There were also four specialized Labour Courts, a Social and Labour Court, and a Social and Labour Court of Appeal. In 1998, an Administrative Court was established as a specialized court with divisions in four cities. Thus, already during the 1990s, from an organizational point of view the institutional framework of Slovenia's judiciary was much more developed than in the other countries of the former Yugoslavia and in line with all other Western European countries. As already mentioned, a judges association had already been established during the Socialist Republic. It was created in 1971, and before independence it was a forum for discussion on the salaries, duties, and problems of judges. At that time it was normal for all judges to join the association. In 1978 the first negotiations were held with the government on judges' salaries, and the association was treated as a negotiating partner. This was a major success; but there were also important consultations in 1983/1984 when some judicial reforms were decided, as well as in 1979 and 1984.[15] Today, the Judges Association is fully recognized and legitimated, but politicians and academics consider it to be a sort of "judges' trade union". In fact, the bulk of the association's activity is linked to salary bargaining.

From the end of the 1990s onwards, the process of judicial reform in Slovenia was entirely tailored to the EU recommendations in order to conclude the negotiations in view of the 2004 accession (Dallara and Vrabec 2010). Political actors were united in pursuing the reform and modernization of the judicial system, with no serious disputes on the guarantees of independence or other measures relative to the institutional power of the judiciary (ibid.). The only issues that provoked tension between political and judicial actors concerned the scant efficiency of the judicial system and salaries. To be noted is that all the Regular Reports issued by the EC

[14] The Supreme Court is the highest appellate court in the state. It works primarily as a court of cassation. It is a court with appellate jurisdiction in criminal and civil cases, commercial lawsuits, cases of administrative review, and labour and social security disputes. It is the court of third instance in almost all the cases within its jurisdiction. The grounds for appeal to the Supreme Court (defined as extraordinary legal remedies in Slovenian procedural law) are therefore limited to issues of substantive law and the most severe breaches of procedure (Čarni and Špela 2006).

[15] Interview with the President of the Judges Association of Slovenia, 13 April 2007, Ljubljana.

from 1997 to 2004 assessed the independence of the judiciary as good and as not a problem for the country. Even in the 2003 Report on Slovenia's preparations for membership, the EC declared that "The judiciary continues to have a high degree of independence" (p. 12).[16] This is an important difference with respect to the other countries considered by this study. According to the Judges Association,[17] between 2000 and 2005 attempts were made to increase the government's power in the appointment of court presidents and the distribution of cases, but the Judges Association and the representative of the high courts were able to limit such attempts. This is indicative of fruitful dialogue between judicial and political actors. The President of the Judges Association explained that the major players in the judicial reforms were "*The Ministry and in several cases the Supreme Court, in particular for changes related to procedural laws. The Minister sometimes accepted the Supreme Court's proposals in their entirety. We were also involved in discussions on reform of procedural laws or concerning organizational reform...*".[18] again, this is an important difference with respect to the other countries of the former Yugoslavia, in particular Serbia, where in the last decade the Judges Association was never consulted or even recognized as an "actor" entitled to express its opinion on judicial reforms. A Judicial Training Centre was also established in 2004 through a twinning project with the *French Ecole Nationale de la Magistrature*, and it received good support from both political and judicial actors.[19] This was a specific requirement of the EU in the last years before the accession. Despite the progress made in the previous decade, according to the international actors (EUMAP, EU and CoE) monitoring judicial reforms, public trust in the judiciary remained low due to the heavy backlogs of the courts. The problem of judicial backlogs was probably the most serious that the Slovenian judiciary faced (Dallara and Vrabec 2010). Following a number of cases brought before the European Court of Human Rights, in which the excessive length of judicial proceedings in Slovenia has been recognized (as a violation of the right to fair trial as set out in Article 6 of the European Convention on Human Rights), a joint state programme was adopted from 2005 to 2010. This was the Lukenda Project, whose purpose was to improve the efficiency of the judiciary, and in particular to eliminate backlogs (Dallara and Vrabec 2010). This programme was strongly supported by political actors, and although it was initially resisted by some judges, it was then accepted and implemented by the judiciary. The Judges Association admitted that the inefficiency of the courts was a real problem, and it was committed to finding solutions for the organisational problems that hampered the functioning of the judiciary.

[16] European Commission (2003), Comprehensive monitoring report on Slovenia's preparations for membership, COM/2003/0675 final.

[17] Interview with the President of the Judges Association of Slovenia, 13 April 200, Ljubljana.

[18] Ibid.

[19] Ibid.

2.4 Croatia and the EU: The Long, But Successful, Pre-accession Path

In Croatia, the first post-Yugoslav elections opened the door to nationalist forces[20] led by the Croatian Democratic Union (HDZ) under the leadership of former Partisan General and political dissident Franjo Tudjman. The HDZ won the 1990 elections with its anti-communist expression of Croatian identity. As long as Serbs occupied Croatian territory, Tudjman was able to monopolize power in Croatia. Enacted in December 1990 was the new Constitution, which introduced a mixed presidential parliamentary system with strong presidential powers. Tudjman was able to tailor the new Constitution to his own ambitions in perfect authoritarian style. Throughout the 1990s, in fact, Croatian politics were characterised by an authoritarian style of governance accompanied by international isolationism and suspicion of any type of supranational organisation like the EU (Jović 2006). With Tudjman's death, the elections of 2000 were won by a moderate six-party opposition coalition headed by the Social Democratic Party led by Racan, after an electoral campaign that included accession to the EU in the government programme.

In 2000, Racan's government managed to overcome the international isolation of the Tudjamn era. It made first significant steps in domestic reforms and gained admittance to international institutions (for example, the World Trade Organization in November 2000). The association agreement with the EU was signed in October 2001, and the application for membership followed in February 2003.

This was Croatia's first experience of a coalition government, and a highly heterogeneous one at that. Vlahutin (2003) argues that the new President, Stipe Mesic, introduced a new style of government and immediately started to change Croatia's image abroad. "The new Government brought fresh optimism, but this did not last very long. The coalition soon became rather dysfunctional" (p. 25). The coalition government lasted one term, and paid the price for its deficiencies at the elections of November 2003; but overall it left Croatia stronger and much more democratic than it had been when it took office in 2000 (ibid.). In 2003, the return of the Croatian Democratic Union (HDZ) to power with Sanader as Prime Minister raised concerns about a possible resurgence of nationalism. Fortunately, however, democratic changes introduced by the previous Racan government, the moderating influence of President Stipe Mesic, and the restraint imposed by Croatia's European aspirations, mitigating the HDZ's nationalism.

The strategy of Prime Minister Sanader was to transform the HDZ from the nationalist-populist movement of the 1990s into a "modern" party of the conservative right. Nationalist forces were supplanted by democratic and modernizing coalitions oriented towards European membership. Furthermore, Croatian nationalism had achieved some of its goals: the creation of a nation-state controlling all of

[20] The same situation occurred in Serbia. See Chap. 4.

its territory; a moderate stance that marginalized the radical elements; and a break with the legacies of the Tudjman era (Cierco 2009). The prospect of integration built consensus among political groups and citizens around democracy as the basis for the country's political system, and as the vehicle for implementation of the political and economic reforms.

As Cierco (2009) writes, the Ivo Sanader government did not do much to improve the rule of law internally; nor did it reverse three major policy shifts inaugurated in the post-Tudjamn era that became test issues for the EU's attitude to Croatia. The first was the change of policy towards Bosnia Herzegovina and the end of Zagreb's support for HDZ nationalist extremists in Herzegovina. The second was cooperation with the ICTY, including the release of Croatian military personnel widely seen as heroes. Finally, the return to Croatia of members of the Serbian minority expelled in 1995 from Krajina was an important change that improved relations between the two ethnic communities. This was one the strongest structural constraints from the past that still affected Croatia's stateness.

Overall, Croatia is a case of success in terms of relations with the EU and outcomes of the accession process. In fact, Croatia was the first country in the Western Balkans group to complete the Stabilization and Association Process and gain the status of candidate, doing so in 2004.[21] The negotiation phase lasted from 2005 to 2011, and accession was established for July 2013. The EU recognized Croatia's advanced status in the region and treated the country as a special Western Balkans candidate (Noutcheva and Aydin-Düzgit 2012). The EU's strategy towards Croatia was characterized by the good credibility of the EU incentives, so that the EU exercised virtuous leverage on policy adoption and implementation. A slight decrease in EU leverage occurred in 2008–2009 when veto power was used on the enlargement process to block Croatia's accession because of the border dispute with Slovenia on the Piran Bay. The pressure applied by the EU member states rapidly induced the two countries to reach an agreement, and Croatia resumed the pre-accession path. During the same period (2008–2009) problems arose when the EU had to decide whether or not to open the negotiation on Chap. 23 (the one on judicial reforms). Owing to a temporary decline in cooperation with ICTY, the negotiation was not started at that time (ibid.). Thus, these 2 years may be seen as a temporary interlude in the EU's leverage.

The credibility of the EU membership prospect was finally strengthened after 2010 with the opening of the Chap. 23 negotiation; this was the final push which produced rapid and effective results for judicial reform. As for the elites' attitude towards the EU, since Tudjman's death in 1999, and especially after 2003, the political elites were always largely in agreement on EU accession. Even the moderately nationalist party, the HDZ,[22] which was in power for most of the

[21] Slovenia was not part of the Stabilization and Association Process launched by the EU for the Western Balkans group in 1999.

[22] The Croatian Democratic Union, the main centre-right political party that expressed nationalist tendencies especially at the end of the 1990s.

2000s, adopted a pro-EU rhetoric and an EU-reform agenda that facilitated at least the process of law adoption (Noutcheva and Aydin-Düzgit 2012). The semi-presidential form of government granted quite strong powers to the President, although they were mitigated by two reforms in 2000–2001. This relatively stable system impacted positively on rule adoption. The political science literature concurs in defining Croatia as a country with a good state capacity in term of institutional performance and the administrative functioning of the public institutions (Noutcheva 2012; Börzel 2013). At the level of public opinion, the EU-forced cooperation with ICTY was a rather controversial and unpopular issue, although less so than in other countries like Serbia. As reported by Coman (2014), the Croatian democratic state was built on the basis of an official narrative focused on the "Homeland War" and its "heroes". This issue therefore dominated the political scene for some time (Peskin and Boduszynski 2003). Even though Croatian leaders were perfectly aware of this common national anti-ICTY stance, they maintained a moderate attitude and shared a pro-European rhetoric throughout the pre-accession period (Boduszynski 2013). The myth of the "Homeland War" gradually vanished because the EU's leverage on Croatian society was widespread in the final stages of the negotiations. Nevertheless, collaboration with the ICTY remained a sensitive issue at domestic level. Coman (2014) explains that not only politicians, but also judges and academics, were critical of the mission and the activity of the International Tribunal (Dimitrijevic 2009).[23] Significant steps forward were first taken after 2000 by Racan's government, which tried to present the ICTY as a legal, not a political, question. Then, after 2003, a gradual process of reconciliation between the Croatian state and the ICTY began. Even Sanader, who favoured the rapid pursuit of EU and NATO membership and saw compliance with United Nations Security Council resolutions as means by which Croatia could accelerate membership negotiations with both institutions. At that time, the widespread elite consensus in favour of Croatia's accession to the EU was important for the success of this domestic policy. In fact, EU conditionality played a key instrumental role in bringing about Croatia's cooperation with the ICTY.

In term of legacies of the past, to be noted is that, in Croatia, the heritage of the Yugoslav socialist system was mainly related to the country's economic structure, characterized by corruption and clientelism (Boduszynski 2013). Instead, the socialist legacies were less influential in terms of stateness, and in particular in terms of institutional performance and the administrative functioning of the public institutions (Noutcheva 2012; Börzel 2013). Stateness problems certainly characterized the pre-accession process of Croatia, especially in relation to the Serbian minority, the territorial sea disputes with Slovenia, and the continuing myth of the

[23] Also in relation to the ECtHR decisions, complaints against Croatian judges initially originated from conflict-related issues (Lamont 2010, 2011). Although the majority of complaints concerned the inability of the Croatian courts to complete proceedings in a reasonable period of time, they deal problems related to the conflict and ethnic cleavages (Lamont 2011). This may therefore be considered, although not so reliable, as an indicator of the judges' lesser willingness to prosecute these crimes within a reasonable period of time.

Homeland War. In spite of these problems, cooperation with the neighbouring countries and the conditions of the minority enclaves has significantly improved in recent years, especially with President Josipović (Boduszynski 2013).

2.5 Judicial Reforms in Croatia

Croatia is considered another case of success in terms of judicial reform outcomes. In the years before the accession, the example of judicial reform in Croatia was frequently cited as one of the most recent successes of the EU Enlargement Policy. In this regard, Croatia's ambassador in Italy, Damir Grubisa, declared that "The EU acted as an important catalyst for change during the 6 years of negotiation: many reforms could not have been implemented without stimulus from the outside. They were impressive and changed the country's political, economic and psychological landscape. The most important reforms were those of the judiciary and the fight against corruption." (EUI Times, 9 July 2013). The following analysis proposes a number of factors explanatory of this good performance. It differentiates between two phases of the Croatian judicial reform: from 1990 to 2004 (before obtaining candidate status); and from 2005 to 2013 (the final rush towards membership).

2.5.1 From Politicization of the Judiciary to the First Reforms (1990–2004)

As said, in terms of legacies from the past, Croatia suffered more in the period of the ethno-authoritarian regime of Tudjman in the 1990s than in the years of the Socialist Republic. Political interference in the judiciary was the main problem throughout the 1990–2000 period. At the end of the communist regime, in 1990, the aim of the new leaders was to make independent a judiciary which had been politically controlled for many years. However, until 2000, politicized behaviour within the judiciary prevailed, and the 1990–2000 decade corresponded to a period of political crisis and institutional inertia.

As Coman (2014) writes, although the Constitution adopted in 1990 regulated the independence and impartiality of the judiciary, implementation of the constitutional provisions was delayed. *De facto*, the decrees enacted by President Tudjman violated most of the constitutional principles. Tudjman's government mobilized public institutions in general, and the judiciary in particular, "to privilege Croats over other ethnic groups and above all to prevent Serbs from returning to Croatia" (Blitz 2003, p. 184). This legacy generated a series of structural socio-economic problems and tensions among judges with different legal and political views on democratization and national identities.

In regard to the specific organization of the judiciary, Uzelac (2000) describes how, from a formal legal standpoint, a new regulation and status for judicial power was provided in 1990 by the afore-mentioned new Constitution. The changes were mainly reflected in the introduction of the division and separation of powers, and in guarantees of the autonomy and independence of judicial power. The Constitution also included some vague provisions on the status of judges: judicial office was defined as "permanent" but with some exceptions that made interpretation of this provision difficult.[24]

Cohen (1992) recalls how, in spite of these provisions, less than 6 months after taking power, Tudjman had already replaced 280 judicial officials. The controversial laws adopted following the Constitutional provisions gave the Minister of Justice wide latitude in the appointment, and especially the removal, of personnel. Top officials in the Ministry would be able to decide whether judges had the suitable human and civil qualities to fulfil their responsibilities. Some members of the legal community objected that the vagueness of the new laws threatened judicial independence to the same extent as the ideological criteria used by the Communists. The sole purpose of the new provision appeared to be to purge former communist judges and prosecutors, and allow their replacement by new judges supportive of the Tudjman government. The state of emergency declared during the 1991 Balkan War meant a further concentration of power in the hands of the executive. Uzelac (2000) emphasises that judicial reforms during the 1990s may be better described as a lack of reform, or as an anti-reform. The absence of a medium-long range strategy of development sent a clear message to the judiciary. Therefore, until the end of the 1990s, there was a large outflow of judges to other legal professions. Most of the judges that left the judiciary were among the best qualified and most experienced, which contributed further to decreasing the Croatian judiciary's professionalization. The Courts Act passed in 1993 provided a basic legislative framework for organization of the judiciary. Courts of General Jurisdiction were the first level. These courts adjudicated in all disputes except those where the law explicitly determined the jurisdiction of another court. These courts were organized in three instances, and they were divided into regions. Municipal courts had first-instance jurisdiction in both civil and criminal cases. The Supreme Court was the highest court in Croatia, and as the last instance it decided on extraordinary legal remedies against valid decisions taken by the courts of general jurisdiction (dismissed appeals), and all other courts in Croatia (Kuecking and Zugi 2005). The Supreme Court had significant administrative tasks and functions concerning the judiciary as a whole. However, until recent changes, also the Ministry of Justice exerted significant control over the administration of courts. According the

[24] Article 120: a judge may be relieved of his judicial office only 1. at his own request; 2. if he has become permanently incapacitated to perform his office; 3. if he has been sentenced for a criminal offence which makes him unworthy to hold judicial office; 4. if in conformity with law it is so decided by the High Judiciary Council of the Republic owing to the commission of an act of serious infringement of discipline (Uzelac 2000).

Constitutional Court rules, the right to appeal was a constitutional right of every citizen and of every legal entity.

Another legacy of the Tudjman regime, which lasted until the mid-2000s, concerned the territorial organizational of the judiciary. Tudjman's policy of preventing irredentism led to the creation of 20 new counties and municipalities and, subsequently, to an increase in the number of local courts.[25] This was seen as a way to satisfy all the different territorial communities; but, in fact, it only contributed to the creation of a huge, inefficient and costly judicial system not linked to the real needs of the country (Cohen 1992). In this regard, important structural reforms between 2004 and 2008 led to rationalization of the court networks in the country, drastically reducing the number and types of courts and improving the efficiency of the system as a whole (Uzelac 2003). The idea of a professional body responsible for conducting the "internal affairs of the judiciary" and with important functions in the selection process had been introduced into the Croatian Constitution in the days of nation-building and democracy optimism of 1990. It had then been decided to introduce a self-governing body. However, its implementation was delayed for many years: indeed, in practice, the Council was not established until 6 years later (Uzelac 2003).[26] The models were the French and the Italian *Superior Councils of the Judiciary*. But the idea of self-government by the judiciary seemed too avant-garde for the period of transition, and its implementation was delayed for many years. In the period from 1991 to 1994, the judiciary languished in an informal limbo: judges were constitutionally well protected, but in practice they were in a state of permanent provisionality (Uzelac 2000, 2003, 2004). The 1993 Court Act, according to the Constitution, provided that a body, named the "State Judicial Council" (SJC), was to appoint, discipline and remove judges. However, until late 1994 there was no such body and no rules on its composition. In this vacuum, according to Uzelac (2000), the judiciary continued to function without clear and uniform rules. "Judges continued to be appointed and removed from office by Croatian Sabor (Parliament). In 5 years, the mandate of a significant portion of judges expired: some of the judges simply continued to perform their functions; some others received formal decrees on the expiry of their mandate and consequent end of their office" (Uzelac 2000, p. 8).

The manner in which the SJC became merely a "lever in the hands of the executive" was simple (Uzelac 2003). The time of appointment of the SJC members coincided with a period of intense parliamentary crisis during which most of the opposition parties instructed their deputies to leave the parliament, and for several months the parliament enacted laws without debate, but only by vote of the HDZ.

[25] Interview with Ivo Josipovic, current President of the Republic of Croatia, at that time, Dean of the Law Faculty, University of Zagreb: 10 April 2007, Zagreb.

[26] A complete analysis of the judicial reform process in Croatia during the 1990–2000 can be found in various studies by Professor Uzelac, Law School of Zagreb. See in particular Uzelac (2000, 2003, 2004).

A first clash in the process of appointing the SJC members occurred in the Supreme Court, which presented two very different lists of candidates.

In the meantime, the leadership of the HDZ, and Tudjman himself, decided to take the SJC appointment process into their own hands. An informal commission presided over by Tudjman's counsellor for national affairs drafted its own list of candidates, which largely consisted of people loyal to the ruling party. Since this body did not have the official capacity to propose candidates, an innovative formula was found: the Attorney General presented the list. All of the candidates on this list were accepted, and the candidates proposed by the legitimate professional bodies designated by law were rejected.[27] The Council began its activity during a period when the authoritarian tendencies of the Tudjman regime were increasing. What the SJC did in that period was only controversial and reflected the political nature of its role. From 1995 to 2000 many of the provisions and judicial appointments made by the SJC were subject to appeals before the Constitutional Court, mainly presented by the Judges Association of Croatia and by groups of rejected candidates. The Constitutional Court accepted some of the appeals. Nevertheless, prior to 2000, the Constitutional Court's victory over the SJC was merely formal, without concrete abrogation of the above-mentioned provisions. The crisis between the judiciary and the government culminated in 1999. After many cases of political appointment and removal, in particular at high level, the public perception of an inefficient and politicized judiciary was widespread. In 1998 a new Minister of Justice was nominated: Milan Ramliak, a professor at the Zagreb Law School. Shortly afterwards, the Parliament asked him to prepare the bases for a comprehensive reform of the judiciary. To this end, the Minister of Justice, for the first time in Croatian history, published data on all the courts. This was the first public survey on Croatian judiciary, and it highlighted the long duration of proceedings and the backlog of old cases. The decisive blow came from the summit of the state: in 1999, Tudjman's annual address to the nation gave significant salience to the problems of the judiciary. Only a few days later, a storm erupted in the entire national judiciary, evidencing the absolute need of rapid reforms. In 1999 the Parliament enacted the Law on Judicial Salaries, raising them by about 50 %, and shortly afterwards the long-awaited amendments to the Law on the State Judicial Council were enacted. Then events worked favour of the judicial reform process: the illness and death of Tudjman, and the result of the 2000 parliamentary election in which the HDZ was defeated by the democratic opposition. During 2000 the Constitutional Court repealed several provisions of the SJC as unconstitutional; among them, those concerning the appointment and dismissal of judges and court presidents. The Constitutional Court imposed some decisions to made also significant change to the Constitution.

[27] In fact, the only candidates who were appointed as members of the SJC without express political influence were two law professors nominated jointly by four Croatian law schools. These two appointees later proved to be the most vehement critics of the SJC's actions.

Thus, after 2000, the appointment procedure was radically modified. The main innovations aimed at reducing the core of political intervention were the reduction of the SJC members from 15 to 11, and the incompatibility of SJC membership with court presidency. Other provisions gave broader powers to the Constitutional Court in appealing against SJC decisions. The changes introduced in 2000, and the subsequent amendments to the Courts Act, formally provided adequate limitations on political appointments (Dallara 2007). This was a first significant step towards reform of the entire judicial system. After 2000, the Croatian Judges Association (founded in 1991 just after independence) became a recognized stakeholder in judicial reform. Already during the 1990s the Association had tried to oppose the arbitrariness of the SJC, but with scant results. A new leadership was elected in late 1997 and since then the Association has achieved more significant victories. About 80 % of Croatian judges are members of the Association. In the past 10 years the Association has publicly and aggressively criticised the government for various actions. Some of the experts interviewed said that at the beginning of the 2000s, the Association had a too aggressive and corporative style, which was rather counter-productive for the project of judicial reform.[28]

To be noted is that in this first phase the EU's specific leverage on judicial reforms was less powerful and that the changes described above were mainly the result of national bargaining and battles among national political and judicial actors. Then the EU's influence on judicial reform significantly increased after 2004–2005.

2.5.2 The Real Push Towards Judicial Reform (2004–2013)

The changes introduced in 2000, and the subsequent amendments to the Courts Act, formally set adequate limitations on political appointments. But the real push towards adoption of the EU's requirements came after 2005 with adoption of the Justice System Reform Strategy and the relative Action Plan. As in other countries, obtaining candidate status imparted the real impetus for politically sensitive reforms such as that of the judiciary. Nevertheless, most of the measures envisaged in the 2005 National Strategy were only implemented between 2009 and 2011 within the framework of the accession negotiations (Noutcheva and Aydin-Düzgit 2012).

An important political development occurred in 2009–2010 when the Sanader government resigned and Sanader was subsequently arrested on charges of corruption. Sanader's successor, Jadranka Kosor, in spite of the scandal involving his HDZ party, declared zero tolerance of corruption even against his party members. According to Noutcheva and Aydin-Düzgit (2012), this action was an obvious

[28] Interview with Ivo Josipovic, current President of the Republic of Croatia, at that time Dean of the Law Faculty, University of Zagreb: 10 April 2007, Zagreb.

attempt to conclude the EU accession negotiations and to secure Kosor's political future. There was therefore a clear alignment of the political leaders' preferences with the EU rules, so that the EU empowered the position of the Kosor leadership. The final sprint in judicial reform came between 2009 and 2010 when the EU monitored Chap. 23 of the *Acquis* devoted to the functioning of the judicial system.

The European Commission implemented the first lessons learned from Romania's and Bulgaria's difficulties in judicial reforms by establishing a set of clearer standards to be reached, including impartiality, independence integrity, efficiency, quality of justice, and high standards of adjudication (Coman 2014). In this phase, judicial reform was the major focus of EU conditionality defining the four key aspects of judicial reform: independence, impartiality, efficiency, and professionalism of the judiciary (European Commission 2006, 2008, 2010). Moreover, the European Commission also closely monitored the Croatian government's anti-corruption policies, and it financed structural measures such as capital investment and the equipment of courts, and judicial training programmes on issues such as economic crime, money laundering, and the fight against corruption (Coman 2014).

As a reaction, in 2010, the Constitution was amended to strengthen judicial independence and further to reduce political interference in the State Judicial Council. Also the power of the Ministry of Justice on appointments was mitigated by an increase in the autonomy of the State Judicial Council and the State Prosecutorial Council (European Commission 2010). New criteria and selection procedures based on verified qualifications and expertise for the appointment of judges and prosecutors were finally introduced.

2010 also saw conclusion of the above-mentioned long process of rationalising the court network begun in 2004. A substantial reduction of 50 % of backlog cases in the courts was achieved between 2005 and 2010, from 1.6 million to 800,000 (Madir 2011). This rationalization policy is considered one of the "best practices" for the territorial reorganization of courts, and it was frequently cited as a model to be emulated by some old member states, such as Italy and France, in implementing the same policy type (Carnevali 2013).

Noutcheva and Aydin-Düzgit (2012) argued that, taken together, the reforms could be seen as a complete overhaul of Croatia's judicial system. But then, as Coman (2014) suggests, more sceptical scholars with experience in analysing the previous wave of enlargement have labelled these first-order changes a "Potemkin harmonization". In truth, effective implementation took time and depended on a variety of domestic factors.

The experiences of Romania and Hungary some years after the accession, when many of the rule-of-law advances were reversed, make scholars more cautious about this "first-order change" (Dallara and Piana 2014; Coman 2014). It was a necessary condition for accession but not a sufficient one for a substantive transformation of Croatian judicial policies. The lack of enforcement of judicial decisions, even those of the ECHR, and impunity for war crimes, remained matters of concern for the European Commission (European Commission 2011). As in Slovenia so in Croatia, during the last 5 years the focus of the reforms concerning the judiciary was mainly on the efficiency and capacity of courts. Political leaders

were generally willing to introduce changes within the judiciary in the name of the country's modernization.[29] Even judges rarely opposed the major structural reforms. After 2000, the Judges Association also became more open to international collaboration. Croatian judges increasingly participated in international groups and communities of judges (such as those within the Council of Europe), being among their most active members (Dallara and Piana 2014). According to the judges interviewed, this link with the international community of judges positively influenced the Croatian judges' attitude towards reforms.[30] A good illustration of this was provided by a Croatian judge: "The best way to change something within the judiciary is to call the change in the name of the EU accession. The EU is a powerful lever to speed up the reforms although, sometimes, only from a normative point of view."[31]

2.6 Conclusions

The foregoing description of the Slovenia and Croatia cases makes it possible to define them as two examples of relative success in terms of both relations with the EU and judicial reforms. As said, the two countries were treated by the EU as front-runners of the Former Yugoslavia, although Croatia raised some more concerns related to its Balkans conflict legacies.

The main explanatory factors for this positive outcome may be summarized as the absence of conflict among political and judicial actors on the EU-driven judicial policies; the existence of a good administrative capacity, which facilitated the adoption of externally-driven norms; and the ability of the EU to target its strategy on these two front-runner cases. The strategy towards Croatia was further targeted and standardized, in particular in relation to the rule-of law-reforms, by learning from the past difficult experiences of Romania and Bulgaria. These difficulties and poor results induced the EU to improve the conditionality on the rule-of-law issues, and especially on judicial reforms, thus strengthening both the credibility and determinacy of its strategy.

In Slovenia, the credibility of the EU conditionality was good and reliable from the early stages of the pre-accession process onwards. Moreover, the Slovenian elites started to align their policies and institutions with the EU standards even before candidate status was obtained. The good level of state and administrative capacity allowed for this rapid progress in the democratization and modernization

[29] This statement was confirmed in the majority of the interviews conducted with key judicial and political actors in Zagreb in April–May 2007: in particular, in the interview with Professor Ivo Josipović (current President of Croatia) held in Zagreb in April 2007.

[30] Interview with the President of the Judges Association of Croatia, 9 April 2007, Zagreb.

[31] Ibid.

of the state institutions. This advanced status may be considered the result of the softer and more open Socialist regime during the 1970s and 1980s.

The attitude of the political elites was always in favour of EU accession, and the enlargement requirements were never questioned. Starting from the first Regular Reports, the EU evaluated judicial independence and the institutional framework of the Slovenian judiciary as good and in line with EU standards. Thus, there were no "politically sensitive" requirements to be fulfilled. This may be considered one of the explanations for the smooth and non-conflictual EU-driven judicial reform (Table 2.1). By contrast, the EU strategy towards Croatia encountered some more critical phases due to the difficult collaboration with the ICTY. In spite of these difficulties, which account for the longer and postponed pre-accession path, Croatia is considered in the EU enlargement literature as vividly demonstrating political empowerment through the prospect of EU membership (Vachudova 2005; Noutcheva 2012).

According to Noutcheva and Aydin-Düzgit (2012), in the key phases of the accession process, as political elites came to power, they legitimized themselves by aligning their agenda with that of Brussels, and they initiated reforms that improved Croatia's accession prospects. This was the case of the HDZ's return to power in 2003, which accelerated democratic reforms; the re-election of the HDZ-led government in 2007, which could not ignore rule-of-law requirements in light of Croatia's accession negotiations and increasing external demands and domestic public expectations; and the coming to power of a new political leadership in HDZ in 2009, which speeded up rule-of-law reform. The incumbents' incentives remained powerful throughout the 2000s, and substantive progress in judicial reform and the fight against corruption was only achieved when the EU's pressure coincided with the interests of the new HDZ leadership in guaranteeing its political credentials after 2009.

The two cases show that, although some evidence of the legacies of the past in the functioning of the judiciary were still present after independence, political elites were able gradually to overcome obstacles against organization of the judiciary by using the EU as a powerful lever to justify and introduce important structural changes. Meanwhile, it is evident that the greater determinacy of the EU's policy towards the two countries during the first half of 2000 positively influenced the reform outcomes. The slightly different historical background of the two countries (namely the greater influence of the Habsburg Empire before the Communist period) may be one of the reasons why structural judicial reforms were less difficult than in the other countries analysed (Bieber and Ristić 2012). Although political influence on the judiciary was quite strong during the SFRY, as in the other countries of the Yugoslavia federation, the profound Habsburg imprint on the state administration, and later the influence of the Austrian and German legal systems (also through scholars who had studied abroad), may be factors that account for the more straightforward adoption of institutional reforms in comparison with other South-Eastern European countries (Ibid.).

Thus, in this context, the leverage of EU accession was powerful in inducing the national governments to reduce political control over the judiciary after the authoritarian regimes. Although immediately after independence some political influence

Table 2.1 EU conditionality and mediating factors in Slovenia

Period	EU conditionality	Presence/absence of mediating factors	Results in terms of compliance
1990–1997	Formally absent Some preliminary agreements with the EU signed before the application for membership	Spontaneous EU-oriented reform plan even before candidate status Strong commitment among national actors Low leverage of legacies	Good judicial independence and impartiality just after independence
1997–2003	Good credibility and determinacy	Polarization between change agents and veto players not relevant Strong pro-EU commitment Low influence of legacies No structural constraints and stateness problems	Rapid institutional reforms Focus on the efficiency and quality of justice

on the judiciary was manifest in both countries (especially in Croatia under Tudjman), the key actors interviewed confirmed that political parties were open to reform without the fear of losing control over the judicial system (Table 2.2).

Political actors were always largely in agreement on EU accession and requirements (though more in Slovenia than in Croatia).[32] Even the goals related to judicial reforms were achieved mainly in the name of EU accession. In these two countries there was no polarization of actors between supporters of the EU requirements and veto players, as instead occurred in the other two cases (Romania and Serbia) analysed in this book.

Structural constraints linked to the legacies of the socialist regime were still present in Croatia during the last decade, but, as described, they were mainly related to the economic structure of the country, characterized by corruption and clientelism (Boduszynski 2013). These socialist legacies only marginally influenced the performance and administrative functioning of the public institutions, which remained quite good (Noutcheva 2012; Börzel 2013).

In the first part of Croatia's pre-accession process, some stateness problems were still present (the condition of the Serb minority, the sea disputes with Slovenia, and the myth of the Homeland War). But they have significantly improved in recent years under President Josipović (Boduszynski 2013).

A balanced dialogue between political and judicial actors was maintained, and this contributed to accomplishment of the institutional reforms relative to judicial independence and governance. This is an important difference with respect to the other countries analysed, and more in general with respect to the other countries of the South-East European area. It should be stressed that, in both Slovenia and Croatia, the existence of a powerful and unitary judicial association involving the

[32] In Croatia, problems and concerns were instead related to the collaboration with the ICTY. Nevertheless, the salience and the opposition against this issue decreased with advancement towards membership.

Table 2.2 EU conditionality and mediating factors in Croatia

Period	EU conditionality	Presence/absence of mediating factors	Results in terms of compliance
2000–2004	Medium credibility, in line with the other Balkans countries	Polarization between change agents and veto players not relevant Good convergence on EU requirements (except for ICTY) Some legacies and structural constraints from the Tudjman decade	First reforms of the appointment procedure and of governance
2004–2012	EU credibility significantly increased after 2005 (candidate status) Temporary decrease in 2008–2009 Increase again after 2011 (end of negotiations)	Polarization between change agents and veto players not relevant convergence on EU accession, even on the ICTY requirements Legacies and structural constraints only on the economic structure	Steps forward in all aspects of judicial reform Focus on the efficiency and quality of justice

majority of the country's judges was always recognized by national governments and consulted (even if not always) on judicial reform matters.

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