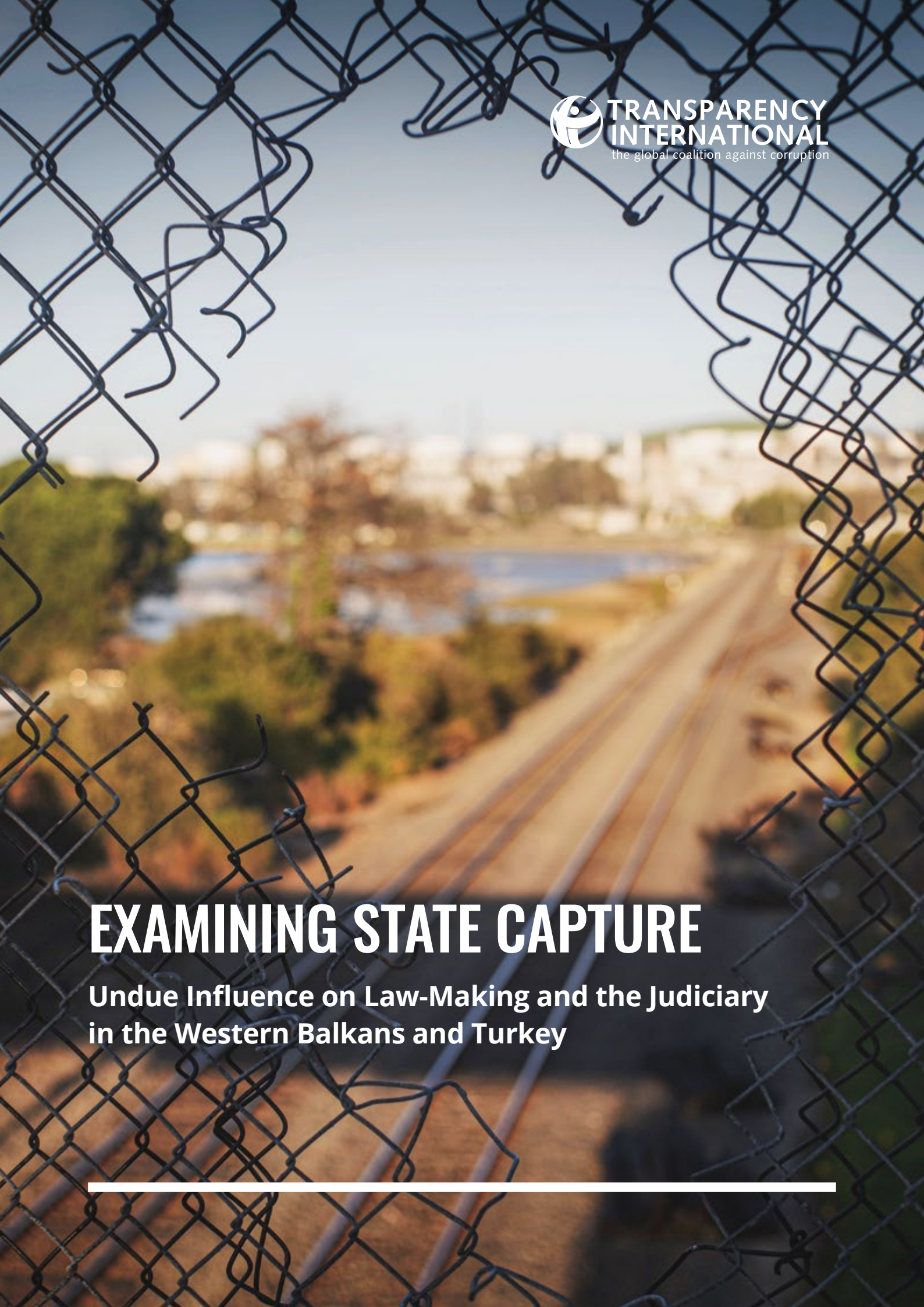

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EXAMINING STATE CAPTURE

Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey

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Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey

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EXECUTIVE SUMMARY

The capture of the state in the Western Balkans and Turkey is enriching politicians and their networks at the severe cost of ordinary citizens. It is also eroding public trust in government institutions, as they are increasingly being used to serve private interests.

The presence of state capture in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey has been reported in the European Commission's enlargement country reports, but its underpinnings and motivations are not sufficiently addressed in the reforms promoted in the region.

Efforts have been made to create legal mechanisms and transparent, accountable institutions to address control of the nations' affairs by private interests. These have aimed to guarantee judicial and parliamentary independence as well as equal implementation of laws. Effective rule of law, however, remains a challenge in the countries. It is constantly being undermined by political leaders whose main motivation is to capture the state for private gain. This leads to widespread abuse of public office.

This Transparency International report examines two key enabling factors of state capture in the Western Balkans and Turkey: impunity for high-level corruption and tailor-made laws. The report provides insight into how the judiciary ineffectively handles grand corruption and other corruption by high-level officials. It also shows how this problem and undue influence on law-making in the service of private interests help to achieve and maintain state capture.

We have found that impunity and tailor-made laws are the result of political dynamics – greatly based on patronage and clientelist networks – that are able to transcend institutional and legal restrictions. Based on data on high-level corruption cases and tailor-made laws collected by our chapters and partners in the countries, our report identifies shortcomings both in the judiciary and in law-making that reflect the characteristics of state capture in the region.

Through the analysis of high-level corruption cases, the report illustrates how patronage and clientelist networks and schemes operate both at country and local levels to abuse public office. The cases demonstrate that the power of political parties and the loyalty they command are key ingredients in the success of such networks. The effectiveness of the prosecution of these cases is determined by the political influence of ruling parties over the judiciary. Their influence often results in biased judges and prosecutors, weak investigations, long delays and acquittal or lighter sentences for defendants.

Tailor-made laws are laws created to serve only the interests of particular individuals, groups or companies, often at the cost of others, including the public. The report identifies three types of tailor-made laws based on their purpose: laws to control part of a sector or industry, laws to reduce the capacity of institutions to exercise checks and balances, and laws to ensure that positions in public office and justice systems are held by people who enable corruption. Tailor-made laws are considered the highest expression of state capture since they ultimately make the capture legal. Our analysis finds that the control of ruling parties over the parliament, loopholes in the legal system, the abuse of urgent procedures and special laws, the absence of public debate on proposed legislation, and the

lack of or weak regulations on lobbying are instrumental conditions for the creation of tailor-made laws.

Measures to address rule of law issues and state capture will, crucially, require a political dimension. This involves, first, understanding the political practices and incentives conducive to capturing the state. Such political practices are characterised by long-lasting commitments and loyalty to political parties and patronage networks, a blurred line between the public and the private space, and a confrontational style of politics. Acknowledging these aspects reveals that a change of ruling political party is not necessarily the solution if the way of doing politics stays the same. This conclusion leads to a second implication, which is the need to introduce new incentives and perspectives conducive to integrity-based politics. Considering the importance of political parties as the main actors behind capture, this involves shifting the focus of political parties from personal exchanges to long-term political programmes with a shared vision beyond a particular ethnic group or network.

Based on these findings, our key recommendations for all stakeholders – from EU and national decision-makers to local officials and citizens – are as follows:

- Introduce indicators to increase understanding of political practices and structures that undermine independent and accountable judiciaries and parliaments.
- Combine the strengthening of systems and regulations with political measures that take into account how power and interests determine the implementation of reforms.
- Link EU membership conditionality to the reform process itself, rather than to concrete quantitative outcomes only.[1]
- Incentivise the adoption of mechanisms for implementing anti-corruption and anti-undue influence legislation, including through conditions for accessing multilateral finance.
- Define the relationships, activities, positions, assets, interests, past offences and other eligibility issues that constitute incompatibilities for appointees in the civil service.
- Establish a coherent and operational framework for the management and resolving of conflict of interests, and identify specific at-risk sectors positions, activities or duties subject to that framework, including advisory and experts roles.
- Identify and empower public officials who can act as change agents and drive integrity-based politics within established government systems.
- Adopt a collective action approach – where individual behaviour is shaped by the expected behaviour of the collective – by nurturing informal constraints against corruption to shift social norms tolerant with corruption and to bring about alternative incentives and structures in politics, combining top-down and bottom-up measures.[2]
- Strengthen existing coalitions and organise new ones that can put pressure on rule enforcement agencies by combining shared collective interests.
- Use the power of social norms to promote society-wide opposition to impunity for grand corruption and the creation of tailor-made laws by supporting civil society and awareness campaigns.
- Further promote and empower a civic culture supportive of integrity-based politics and democracy by creating spaces for dialogue between different stakeholders within countries.
- Enable and empower social networks at the regional level to demand political integrity by creating spaces for dialogue and exchange.

INTRODUCTION

Despite being one of the main conditions for the Western Balkan countries (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia) and Turkey to join the European Union, establishing the rule of law remains a key challenge in the seven aspiring countries. Since they first aspired to join the EU, they have made efforts to fight corruption and organised crime and consolidate democratic systems aligned to European standards. However, despite some progress, the measures put in place to achieve these aims may be worsening the situation.[3]

A society governed by the rule of law is open and fair; its rules and laws are publicly promulgated, equally enforced, independently adjudicated, and widely known and accepted; persons, public and private institutions and entities, and the state are accountable to the supremacy of the law; and justice is accessible to all.[4] This requires laws that are designed in accordance with national constitutions and human rights, and an independent judiciary and systems that guarantee equality and effectiveness in legal and judicial services. Comprehensive, quality laws and a full, effective judicial institutional setting are necessary for the rule of law.[5]

Efforts to establish the rule of law in the region have produced some positive results in the capacities of national judicial and legal systems, but not necessarily an improvement in their quality.[6] For example, there may be more laws, but not enough attention is paid to how laws are made. The abuse of urgent procedures or non-transparent and non-participatory channels to pass laws affects the coherence, stability and generality of some laws.

The lack of results puts into question the approach being employed to establish the rule of law in the seven countries. One of the main criticisms of their reforms is the excessive focus put on the technical side of the problem and not enough on its political side.[7]

Examining the political aspect behind the weak rule of law here reveals a political practice that is very much motivated by patronage and clientelistic networks focused on controlling the state for personal profit. A particular form of state capture, which will be explained in the next section, is recognised as a consistent problem across all seven countries.[8]

In its communication of a credible enlargement perspective for and enhanced EU engagement with the Western Balkans from February 2018 onwards, the European Commission (EC) explicitly mentions the existence of state capture in the region and gives a clear message to candidate countries: showing signs of state capture will compromise any chance of becoming an EU member by 2025.[9]

State capture

State capture is understood as efforts by private actors and public actors with private interests to redirect public policy decisions away from the public interest, using corrupt means and clustering around certain state organs and functions.

But how is state capture achieved and maintained in the seven countries? Drawing on original data and secondary literature, our report tries to answer this question by looking at two pillars of the rule of law – the performance of the judiciary and the process of law-making – and their connection with state capture. In particular, the report looks at 1)

shortcomings in the judiciary's response to corruption by high-level officials, resulting in inappropriate prosecution and even impunity for grand corruption, and 2) undue influence in law-making, resulting in tailor-made laws to protect private interests.

Thus, the analysis provides a deeper understanding of the problem of state capture by reflecting on some of its enabling factors. It sheds light on the political dynamics that prevent the establishment of the rule of law in the region and, based on our analysis, offers specific recommendations.

The first part of the report – as a prelude to our analysis of the enablers of state capture in the fourth part – gives a brief overview of the type of state capture that exists in the Western Balkans and Turkey. State capture in the region is characterised by being driven mainly by political parties and the patronage and clientelistic networks that sustain them. It is a capture of the state from within that aims at capture not only for financial gain but also for political power by controlling the different branches of the government (the judiciary and the legislature).

Next, based on the corruption cases collected for the study, the report maps out some of the characteristics of grand corruption cases in order to better understand the involvement of high-level officials in corruption and the responsibility of judicial systems in dealing with such cases. This is followed by a description of the types of tailor-made laws prevalent in the seven countries, which provide insight into the interests behind the capture of the state.

Ultimately, through the lens of state capture, we show how the obstacles to the rule of law that exist in the countries have an important political root cause that needs to be addressed to enable efficient reform.

Tailor-made laws

Tailor-made laws are legal acts created for the purpose of serving only the interests of a natural person, a legal person or a narrow group/network of connected persons and not the interest of other actors in a sector, group of society or the public interest. Although the law seems to have a general application, in fact it applies to a particular matter and results in circumventing potential legal remedies that could be provided by ordinary courts.

Background of the study

This report is one of the research outputs of the EU-funded project *Ending impunity for grand corruption in the Western Balkans and Turkey*, which aims to reduce corruption and state capture in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey. The project seeks to improve good governance, transparency and accountability in the judiciary and democratic law-making. To do so, we look into how state capture is achieved and sustained by highlighting shortcomings in the criminal justice system when handling grand corruption cases, and exposing tailor-made laws created to protect the private interests of a few.

Research is combined with evidence-based advocacy campaigns to push for change in each country. In addition to the regional report, the research outputs of the project are seven country reports and two databases. One database collects corruption cases in the region, specifically grand corruption cases or ones that might represent an entry point for state capture. These cases illustrate red flags and shortcomings in the judicial systems of the countries when addressing political corruption. The second database includes tailor-made laws, laws that serve to gain and maintain privileged benefits and in doing so make state capture legal. It also reveals how law-making is used to protect private interests. The databases are not meant to be fully comprehensive. Rather, they use a qualitative approach to both the cases and the laws, treating them as tools to understand how the judicial system operates and how law-making is influenced.

This project builds on Transparency International's previous work in the Western Balkans and Turkey. In-depth research into anti-corruption efforts conducted by Transparency International in Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, Serbia and Turkey between 2014 and 2015 found that state capture was a consistent problem across all seven countries. Subsequent research on cases of state capture in specific sectors of each country[10] has enabled us to better understand where capture takes place and what its characteristics are. Now, by analysing how each country's judiciary addresses corruption cases that can serve as an entry point for capture and how undue influence in law-making results in tailor-made laws, we can answer the question of what makes state capture possible.

Methodology and definitions

State capture is a key obstacle to the effectiveness of anti-corruption and rule of law reforms in the Western Balkans and Turkey. The impunity for corruption and the creation of laws to further the private interests of particular groups or individuals against the public interest are considered key ways to explain the existence and sustainability of the capture of the state.

The analysis in our report considers several sources of information: primary data collected on corruption cases and tailor-made laws; previous assessments of corruption, state capture and the rule of law in the region by Transparency International's National Integrity System, the European Commission, GRECO and UNCAC; official documents; media articles; and the specialised literature.

The collection of original data on cases and laws covers the period from 2005 to 2020. The selection of corruption cases followed three criteria. The first was to include any corruption cases matching Transparency International's definition of grand corruption. Transparency International defines grand corruption as the offences in UNCAC Articles 15-25 when committed as part of a scheme involving a high-level public official and comprising a significant misappropriation of public funds or resources, or severely restricting the exercise of the most basic human rights of a substantial part of the population or a vulnerable group. However, since a legal definition presents limitations for the exploration of a complex political phenomenon, we expanded the selection criteria to include cases showing a lack of autonomy, independence and impartiality in the judiciary, and cases that serve as an entry point for state capture. The indicators to consider a case as an entry point for state capture include:

- when a member of parliament or official with the power of law- or policy-making is involved in such capacity in criminal offences
- when a top-level decision-maker of a regulatory body is involved in such capacity in criminal offences
- when the alleged criminal offences involve a public official who obtained their position through a revolving-door situation
- when the conduct in any of the above three categories serves the interest of a legal person or a narrow group/network of connected persons and not the interest of another actor in a sector, group of society or the public interest
- cases linked to tailor-made laws

All three criteria have in common the involvement of at least one public official who has the power to influence or change policies and regulations. In most cases, the public officials have held roles of high responsibility in state-level institutions, such as ministries. Nevertheless, given that the political reality in the Western Balkans and Turkey is characterised by the power of political parties and party members in certain municipalities, corruption cases involving powerful mayors or other local authorities were also included.

Based on the definition of tailor-made laws that we used, the following criteria were considered as indicators that laws might be tailor-made: who benefited from the law, the law's impact, and any anomalies in the making or approval of the law.

Regarding their purpose, we considered three types of tailor-made laws: 1) to control a sector or industry, or protect certain privileges, 2) to remove or appoint un/wanted officials, and 3) to reduce institutional power to exercise checks and balances by controlling personnel procedures, reducing the monitoring capacity of agencies or audits, preventing accountability, or weakening scrutiny by the media and civil society organisations.

Far from providing a comprehensive picture of the situation, this report offers a qualitative approach that builds on the best efforts made by Transparency International's chapters and partners in the region to identify cases and laws and collect detailed information. In addition to this regional report, an in-depth analysis for each country can be found in the country reports.

STATE CAPTURE IN THE WESTERN BALKANS AND TURKEY

State capture in the Western Balkans and Turkey goes beyond the traditional understanding of state capture as efforts made by individuals, groups or firms to shape government policies and regulations for their own advantage and gain.[11] In these countries, political elites and their grip on power are the main driving force behind the capture, bringing particular characteristics to the phenomenon. The patronage and clientelistic networks that sustain political parties are a key fuel for state capture here and a major challenge to its eradication.

Despite the differences between Albania and the former Yugoslav countries, part of the explanation for any similarities in the form of state capture in the Western Balkan countries is closely related to their history as former communist countries and their long-standing relationship dynamics.

The former Yugoslav states have evolved from a communist political practice to a democratic one through the experience of reconstruction after the conflict of the 1990s. At the time, communist narratives were replaced by nationalist discourses, and democratisation and the free market were embraced in the service of nation-building. [12] However, the transition was made without an adequate institutional setting to ensure transparency, checks and balances, and institutional independence. Instead, previous motivations and dynamics were projected onto the new circumstances.

The opportunities created by the state-building period after the conflict and the intervention of international actors were seized by the elites to consolidate and extend their power.[13] According to Džankić, the structural anomalies brought about by internationally brokered peace agreements, such as the Dayton Agreement[14] in Bosnia and Herzegovina and the Ohrid Agreement[15] in North Macedonia, facilitated state capture and weakened democratic consolidation.[16]

The Dayton Agreement prioritised ethno-national control of the electoral system and all levels of governance. This control took shape in the territorial administrative division of Bosnia and Herzegovina and the legitimation of three constituent ethnic groups within sub-state units.[17] Thus, the three main ethnic groups control the economic and political systems in their own territory, and there is an absence of party competition across ethnic lines.[18] This arrangement facilitates isolation and closeness between the areas of control and their own private interests, rather than an open system built on cross-ethnic interests and collaboration. As the report later shows, the legal and institutional complexity in Bosnia and Herzegovina affects the prosecution of corruption and the privatisation of law-making.

In North Macedonia, the power-sharing arrangements brought about by the Ohrid Agreement further emphasised the ethnicisation of the Macedonian and Albanian communities, resulting in the ethnic elites cementing their respective ethnic agendas by capturing state resources and the public administration.[19] According to Coelho, the international presence in

Kosovo from 1999 also explains in part the conditions that have facilitated state capture. These conditions include the misuse of foreign aid, privatisation under questionable procedures, the legitimisation of unaccountable politicians, and corruption by international partners.[20]

Thus, after the conflicts in the former Yugoslav countries, the control of political, economic and social institutions was shaped primarily by ethnic divisions and clientelistic relationships. The democratic transition made it difficult to maintain informal practices and relationships. In some cases, political elites developed their networks in the form of political parties, allowing them to hold onto power. Moving toward "political clientelism" involved the exchange of material goods or benefits for political support.[21] Political parties became clientelistic networks in disguise.

Members of these networks are generally people who aspire to positions of power or seek promotion, and membership in a political party is the safest and fastest way to achieve these aims. The patrons, from their positions of power, provide goods and bestow favours, jobs, concessions and contracts among their clients in exchange for political support, and they exercise undue influence on institutions in order to shape policies, the legal environment and the economy to suit their own interests.[22] These informal commitments often prevail over democratic decision-making, professional duties and ethical behaviour.[23]

Once the system is established, the priority becomes to maintain the political status quo so as not to lose acquired privileges. In this context, corruption becomes an enabler of patronage, clientelism and state capture, and tailor-made laws become a mechanism to legalise undue influence in the system.

In Albania, the democratisation process started in 1991 in a context of communism with no fertile ground to cultivate a culturally democratic civil society.[24] One of the challenges hindering the implementation of the rule of law has been the role that cultural group affiliation, such as clan membership, continues to play in Albanian politics. Clans can be as powerful as interest groups since they are identity-based, hierarchical, informal structures derived from close bonds and relationships of trust. The clans in Albania influence their members' behaviour and shape social interactions within the group as well as with other clans and government institutions.[25] They can also determine political alliances with parties able to benefit them. Their influence in politics is mirrored in the political party system, while their intervention in state institutions is reflected in the extended cronyism and nepotism that exists in the Albanian public administration.[26]

Turkey also presents elements of state capture expressed in the expanded powers of President Recep Tayyip Erdoğan and his Justice and Development Party (AKP). The government's power has grown stronger since the averted coup in 2016 and the state of emergency that ensued.[27] In 2017, a constitutional referendum abolished parliamentary control and turned the country into a presidential system.[28]

The Turkish government puts significant efforts into weakening the opposition as much as possible as a way to exercise power and keep control.[29] The different branches of government also serve this purpose, and control over the judiciary is used not only to give Erdoğan's loyal close contacts impunity for corruption, but also to eliminate critical voices.[30] For example, the civic leader Osman Kavala, among 15 others, faced a possible life sentence in prison without any evidence of criminal activity for the protests in Gezi Park in 2013. Kavala stood accused of "attempting to overthrow the government wholly or partially preventing its functioning".[31]

A discourse of danger and fear has also been useful to extend the president's power and create legitimacy. As Bak notes, the president's frequent declaration of a state of emergency excuses the ruling Islamo-nationalist networks from respecting basic principles of the rule of law. Instead, control exercised through the abuse of declarations of a state of emergency is justified by appealing to security interests and ideas aligned with the regime's nationalist ideology.[32]

The general repression of independent media and civil society grows in parallel with an increasing authoritarianism in the region. During the COVID-19 pandemic, declarations of a state of emergency to contain the spread of the virus have raised concerns about how the region's governments are using the circumstances to reinforce their capture of the state.[33] In Serbia, for example, President Vučić, jointly with the prime minister and the president of the parliament, declared a state of emergency[34] by using a constitutional provision that enabled them to do so "if the parliament could not convene". In reality, no attempt was made to convene Parliament. Then, during the state of emergency, the government of Serbia declared secret all procurements aimed at responding to the COVID-19

crisis, and did not permit public access to the documents even after the state of emergency was lifted.[35]

HIGH-LEVEL CORRUPTION

Understanding how the ineffective prosecution of corruption may facilitate state capture requires consideration of a particular type of corruption. Given that capture of the state involves undue influence in public decision-making to change the rules governing a country, the corruption cases that can directly or indirectly contribute to state capture involve at least one public official in a position to make rules and influence policy. Many of these cases show the patronage and clientelistic relationships behind politics in the Western Balkans and Turkey, which in great part explain the shortcomings of the judiciary in prosecuting corruption involving high-level public officials.

CHARACTERISTICS

Based on a qualitative approach that is therefore not representative in quantitative terms, this section describes some of the characteristics present in corruption cases involving high-level public officials in the Western Balkans and Turkey. An overview of this type of corruption provides a context for the section "Achieving and maintaining state capture" in order to understand how shortcomings in the judiciary's handling of related corruption cases can contribute to state capture in the region. A full list of the cases, together with the details of each case, can be accessed in Transparency International's database.

Networks

A prominent characteristic in many of the collected corruption cases is the presence of networks and of patronage and clientelist relationships involving different hierarchies within the civil service, such as ministers and assistants to ministers. As noted earlier, the exchange of favours through personal networks and the loyalty to a patron are commonly seen as a way to obtain jobs and other commodities in the seven countries. In some cases, corruption serves the purpose of "extracting" resources such as jobs and contracts through patronage relationships. In other cases, corruption is part of the political mechanisms used to capture the state, such as through clientelistic networks.

A clear example of the first kind is the *Pronto* case of illegally awarding employments in Kosovo. Leaked phone calls published by the media outlet *Insajderi* revealed in 2011 that the employment of people close to the Democratic Party (PDK) in government positions had reportedly been influenced by Adem Grabovci, leader of the party, and eleven others. This was done by disqualifying candidates, replacing members of selection committees, and cancelling open calls when PDK members did not get enough points in the official recruitment process.[36] From November to December 2011, Grabovci and the others arranged the appointment of the head of the Court of Appeals, the Chief Prosecutor of Prizren, the Director for Central Public Enterprises, the chief executive of the Registration Agency at the Ministry of Internal Affairs, and the chief executive of the Agency for Medicinal Products, among others.[37]

Another example took place in Bosnia and Herzegovina in 2016. Amir Zukić, then secretary general of the ruling Party of Democratic Action (SDA) and an MP, has been accused of exercising his influence over Esed Džananović, member of the SDA and manager at the public company Elektroprivreda BiH, to receive payments, together with other

members of the SDA, in exchange for employment in the company.[38]

An example of political clientelism arises in the case of the former mayor of Durres Vangjush Dako, member of the Socialist Party steering committee at the time and responsible for the election campaign in Durres during the 2017 elections in Albania. Dako cooperated with the local Avdulaj clan in vote-buying and voter intimidation in exchange for favoured treatment in local institutions.[39]

The use of corruption by clientelistic networks has been highly prominent in certain governments and at certain periods of time. North Macedonia stands out in this regard. Particularly between 2010 and 2013 the same top-level officials were involved, and often collaborated, in several cases of abuse of office. For instance, the former prime minister Nikola Gruevski, and the former minister for transport Mile Janakieski[40], collaborated in five different corruption cases described in the database (Traektorija[41], Talir[42], TNT[43], Titanic[44] and Torture[45]).[46] Likewise, Gruevski collaborated with the former interior minister Gordana Jankuloska in the *Tank* case. The *Tank* case involved Gruevski asking Jankuloska to carry out a public procurement to buy a new Mercedes Benz vehicle and favour the operator Mak Auto Star Dooel in the process. In order to respond to Gruevski's request, Jankuloska involved her assistant, Gjoko Popovski, also a defendant in the case, in what illustrates a clear patron-client relationship pattern involving different hierarchies in office.[47]

Schemes

Corruption cases involving powerful public officials are often parts of a scheme rather than random actions. According to Transparency International's definition of grand corruption, a scheme exists when offences under UNCAC Articles 15-25 are committed as part of a systematic or well-organised plan of action. Schemes are usually organised to function for a certain period of time in order to achieve a concrete goal. When determining whether corruption offences are part of a scheme, consideration has been given to the number of transactions, the duration of the offence(s), the number of participants, the amount misappropriated and the number of victims. We found schemes in several countries.

One example of a scheme could be seen in the case of the former judge Kole Puka and five lawyers in the municipality of Klina Kosovo, a case which has now been dismissed. The defendants were suspected of organising a scheme with the purpose of fabricating court cases, issue unlawful decisions, falsify documents, present false facts, and conspire with insurance companies to agree with Puka's proposals during trials. These actions took place between 2004 and 2008 and the gain obtained was €1.2 million.[48] In November 2020, the Basic Court of Prishtina dismissed the indictment and terminated the criminal proceedings against Puka and the lawyers.[49]

Also in Kosovo, the former minister for transport, post and telecommunications (MTPT) Fatmir Limaj, the former head of procurement at the ministry Nexhat Krasniqi, and the minister's former chief of staff Endrit Shala were charged with creating a scheme to award public contracts to road maintenance companies in exchange for a 20 per cent commission. The scheme operated from 2007 to 2010. However, the Court of Appeals acquitted them in the second instance judgment in July 2019.[50]

In some cases, schemes involve high-level officials from different institutions. In Montenegro, for example, the government issued state guarantees worth more than €131 million for loans made in 2010 and 2011 to the Montenegrin aluminium smelter company Kombinat Aluminijuma Podgorica (KAP). The guarantees were given without justification assessments or adequate counter-guarantees. Seven high-level officials are suspected of abuse of their official position in the case, including former prime ministers Milo Djukanović and Igor Lukšić, the president of the State Aid Control Commission Mitar Bajčeta, former minister for the economy Branko Vujović, former director of the Pension and Disability Insurance Fund and former finance minister Radoje Žugić, former director of the Employment Bureau Zoran Jelić, and development fund employee Bransilav Janković.[51] KAP had been privatised in 2005 and sold to an offshore company in Cyprus valued at just €1,700 and owned by the Russian Oleg Deripaska.

In the context of the Western Balkans, schemes can also be closely associated with illegal financing of political parties. A good example of this is found in North Macedonia.

The Special Prosecutor's Office accused six individuals, among them the former prime minister and leader of the VMRO-DPMNE political party Nikola Gruevski, with illegally financing the party. According to the indictment, the group laundered roughly €5 million from 2009 to 2015 by buying

property (business premises, apartments, houses, land) on behalf of the political party.

According to evidence presented by the Special Prosecutor's Office, top members of the VMRO-DPMNE party received the money through donations and then used the money to pay for debts, bills, marketing services, and the purchase of property. Most of the payment slips had the same handwriting and were paid into commercial banks at intervals of 20 to 30 seconds. In 2009, €336,000 was paid in 12 days; in 2011, €12,000 was paid per day; in 2012, €161,000 was paid in 11 days; and in 2014 and 2015, €3 million was deposited in the party's account as donations.[52]

The local level

In countries politically sustained on patron-client relationships, shaped around ethnic divisions and political party affiliations, and as in the case of Bosnia and Herzegovina marked by complex institutional settings, the municipal level can be as relevant as the national level when it comes to political corruption. For this reason, and owing to the importance of political party membership and loyalty in sustaining the political apparatus, we also considered key representatives of the ruling parties at the municipal level as high-level public officials.

The power and influence of key party members at the municipal level was found in several cases. In Kosovo in 2012, for example, Sami Lushtaku, former mayor of Skenderaj and a key figure in the Democratic Party of Kosovo, was suspected of exercising his influence on the directors of the Kosovo Energy Corporation to award a tender for the physical security of its premises to the Security Code company. The company, which is owned by Lushtaku's nephew, was awarded the tender even though it did not meet the criteria set out in the call, according to the prosecution.

The Anti-Corruption Agency intervened and the tender was cancelled. However, following a complaint filed by Security Code, the Procurement Review Body and the Kosovo Energy Corporation (KEC) board once again awarded the tender to Lushtaku's nephew. In October 2012 an investigation was launched but the indictment accusing Lushtaku, the former director of the KEC, the head of the Procurement Review Body and the owners of Security Code, among others, was not filed until 2015. In 2019 the accused were acquitted of the charges owing to a lack of evidence.[53]

The case of Bosnia and Herzegovina stands out for its complex political and administrative organisation, which is divided between the state level, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska. This political division multiplies the opportunities for corruption at a subnational and local level. An example of how the subnational and local level can be connected through corruption in line with party loyalties is a scheme that operated in the Ministry of Agriculture of the FBiH from 2011 to 2014.

During the period the former minister for agriculture of the FBiH, Jerko Ivanković-Lijanović , decided which farmers would receive federal agriculture grants on the condition that they returned half of the subsidy to him. Members of his political party, NSRZB – including the party's vice-president and president of the party's cantonal board in Tuzla Mersed Šerifović and the former minister for agriculture, water management and forestry in the government of Tuzla canton and at the time minister for trade, tourism and transport in the same local government Edin Ajanović, among other members of NSRZB – collaborated with Ivanković-Lijanović to take the money from farmers for a benefit of 10 per cent and then give the rest to him. The grants were denied to farmers who stopped paying or did not want to pay.[54]

The transition toward political pluralism and a liberal economy in the Western Balkan countries has been marked by a variety of opportunities for corruption. With ongoing support from oligarchs, political leaders have taken advantage of the windows of opportunity that opened up in the transition, such as the privatisation processes that transferred most state-owned property and companies to political cronies in line with similar market reforms in the former Soviet Union. The extension of executive power over other branches of government created additional opportunities to misappropriate public funds via tenders and through further abuse of official power and institutions.

In Montenegro, approximately €7.3 million was paid in bribes to Montenegrin Telecom officials in exchange for favourable terms for the purchase of a majority of shares in Montenegrin Telecom by three former senior executives of the Hungarian telecommunications provider in 2005.[55] The Hungarian executives applied the same bribery scheme during the privatisation of Macedonian Telecom in 2005.[56] In 2011, the US Securities and Exchange Commission (US SEC) filed charges against Hungary's Magyar Telecom and three of its former

senior executives for the bribery of government and political party officials in Montenegro and Macedonia.[57] The judiciary in Montenegro took over 13 years to proceed with the investigation owing to the alleged involvement in the bribery scheme of relatives of high-ranking politicians in the country. In February 2019, the High Court in Podgorica confirmed the charge brought by the Special Prosecutor's Office in Montenegro against the former directors of Montenegrin Telecom.[58] The US SEC reached settlement agreements with Magyar Telecom and its charged former executives on the penalties to be imposed on them. In Macedonia the investigation continues.

In Serbia, an accusation of embezzlement during the privatisation of the company Minel Transformers (the main domestic manufacturer of electric transformers) was levelled against the former MP and minister without portfolio in charge of innovation and technological development Nenad Popović. The Anti-Corruption Agency filed a criminal complaint against Popović in 2012 after workers in the company accused him of withdrawing money from the company and leaving it bankrupt with millions in debt. According to privatisation documents obtained by reporters, Popović did not fulfil his contractual obligation to invest €7 million in production, pay contributions to workers, and pay dividends to small shareholders.[59] Despite pressure from the Anti-Corruption Agency to investigate the case, the Higher Prosecutor's Office in Belgrade has yet to initiate an investigation.[60]

Links with organised crime

Together with corruption, organised crime is another persistent problem in the Western Balkans and Turkey. The two elements work together when organised criminal groups require the collaboration of the authorities to achieve their objectives. The corruption of relevant public officials to allow organised crime has been found in more than one country.

In Albania, for example, the former interior minister Samir Tahiri, in collaboration with the director of the local police station in Vlorë, stood accused of helping a criminal group. According to the accusation, he allegedly provided information to traffickers and removed obstacles to the trafficking of narcotics during his tenure in office from 2013 to 2017. The prosecution's evidence included communications referring to valuable gifts and a 30 per cent share of the narcotics for Tahiri and his family in exchange for protection. In 2019 the Court of First Instance for Serious Crimes declared Tahiri guilty of the criminal offence of abuse of office, but cleared him of drug trafficking and being part of a criminal group. The first decision was appealed and the case was set to be tried by the Special Court of Appeal against Organised Crime and Corruption.[61]

In Bosnia and Herzegovina, the former police commissioner of Una-Sana canton Ramo Brkić stood accused of abuse of office and of being a member of an organised group to produce and trade with narcotics, which also operated in Croatia and Slovenia.[62] From 2006 to 2011, the monetary benefits acquired through the sale of narcotics were shared with Brkić in exchange for not being prosecuted or investigated for drug-related offences. The same practice of corruption applied to the judicial procedure against Brkić, when the latter unsuccessfully attempted to bribe the judge in exchange for a favourable sentence. In 2015 Brkić was sentenced to eleven years in prison.[63]

In Serbia in March 2011, the Higher Court in Belgrade sentenced 21 members of the criminal group Customs Mafia to a total of 60 years' imprisonment. The group earned millions of euro from the smuggling of goods with the help of customs officials. In particular Velibor Lukić, who was the coordinator for anti-smuggling operations in the customs administration for south Belgrade, was sentenced to nine years' imprisonment for criminal association and bribery.[64]

LEGALISATION OF THE CAPTURE

Research on tailor-made laws in the Western Balkans and Turkey is rather new, despite being crucial to understanding the significance and consolidation of state capture in the region. For some, tailor-made laws are the highest expression of state capture.[65]

Tailor-made laws seal and legitimise the privatisation of public institutions and resources by making it legal. Such laws not only decriminalise the capture but, once legalised, make it harder to fight capture because the effort will be perceived as disobeying the law.

In addition to applying TI's definition of tailor-made laws to determine whether a law is tailor-made, we also consider who benefited from the law (and who was excluded from it), the law's impact, and any anomalies in the making or approval of the law.

While more research needs to be done to fully grasp the scope and impact of undue influence in law-making – which is challenging in light of the hidden nature of the topic itself – our initial findings show that the phenomenon of tailor-made laws does not manifest itself in the same way in the seven countries included in the report. During our data collection, the countries where the most tailor-made laws were found were Turkey (which contrasts with the scarcity of available information on grand corruption cases) and Albania.

The least number of tailor-made laws were found in Kosovo and Montenegro. In Kosovo, attempts at tailor-made laws took place at a secondary level of legislation, such as administrative instructions. Considering that administrative instructions in Kosovo have normative power and apply to an indefinite and unlimited number of individuals, they are also considered in the study.

In Bosnia and Herzegovina, political elites do not engage in creating tailor-made laws so much as in taking advantage of legislative gaps in order to maintain the status quo.[66]

Another distinction can be drawn between tailoring the making of a law and tailoring its implementation. In several countries we found laws whose implementation, rather than their formal content, was biased.

Below are examples of the collected tailor-made laws classified according to their purpose: to control an industry, to reduce institutional oversight or to control staff appointments. A full list and details of the tailor-made laws can be found in the databases.

LAWS TO BENEFIT FROM A SECTOR OR INDUSTRY

Financial gain is the main motivator when it comes to unduly influencing the way a sector or industry is regulated. How ambitious that motivation is can vary. In some cases, tailor-made laws aim to monopolise or control most of a sector or industry, whereas in other cases they seek only to control a particular aspect or opportunity in an industry. A different category, but still related to operating within a sector for financial gain, includes laws created to satisfy a temporary need or, alternatively, to remove obstacles that prevent the satisfaction of that need.

Another finding from the tailor-made laws we have studied is that at the national level no particular sector is dramatically more affected than any other.

Rather, the findings show that a variety of sectors, such as energy, lotteries, infrastructure, construction, agriculture and health, can all be attractive enough to capture if the opportunity arises.

Laws to control a sector or industry

Tailor-made laws regulating lottery and gambling activities are a clear example of undue influence intended to monopolise a sector. This has occurred in three countries: Bosnia and Herzegovina, North Macedonia and Albania.

In March 2019, the Republika Srpska passed the Law on Games of Chance. The law defines games of chance as an activity of public interest, and gives exclusive rights over the activity to the government of Republika Srpska. This right is realised through the state-owned enterprise Lutrija Republike Srpske a.d. Banja Luka.

After the law was passed, the state-owned enterprise Lutrija RS published an international tender for partnership in organising electronic lottery games, which was won by the company Casino Austria VLT.[67] Thus, Lutrija RS and Casino Austria became the exclusive providers of electronic lotteries in Republika Srpska.[68] Casino Austria VLT had been founded only one month before, in July 2019, in Switzerland and belongs to Casinos Austria International.[69] Previously the company had successfully lobbied for a change in the lottery and games of chance law in North Macedonia, becoming a partner of the Macedonian state by acquiring 49 per cent of the company monopolising the sector.[70]

In Albania in 2015, what was initially presented as a law on gambling to reduce the damage caused by the gambling industry among youth and poor households in the country became a propulsive force for the industry's growth. Initially, the draft Law on Gambling included provisions to charge the gambling industry a 25 per cent tax, limit the number of stations to a maximum of 500 per gambling company, and locate stations at least 200 metres from religious and education institutions.[71] However, 24 hours before the plenary session of Parliament, two MPs from the Socialist Party and the Socialist Movement for Integration party submitted amendments that, instead of limiting the industry, expanded it significantly.[72] Among other things, the amendments decreased the tax from 25 to 15 per cent, doubled the limit on gambling stations from 500 to 1000, and decreased the minimum distance from 200 to 100 metres.[73]

In the two years after the law was passed, the gambling industry increased its revenue by 68 per cent.[74] The main beneficiaries of the law were five gambling companies that dominate roughly 80 per cent of the industry (Top Bast, Apex-Al, Astra Albania, Adriatic Game and Top Start). It is possible that the law not only increased the profits of these companies, but might also have facilitated money laundering, considering the connections between the gambling industry and organised criminal groups. According to the 2018 US State Department's report on money laundering, gaming is one of the most popular methods of hiding illicit proceeds in Albania.[75] Thus, the beneficiaries of the law might include organised crime networks and politicians who finance their campaigns with such money.

An example of a law tailored to privilege certain parts of a sector over others based on private interests rather than on technical criteria is found in the energy sector in North Macedonia. Regulation No. 29 has set the conditions for the production of electricity from renewable energy since 2019. Based on the Energy Law of 2018, the regulation establishes the conditions for determining two types of support for electricity producers that use renewable energy sources: feed-in tariffs and premiums. Under the regulation, the maximum level of installed power to obtain feed-in tariffs is 10 MW for hydropower plants, 50 MW for wind power plants, and 1 MW for biomass and biogas thermopower plants. To be eligible for premiums, the maximum installed power should not exceed 50 MW for wind power plants and 30 MW for photovoltaic power plants. Feed-in tariffs are provided for long periods of time, ranging from 15 to 20 years. Premiums are awarded to the best bidder in an open competition process.

In general, the above conditions particularly benefit hydropower producers because of the cut-off point to obtain feed-in tariffs relative to other producers. In addition, competition in the wind and solar energy sector has increased, since they are now regulated by premiums, whereas competition in the hydropower plants remains the same. In concrete

terms, the regulation especially benefits one of the major investors in the hydropower sector, specifically the company Small Hydro Power Plants Skopje, which owns seven hydropower plants. The company's manager is Todor Angjusev, brother of Deputy Prime Minister Kocho Angjushev. This company is the result of a joint venture between the companies Feroinvest and Granit AD. The brothers Todor and Kocho Angjushev are the founders of Feroinvest, which owns 25 of the 75 small hydropower plants registered in the country. Thus, the deputy prime minister, who participates in the drafting of energy sector laws and regulations, owns one-third of the small hydropower plants in the country, revealing a potential conflict of interest.[76]

One of the effects of this type of tailor-made law is the exclusion of competitors, which in turn has a negative impact on economic development. However, this is not the only effect. In some cases, such laws can also be very costly to the public budget. In 2018, the company A.N.K. presented an unsolicited proposal to the government of Albania for the construction of the Milot-Balldren highway. In June 2018, the Council of Ministers awarded an 8.5 per cent bonus point to the company, and in October the Ministry of Infrastructure announced a 13-year concession to A.N.K Sh.P.K. for the construction of the 17.2 km Milot-Balldren road. Law No. 52 was passed in July 2019 for this purpose.

For the job, the company will charge €256 million (€15 million per km), more than twice the amount that the government of Albania had envisaged for the construction of the road in its Sectorial Transport Strategy 2016-2020.[77] Still, the government allocated an extra €44 million to the project in its mid-term budget plan, increasing the total cost to nearly €300 million. The State Supreme Audit Institution of Albania (ALSAI) revealed an artificial increase in the costs of the project created by qualifying the project as a "highway" instead of an "interurban road" with a consequent increase in the price from €61.5 million to €140 million in the feasibility study.[78]

A.N.K. Sh.P.K. is closely connected to the ruling Socialist Party (SP) as it was founded in 1998 by Ndue Kola, an MP for the SP from 2009 to 2013. In 2009, the company was sold to Kola's brother, Agim Kola, who is also closely connected to the SP government.[79] The company's close ties with the ruling party make the deal look problematic.

Other tailor-made laws, rather than being about intervening in an ongoing initiative, seem to be specifically created to aid a particular beneficiary. This is the case with the Turkish Social and General Health Insurance Law No. 5510, in force since May 2019. The law authorises the Ministry of Health to categorise different types of health-care providers and creates a new category of hospitals, which are defined as "advanced level hospitals". The requirements to be considered an advanced level hospital are to have a 600-bed capacity, 60,000 square metres of indoor facilities, 240 doctors and 480 nurses. This type of hospital is supposed to receive better benefits from the Ministry of Health. Interestingly, only one hospital meets the requirements and it is formerly owned by the Health Minister Fahrettin Koca.[80]

This circumstance triggered opposition from several private hospital owners, who plan to request that the State Council annul the law. The fact that prior to the law, Medipol Hospitals, which was founded by the health minister, received support from the government in the form of donations,[81] including land and historical buildings, only increases suspicions that the law resulted from an abuse of power and was exclusively motivated by a private interest.

Laws to satisfy a particular need

Some tailor-made laws are a response to concrete needs. They are often intended to remove obstacles that prevent the fulfilment of private interests. This is the case with Regulation on Wetland Conservation No. 28962[82] in Turkey, enacted in April 2014. The goal of the regulation was to reclassify wetland areas in order to diminish the legally recognised importance of the wetlands on property allocated for the construction of the new Istanbul Airport. The regulation classified wetland in two groups: those of national importance and those of local importance. By defining the wetlands on the property planned for the airport as being of "local importance", the law decriminalised their devastation for construction purposes and released the General Directorate of State Airports Authority from any responsibility in regard to the Ramsar Convention

on the protection of wetlands, in force in Turkey since 1994. The airport's contractors are firms in the Cengiz-Kolin-Limak-MAPA-Kalyon Venture Group, known for their personal and financial ties to the government.[83]

LAWS TO REDUCE INSTITUTIONAL CHECKS AND BALANCES

To diminish the oversight capacity of institutions is one way to clear the path toward privatising public governance. Though laws to reduce institutional checks and balances were not frequently identified among the laws collected in our study, the Amnesty Law in North Macedonia offers one example.

The Amnesty Law adopted in December 2018 exempts from criminal prosecution, terminates criminal proceedings against and exempts from prison anyone who is suspected of having committed a crime related to the events in the Parliament of Macedonia on 27 April 2017. That day around 300 people from the Association for a Common Macedonia stormed the Assembly to prevent the election of Talat Xhaferi as President of the Assembly.

The law grants amnesty to most of the people who participated in the event. Lawyers, legal experts and civil society opposed the law, arguing that it intervenes in the independence of the judiciary and that it contains confusing provisions on the role of the court and the prosecutor.[84] They also argued that an amnesty law should be a general legal act rather than based on the category of the person. The amnesty does not apply to suspects who might have participated in the preparation or organisation of the events in the Assembly or were legally convicted of the following crimes: "association for hostile activity", "violence", persons with a hidden identity who used physical force, perpetrators of violence, persons unauthorised to carry weapons or explosive materials, persons acting in breach of official powers in the performing of criminal activity, and "terrorist threat to the constitutional order". Under the law, 20 people were granted amnesty.

LAWS TO HAVE LOYAL PEOPLE IN PLACE

One of the most effective ways to control public decision-making is to have loyal people in positions of responsibility. This implies the need to control who can be appointed and how to discharge those who can jeopardise the use of public office for private gain. Examples of tailor-made laws of this type were found in Kosovo, Bosnia and Herzegovina, and Turkey.

Approved in Kosovo in 2018, the Law on Notary Office enacted two controversial changes with respect to the previous law: an increase in the number of notaries and a weakening of the eligibility criteria. Under the new law, the number of notaries may be increased by minister's decision to one notary for every 10,000 people (under the previous law the limit was set at one notary for every 20,000 people). Under the new selection criteria, notaries are required to have at least three years of working experience in the field of law, instead of three years' experience as a lawyer under the previous law. In addition, the previous law's requirement not to be a member of a political party now softens in that the person will be deemed as not meeting the criteria only if he or she holds a political post.

Notaries in Kosovo are considered public servants and they have a quasi-judicial character.[85] The above changes were perceived by some notaries as paving the way for political appointments. The potential risk increases when considering the role of notaries in real estate deals and the fact that real estate is one of the most lucrative economic activities in Kosovo. These concerns grew even stronger when the Ministry of Justice announced a new call for potential notaries in 2019. The newspaper *Koha Ditore* reported that at least 60 candidates who passed the written exam were members of political parties, and family members or individuals connected to the judiciary.[86] The risk of a conflict of interest in these appointments prompted the EU office in Kosovo and NGOs to call for the process to be interrupted.[87]

Notaries were also the subject of tailor-made initiatives in the Republika Srpska in Bosnia and Herzegovina, where the Law on Amendments to the Law on Notary Office, in September 2019,

introduced oral tests as part of the examination. Oral examination had already been used in previous calls for notaries and counted toward 80 per cent of the marks, even though the law at the time did not recognise this type of examination. The 2019 law is an example of a tailor-made law being used to retroactively legalise government decisions.[88]

The Amendments to the Law on the Civil Service of the Federation of Bosnia and Herzegovina (FBiH), adopted in October 2015, excluded high and mid-management positions from the category of civil servants, which meant that their appointment or discharge would depend directly on the political mandate of the ruling party at the time. In addition, assistants in the ministries would be nominated by ministers and approved by the government of the FBiH. Thus, the government of the Federation of BiH would increase its direct power over appointments. Ultimately, even though the amendments were adopted by both houses of the Parliament of FBiH, the Constitutional Court of FBiH declared them unconstitutional because they were adopted in urgent procedure without legal justification. The court also did so because the law did not guarantee equal opportunity to employment in the civil service for all FBiH citizens. As a result, the law did not come into force.

In Turkey in July 2018, Presidential Decree No. 17 amended Presidential Decree No. 3 on the Appointment Procedures for Chief Government Officials and in State Institutions and Organisations. Decree No. 17 alters the conditions for appointing university rectors by rescinding the clause requiring a three-year tenure as professor, which was previously considered a professional condition. Instead, the amendment allows newly tenured professors to be appointed as rectors. Two days after the amendment, Prof. Dr. Yusuf Tekin, former undersecretary in the Ministry of Education, who had been tenured as professor just one month beforehand, was appointed rector of Hacı Bayram Veli University.[89] The amendment lowers a merit-based criterion for positions in institutions with great power to influence society.

LINKS WITH CORRUPTION

Corruption and tailor-made laws can be linked in at least two ways: corruption can enable undue influence on a law, while a tailor-made law can create opportunities for systemic corruption.

The latter is the case with the Administrative Instruction to create a programme for treatment outside public health-care institutions, approved in Kosovo in 2012, which is related to the *Stent* corruption cases involving health authorities and practitioners. The Administrative Instruction was signed by the former minister Ferid Agani. The programme enabled patients to get subsidised treatment outside of public health-care institutions for services that the public health system was not able to deliver. To obtain the treatment, patients first had to obtain a referral from a doctor; then the Ministry of Health would cover 70 per cent of the cost of their private treatment. The Ministry of Health signed memos of understanding with private hospitals to be part of the programme. A scheme involving the former minister Agani, other officials in the ministry, and doctors from both public and private hospitals, resulted in systematic abuse of the system by giving referrals in exchange for bribes and causing financial and human harm. The presumed damage is more than €4.5 million.[90]

ACHIEVING AND MAINTAINING STATE CAPTURE

Two key enablers of state capture are impunity for grand corruption and the legalisation of the capture. Political control of the judiciary is instrumental for the first enabler, while the creation of tailor-made laws is essential for the second one. Based on our analysis of the collected corruption cases and tailor-made laws, the following are some of the shortcomings in the judiciary's response to corruption cases involving high-level officials, as well as strategies pursued in law-making to pass laws that prioritise private interests over the public good.

THE ROLE OF THE JUDICIARY

In the Western Balkans and Turkey, the inefficiency and lack of independence of the judiciary is not merely a symptom of weak rule of law. It is also key to maintaining state capture by preventing the proper prosecution of high-level officials for corruption and abuse of office. Impunity for grand corruption is a result of the procedural failures of the judiciary and the negligence of judges and prosecutors who are motivated more by personal interests than by professional ethics.

From the corruption cases collected, we have identified the following causes of the judiciary's lack of independence and its inefficiency in the region, resulting in deficient prosecution of grand corruption and ultimately enabling state capture.

Limitations of the legal framework

A first obstacle to the proper prosecution of corruption involving high-level public officials is posed by how the crime is recognised, or not, in the criminal code and relevant legislation. This, in turn, will be reflected in how much the relevant institutions are empowered to act on the crime.

For example, in Serbia, mixing criminal offences that may be committed in connection to corruption with various types of economic crime offences, makes it difficult to monitor achievements in the prosecution of corruption and might result in the inconsistent treatment of corruption offences.[91] In addition, the offence of illicit enrichment, criminalised under Article 20 of the United Nations Convention against Corruption (UNCAC), is not included in the criminal legislation of many countries in the region. The introduction of this criminal offence, as advocated by Transparency Serbia, would imply criminal liability for any "official person" who has committed it, including former public officials.

There is also room for improvement in the definitions of some crimes, such as active bribery. In Serbia, it is not possible at the moment to prosecute certain persons, such as someone who bribes an MP to vote for a certain proposal. To overcome this challenge, Transparency Serbia has proposed establishing criminal liability for both the person who gives or offers a bribe to an official and the person who is offered a bribe to influence the decision of an official when the latter has neither the obligation nor the prohibition to decide or perform an official action. As it is, this type of bribery case goes unnoticed, even though it is especially relevant to state capture and undue influence in public decision-making.[92]

In Turkey, several obstacles prevent opening a criminal procedure against high-level officials. For

example, under the Turkish constitution, opening an investigation against ministers and vice-presidents requires an absolute majority of Parliament. At present, 49 per cent of the seats in Parliament are occupied by the ruling AKP. In practice, this means that very few investigations into corruption against high-level officials are permitted. It also explains the difficulty that we encountered in finding grand corruption cases in Turkey for the study, as well as the fact that the ones we did find are mostly in the early phase of "publicly raised suspicion". If they are in court, they are treated as administrative cases rather than criminal ones.

For example, in 2005, the tourism and hotel companies ETS Tour, Voyage Hotel and Maxx Royal Resorts, which were founded by Minister for Culture and Tourism Mehmet Ersoy, were given permission to build hotels in the Adaliyali protected area, in Bodrum, for 49 years with the state claiming only 1 per cent of the revenue. In response to opposition from activists seeking to protect the area from development, the Constitutional Court annulled the allocation. In 2013, however, the allocation was restored when the Ministry of Environment and Urbanisation revised the environmental plan and designated the area as a "tourism area". Since then, several environmental plans have been annulled and approved in that particular area, suggesting a significant capture of policy-making around the case. An MP raised the conflict of interest surrounding the case in Parliament, but has not received a response and no criminal proceedings have begun.[93] At present, the litigation in the courts revolves around several administrative cases opened in relation to the environmental plans that have allowed Ersoy's companies to build on a protected area.

In some countries, legal limitations result from the lack of harmonisation between criminal legalisation in different jurisdictions, which can give rise to inconsistencies, duplication, double standards and complexity. This is the case in Bosnia and Herzegovina, where, despite recommendations from the Organisation for Security and Co-operation in Europe (OSCE) to harmonise the relevant procedural criminal legislation across all levels of government in the country, the executive and legislative authorities have demonstrated no willingness to do so.[94]

Political influence

The politicisation of the judiciary remains a common challenge in the Western Balkans and Turkey, and a main concern of the European Commission, as stated in its progress reports. Ways to achieve political control of the judiciary include dictating the appointment of judges and prosecutors, corrupting judicial authorities to prevent the proper implementation of laws and rules of functioning, and making use of fear and intimidation.

The case of state guarantees for an aluminium plant in Montenegro exemplifies the effects of political pressure on the performance of the judiciary. The case has been in the preliminary stage of investigation since a Supreme State Prosecutor's Office request in July 2013. High-ranking members of the ruling party and top government officials, including former prime ministers, the president of the State Aid Control Commission and a former economy minister, are involved in the case. In April 2013, the Montenegrin State Audit Institution found that the government had issued state guarantees worth €135 million for loans made in 2010 and 2011 to the Montenegrin aluminium smelter company Kombinat Aluminijuma Podgorica (KAP).[95] The guarantees were given to KAP without adequate justification or counter-guarantees.

Political control of the judiciary not only reduces its independence, but can also deliberately undermine its effectiveness. In North Macedonia, the ineffectiveness of the automated system for court case management used to ensure the random distribution of cases in courts is explained by political influence on the judiciary. The frequent modification of annual court schedules against the will of judges,[96] together with the exclusion of some judges from the system without notice, has allowed cases to be assigned to judges chosen by the political elites. This increases the chances of receiving favourable treatment in the prosecution of crimes involving these elites.

Performance of prosecutors

Obstacles associated with the prosecutor are common among the collected cases. The problem sometimes lies in the poor performance of a prosecutor, such as in the *Gjiknuri* case in Albania, as reported by Reporter.al.[97]

The Albanian Supreme State Audit Institution (ALSAI) filed a lawsuit against the minister for energy and infrastructure and the state's general advocate on 14 October 2015, alleging that the state had incurred financial damages of €479 million owing to their actions or inactions in negotiations to settle a disagreement with the Czech electrical distribution

company ČEZ.[98] In 2009, ČEZ had bought 76 per cent of the shares in the Albanian electrical energy distribution company, but in 2013 the Albanian government cancelled its licence to operate.

The General Prosecutor's Office decided to close the investigation in June 2016, arguing that the facts did not amount to a crime under articles 248 and 25 of the penal code.[99] The performance of the prosecution has been questioned because it limited itself to publicly known facts without investigating further into the conduct of the negotiation and the role of the defendant who acted as chief negotiator. Despite the ALSAI's appeal against the prosecution's decision, the High Court did not hold the General Prosecutor's Office accountable for its decision.[100] [101]

Problems in the performance of the prosecutor were also found in the 2019 OSCE assessment of the judiciary's response to corruption in Bosnia and Herzegovina. The OSCE found that the country's specialised prosecutorial bodies did not initiate the majority of serious corruption cases in 2017 and 2018. One of the causes was their focus on petty corruption cases. Other identified weaknesses were the inadequate capacity of prosecutors in drafting indictments and in gathering evidence to support charges.[102]

The case of North Macedonia stands out when it comes to the performance of the prosecutor. In order to overcome a dysfunctional system of public prosecutor's offices, the Special Public Prosecutor's Office (SPPO) was created in 2015 with the objective of eliminating the impunity of high-level officials for corruption and restoring trust in the judicial system. Instead, the Special Public Prosecutor was sentenced in 2019 to seven years in prison for abuse of office in a case of racketeering. Before being disbanded, the SPPO had opened 33 investigations. However, very few were grand corruption cases that ended in convictions, and any sentences tended to be very light.[103]

In Serbia, the Prosecutor's Office for Organised Crime is in charge of prosecuting corruption offences committed by public officials, such as ministers, directors of state-owned companies and judges, among others. However, the office does not have jurisdiction over corruption crimes by officials directly elected by the people, such as the president or MPs. Other departments in the prosecution offices are in charge of those cases. The reason for the distinction has not been publicly explained.[104]

Procedural shortcomings

The corruption cases analysed in this study reveal the following main shortcomings in judicial performance that have an impact on the judiciary's effectiveness.

Lengthy court proceedings

The length of court proceedings is a common problem in most of the countries, especially in Bosnia and Herzegovina, North Macedonia and Kosovo. In Bosnia and Herzegovina, the optimum deadline of 298 days for first instance court proceedings in corruption cases, which is laid out in the Rulebook on the Time frame for Proceedings in Cases in Courts and Prosecutor's Offices, was not respected in any of the analysed grand corruption cases.[105] Instead, the cases lasted a minimum of one-and-a-half years, and some went on for over three years.

Serious delays in the process of high and medium-level corruption cases at the trial stage are also acknowledged by the OSCE in its assessment of the effectiveness and quality of the judicial response to corruption in Bosnia and Herzegovina.[106] The OSCE assessment identifies two factors to explain the delays: changes to the composition of the panel of judges, which implies the restart of a trial; and poor management by judges, especially in ensuring the presence of parties in court.

The absence of parties from court without proper justification is a problem that North Macedonia also shares. The problem becomes even more challenging when the defendants flee to another country. In North Macedonia, the former prime minister Nikola Gruevski, who was involved in five corruption cases and sentenced to two years in prison, fled to Hungary where he was granted asylum.[107]

In Bosnia and Herzegovina, a judge in the Municipal Court in Sarajevo, Lejla Fazlagić-Pašić, fled to Croatia while under investigation, and has remained there for three years.[108] She is one of the defendants in the case of former interior minister Alija Delimustafić, which involves 30 people and legal entities charged with organising a criminal group and illegally registering and reselling the property of deceased persons in Sarajevo canton. Even though the Constitutional Court of Croatia has stated that she must be extradited to Bosnia and Herzegovina, Croatia's minister for justice has not signed her extradition warrant.[109] Other defendants in the case

have also been absent, delaying the trial 17 times so far. The delays have resulted in damages to the public budget of €175,000 in trial court costs.

In North Macedonia, the court proceedings for grand corruption cases last five years on average.[110] In all but one of the 37 grand corruption cases analysed, the 30-day deadline established by the Law on Criminal Procedure for the commencement of the main hearing after confirmation of an indictment was missed by over 30 days.[111] In addition to the absence of parties, other reasons for delays in North Macedonia are the passive role of judges in managing the process, the need to restart trials as a result of the adjournment of hearings, and long processes for the presentation of evidence.[112]

The presentation and "quality of evidence" is another important aspect that causes delays. The poor quality of evidence, together with negligence and the abuse of procedures, result in a low number and poor quality of indictments for corruption offences in Bosnia and Herzegovina.[113] North Macedonia lacks strict criteria to define the admissibility and relevance of evidence and the relations between items of evidence.[114] In a number of the analysed cases, judges did not adequately assess the quality of the evidence presented.

Delays in court proceedings can determine their outcome. One of the consequences is a lack of accountability because charges are dismissed after the statute of limitations elapses. This form of impunity for corruption has been common in Kosovo. The frequency of long investigations prior to finalising indictments, modifications of indictments, changes of prosecutors, and postponements of court hearings owing to the absence of the defendants raises suspicions of delaying tactics intended to reach the statute of limitations.[115]

Acquittals and soft sentencing

In some countries, similar outcomes in court proceedings reveal patterns and raise questions regarding the fair and equal implementation of the law. One of these cases is Kosovo, where the frequent acquittal of defendants seems to offer supporting proof. The Kosovo Law Institute found that from January to September 2019, the Basic Court of Prishtina imposed imprisonment on only 18 per cent of those convicted of corruption, whereas 26 per cent received suspended sentences, 12 per cent were fined, and 44 per cent were acquitted.[116]

In North Macedonia, sentences in grand corruption cases occur at a very low rate,[117] and the OSCE has expressed concerns over the leniency of sentences in high-level corruption cases.[118]

Institutional complexity and instability

Complex institutional settings pose challenges for the response of national judiciary systems to corruption. Kosovo and Bosnia and Herzegovina are especially affected by this factor.

From Kosovo's declaration of independence in 2008 until 2018, the European Union Rule of Law Mission (EULEX) was in charge of the country's justice system.[119] The gradual transfer of cases from EULEX to Kosovan authorities starting in 2014 increased the workload on national institutions without enough capacity to assume the burden. The lack of training and capacity of national judges and prosecutors to deal with the cases created confusion and, in many instances, the cases needed to start over. One of the cases affected by the situation involved high-level officials from the Ministry of Transport, Post and Telecommunications (MTPT) who were accused of awarding public contracts to road maintenance companies in exchange for a 20 per cent commission. The case required a complete restart of court hearings. An added problem was that corruption already existed inside EULEX.[120]

Another sign of institutional instability is the constant changing of judges and prosecutors. In the *Stent* cases – in which Kosovan health authorities and doctors were accused of abusing the referral system to obtain private subsidised treatment – frequent changes of prosecutors were an obstacle to hearing the case. During the investigation against medical doctors in 2014, six prosecutors were changed.[121]

CAPTURING LAW-MAKING

One of the criteria that indicate whether a law might be tailor-made is irregularities in the process of the law's adoption. Below are examples of some of the strategies found in the adoption of tailor-made laws that can be instrumental for the capture of law-making.

Institutional settings

In theory, the passage of tailor-made laws in an institutional system initially designed to function on democratic principles, such as the separation of powers and the prioritisation of the majority, should not be easy. However, in governments where corruption and state capture are systemic, the institutional system can progressively take on certain characteristics that enable its manipulation. In a model of state capture with a strong political drive, as in the Western Balkans and Turkey, such characteristics are frequently directed at facilitating the ruling party's control over the parliament.

That is the case in Albania. As Vurmo notes, the 2008 constitutional amendments in Albania introduced an electoral system that favours establishment parties and the role of party leaders in deciding who enters Parliament. They also affected the mechanisms of checks and balances, offering more space for the prime minister to control the majority in Parliament by means of a vote of confidence, and weakening the role of the president of the republic, whose veto on laws became easier to overturn with a simple majority instead of a qualified majority.[122] These measures to ensure the party's control over parliamentarians and their decision-making and to weaken checks and balances have paved the way to negotiating and passing tailor-made laws by a small group of people.[123]

Serbia offers another example of how the institutionalisation of simple operating practices prevents open and thorough discussion among the political forces represented in Parliament.[124] Two of the practices are: 1) the fact that the government, and not Parliament, effectively dictates the legislative agenda: and 2) the practice of grouping unrelated items on the agenda in a single session, thus limiting the time and quality of debate on legislative proposals.[125] In this way, legislative amendments and proposals from the few remaining opposition MPs either are not discussed or are rejected if the government does not share their views on the topic.

In Turkey, since the 124th amendment to the Constitution, ministers are allowed to issue regulations to ensure the implementation of the laws in their area of functioning. Such ministerial orders are published directly in the Official Gazette without any need for approval by Parliament or any other legislative body. This capacity has been used in some of the collected tailor-made laws, such as Presidential Decree No. 17 amending the appointment of university positions,[126] and the Social and General Health Insurance Law No. 5510 modifying the categories of health-care providers.[127]

Legal loopholes

Bosnia and Herzegovina offers a clear example of how legal loopholes can make a law ineffective. Amendments to the Law on Conflict of Interest transfer decisions on conflicts of interest to a new Special Parliamentary Commission with that particular role. Under the amendments, the new commission delivers decisions by qualified majority, while the rules regulating the work of the commission must be approved by both houses of the Parliamentary Assembly of Bosnia and Herzegovina, which puts the commission under the direct control of MPs and their political parties.[128]

This control by political parties over the commission played out in favour of Dragan Čović, president of the political party HDZ BiH (Hrvatska Demokratska Zajednica BiH) and former member of the Presidency of Bosnia and Herzegovina, who stood accused of conflict of interest. The case was reported to the Special Parliamentary Commission in 2018, but never reached a resolution because the commission members who belonged to the same political party as Čović never appeared at the meetings.[129]

The ineffectiveness of the Law on Conflict of Interest and its legal loopholes are further emphasised by the lack of coordination between the different levels of government in Bosnia and Herzegovina, which creates a vacuum that disables the law in parts of the territory. In particular, the transfer of the power of decision over conflicts of interest from the Central Electoral Commission (CIK) should have happened at subnational level as well, and in particular to an independent commission, but the Federation of Bosnia and Herzegovina did not do so. Under the Federation's Law on Conflict of Interest, the CIK is still responsible for making decisions on conflicts of interest. This means that no institution in the Federation is now responsible for enforcing the law.[130]

Urgent procedures

In countries such as Bosnia and Herzegovina and Serbia, there is a tendency to use urgent legislative procedures to pass laws. The urgency of the procedures excludes public debate and the possibility of making amendments, thereby increasing the risks of undue influence in law-

making. In addition, in Serbia, the absence of public debates is a problem that is not always justified with urgency.

The Bosnian tailor-made amendments to the Law on the Civil Service of the Federation of Bosnia and Herzegovina, the Law on Amendments to the Law on Notary Office in Republika Srpska, and the amendments to the Criminal Code of the Federation of Bosnia and Herzegovina (though ultimately not passed) were all initiated through urgent parliamentary procedures.

According to GRECO's 2019 compliance report, a large majority of the laws and decisions in Serbia are still adopted under urgent procedures, and most amendments are introduced up to 24 hours before discussion. Justifying the use of urgent procedures on the grounds of national interest or national security has worked in Serbia with the Belgrade Waterfront Law and with the Law on the Security Information Agency, which aims to give the agency's director exclusive rights to decide on the employment, job organisation and professional training of the agency's employees.

Typology of laws

The typology of laws can also serve as a tool to exercise undue influence in law-making. In particular, the creation of "special laws" (*lex specialis*) can enable the bypassing of other laws and procedures. Serbia offers a good example in the law regulating the Belgrade Waterfront project, which sought to build a complex of offices and buildings on the riverfront. The authorities presented the project as a matter of prime national interest, and it was adopted by Parliament in 2015 through a one-time legal mechanism of *lex specialis*.

This is considered to be a misuse of *lex specialis*, which technically refers to laws that regulate a specific aspect of a general law. In the Belgrade Waterfront case, however, the law was created to suit the exclusive deal between the company Eagle Hills, from the United Arab Emirates, and the Serbian government.[131] Thus, a project that would otherwise have violated Serbian rules on expropriation, public-private partnerships, taxation and public procurements was deemed legal.[132]

The law was followed by another legal instrument approved in February 2020 called Special Procedures for the Implementation of Projects for the Construction and Reconstruction of Line Infrastructure Facilities of Particular Importance for the Republic of Serbia. According to the government, the use of the term "of particular importance" to fulfil the aim of the law speeds up the construction of state-promoted infrastructure projects. However, in the name of "projects of particular importance", the law serves to cover deviations from the general rules, especially public procurement regulations.[133]

Also in Serbia, another mechanism for applying special procedures through a "one-case law" relates to agreements with foreign states. These inter-state agreements introduce special provisions and procedures that apply to agreements with the companies of another country, making it possible to circumvent other national legal provisions. This is the case with inter-state agreements concerning public-private partnerships that bypass the Public Procurement Law.[134]

Lack of or weak regulations on lobbying

It is believed that lobbying regulations can help to prevent undue influence in public decision-making. The general purpose of laws on lobbying is to provide transparency and protect the public interest when lobbyists seek to influence state officials and institutions. The countries in the study that have laws on lobbying are Serbia (in effect since August 2019), North Macedonia (since 2011) and Montenegro (since 2014).

The absence of lobbying regulations in countries such as Bosnia and Herzegovina, Albania, Kosovo and Turkey implies that MPs have no obligation to report contacts with people lobbying for the adoption of a particular law or regulation.

Nevertheless, the quality of the law and its implementation are as important as having one. According to a Coalition prEUgovor assessment in 2019, the law in Serbia presents some weaknesses in its scope and its requirements for transparency.[135] The law exclusively regulates influence on laws and other general acts, but does not cover other instances of public decision-making. It also falls short in its criteria to determine which lobbying initiatives should be considered and there is no obligation to report "unofficial" lobbying. In addition, the law only partially ensures transparency since the obligation is to submit a report to the Anti-Corruption Agency (ACA), but not to publish the information.

In North Macedonia, the authorities have been at work since 2018 to draft a new law that improves on the quality of a 2011 law. GRECO acknowledges their

effort in its 2020 assessment, but insists on the need to implement its recommendation to provide a set of rules to ensure the transparent conduct of MPs in their contacts with lobbyists and other third parties in connection with ongoing legislative proposals outside the meetings of the Assembly and its commissions, which is an issue that is not yet satisfactorily contemplated in the draft.[136]

In Montenegro, the low numbers of lobbying certificates issued by 2019 (14) and of lobbyists registered with the relevant agency in 2018 (6) raise doubts in the EC about the proper implementation of the law and the existence of lobbying activities conducted outside the legal framework.[137]

THE RECOMMENDED VS. THE REAL

The reforms recommended by GRECO and the EC to implement the rule of law in the Western Balkans and Turkey are very much aligned with the challenges illustrated in this report regarding the lack of independence of the judiciary, conflicts of interest in law-making, and insufficient transparency. However, despite the efforts to overcome these challenges and establish the rule of law in the region, state capture and impunity for grand corruption prevail. At least two reasons can explain this paradox: insufficient levels of reform implementation, and the partial nature of reforms.

REFORM IMPLEMENTATION

GRECO's Fourth Evaluation Compliance Report (2019, 2020) on corruption prevention in respect of members of parliament, judges and prosecutors in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Turkey demonstrates various levels of reform implementation.

Among the best performers are Albania and Montenegro, followed by North Macedonia. Bosnia and Herzegovina has not satisfactorily implemented any of the 15 recommendations that it received, but it is in the process of implementing 11 of them. The worst performers are Turkey and Serbia,[138] both appearing under the compliance level "globally unsatisfactory".

In general, progress has been made on the adoption of certain regulations or codes of conduct. However, as GRECO points out, more efforts need to be undertaken to create enforcement mechanisms and sanctions in case of violation of the rules.

As a positive example, GRECO welcomes the progress made on judicial reform in Albania. In particular, the reform has resulted in limiting the role of the president of the republic to the formal appointment of High Court judges proposed by the High Judicial Council, which is composed of a majority of judges elected by their peers. In addition, the judicial administration is no longer within the remit of the Ministry of Justice but of the High Judicial Council.[139]

At the negative end of the spectrum, two countries are of special concern for taking measures that reverse the progress that they had made toward fulfilling the European Commission's conditions to join the EU. One is Turkey, where the power of the executive over the judiciary is increasing. In fact, the members of the new Council of Judges and Prosecutors (CJP), which replaces the former High Council of Judges and Prosecutors (HCJP), are appointed by the president of the republic and the Grand National Assembly of Turkey (GNAT). None of them are elected by judges and prosecutors themselves. Moreover, the executive maintains power over the judiciary through reassignments of judicial officeholders against their will, disciplinary procedures, and the training of judges.[140]

The other country is Serbia. According to GRECO, Serbia is of special concern because of the hostile environment in which constitutional reforms take place. Several non-governmental organisations, including the Judges' Association and Prosecutors' Association, have withdrawn from the process.[141] According to critical voices, the government's writing

of constitutional amendments goes against the Constitution and is a threat to the independence of the judiciary. It is believed that if the amendments are adopted, the result will be the complete control of the judiciary by the parliamentary majority in the National Assembly.[142]

Also concerning is the decision taken by the Judicial Council in Montenegro to reappoint five court presidents for at least a third term, which is contrary to GRECO's recommendations. Likewise, no progress has been made in Montenegro on the composition and independence of the Judicial Council.[143]

These decisions and the fact that in most of the countries a large number of GRECO's recommendations are only "partially implemented" raise questions about, on the one hand, the honest commitment and political will of the leadership of these countries to the implementation of rule of law standards and, on the other hand, whether the proposed reforms fit the context and are sufficient to bring about change.

THE NATURE OF THE REFORMS

Academic and NGO assessments of the effectiveness of reforms in the Western Balkans and Turkey generally concur that the recommendations of international organisations have not paid enough attention to the politicisation and historical legacies that shape governance in the countries.[144] This translates into an overemphasis on fixing the problem from a technical perspective, while ignoring the political raison d'être behind the problem.

Even if progress has been made on technical aspects, such as the creation of laws, institutions or mechanisms, the reforms do not necessarily affect the landscape of political power or address politically sensitive dynamics. As a result, the success of the reforms is limited. For example, a common theme among the GRECO recommendations for the countries is to have codes of conduct and ethics training for parliamentarians, judges and prosecutors. GRECO also recommends mechanisms to declare and control conflicts of interest, such as the use of technology for the random allocation of cases in court. Even though these measures are necessary and supported by sanctions, they do not change the political incentives and underpinnings of state capture in the region. In fact, many have been turned into tools to serve the purpose of the ruling political parties in adapting the system to consolidate their power and sideline the opposition.

In the same way, one of the main reform requirements set by the European Union on Southeastern European countries is the establishment of a self-governing judiciary, in particular judicial councils, to ensure judicial independence, as stated in Chapter 23 of the European Union acquis on judiciary and fundamental rights. Judicial councils are conceived as independent bodies responsible for the appointment, promotion and discipline of judges. The understanding is that isolating these functions prevents intervention by the executive. The EU's promotion of judicial academies also seeks to improve the quality, effectiveness and efficiency of judicial education. However, these reforms on their own, without measures to promote political maturity, are considered to have led to the emergence of channels of political interference that preserve the dependency of judges.[145]

The case of Serbia illustrates the point. GRECO recommended "changing the composition of the Serbian High Judicial Council (HJC), in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and legislative powers".[146] The constitutional amendment required to implement the recommendation proposed that the council have 10 members (five judges elected by their peers and five "prominent lawyers" elected by the National Assembly). The proposal, however, is unlikely to reduce the politicisation of the appointments because, on one hand, it is not clear what is meant by a "prominent lawyer" and, on the other hand, there are no clear objective criteria for their selection.[147] Moreover, the selection of the five members by Parliament contradicts the intention to exclude the National Assembly from the election of judges.[148] Nevertheless, even if the National Assembly were completely excluded from the election of judges to the HJC, the ruling party's intervention would still continue because the election of future judges is dependent on their completion of the judicial academy's programme, which is under the control of the executive.[149]

Similar challenges in other countries such as North Macedonia have prompted civil society to argue that judicial councils elected by judges are not a sufficient guarantee of the judiciary's accountability and its protection from influences.[150] As Takacs notes, judicial councils may lead and have led to

adverse effects when carried out prematurely and without the appropriate legal and judicial culture and mentality.[151]

CONNECTING THE DOTS

The prevalence and consolidation of state capture through legal mechanisms and impunity for high-level corruption, which this report has laid out, illustrate how the political system can become a tool for political elites to self-sustain their wealth and power. In turn, they show how a certain political will is necessary for successful implementation of the rule of law in the region.

This requires paying attention, first, to how political expectations and aspirations are created and developed; and, second, to how state capture responds to such expectations and aspirations better than the rule of law.

The political practice

Political and social expectations and aspirations in the Western Balkans and Turkey are created within a political practice that has the following characteristics.

One relates to being sustained by informal patronage networks and, in particular, by loyalty to a patron or group. In a clientelist relationship, both the patron and the client obtain a benefit. In fact, clientelist relationships are more effective in the short term at obtaining what is needed, especially in a context where the state struggles to be a successful public service provider.

The investment involved in creating such networks also explains the loyalty of their members. State capture is unlikely to arise without the expansion of networks and regular corrupt interactions around government institutions.[152] The cost of setting up these relationships and the threat of being caught make joining the group highly risky. This explains why personal loyalty to a patron prevails over democratic decision-making, professional duties and ethical behaviour.

Another characteristic is the blurred line between the public and the private space.[153] The evolutionary and adaptive capacity of clientelistic relationships to penetrate democratic institutions has affected the institutions' meaning and functioning. Cronyism and patronage have become endemic in public administration in the region, preventing the existence of a meritocratic system of equal opportunity in public institutions and eroding public confidence in them.

A third characteristic is a confrontational style of politics. As the analysis in this report has shown, what characterises state capture in the Western Balkans and Turkey, as opposed to state capture in other contexts, is that ultimately the purpose of state capture is to increase and maintain the power of the ruling political party and its close networks. This involves the attempt to exclude the opposition from the political game. The absence of a "culture of compromise" and dialogue translates into a lack of cooperation between groups, causing significant damage to the development of a democratic system.[154]

Finally, it is important to bear in mind that if the issue relates to political practice, the chances of the same problems continuing are high even if the party in power changes.

This political dynamic has planted certain ideas and perceptions among citizens, such as an association of the state with a political party rather than with the separation of powers, or the belief that laws are negotiable so it is not necessary to abide by them.[155] The population's disappointment with the political class and its lack of trust in public institutions and in the power of elections to change things might evolve into a civic culture that is sceptical of the democratic tradition.

In a political practice – where what the members of a party or network do is so important – a collective action approach to problem-solving should be considered in order to create real change.[156] Collective action theory emphasises that people's behaviour is determined by their expectations of how others might act. In contexts of systemic corruption, the expectation of others acting corruptly is high, as individuals are pressured into acting corruptly. Collective action would involve reforms based on alternative approaches that are not purely institutional, but also consider additional elements, such as creating new political incentives and structures and tapping into the potential of the citizenry.

Strengthening the rule of law and preventing state capture are dependent on societal transformation and the incorporation of values, incentives and structures that replace clientelist personal exchanges with long-term collective political visions and programmes,[157] in addition to institutional reforms.[158]

RECOMMENDATIONS

In order to address state capture and the enabling factors described in this report, the Western Balkan countries and Turkey, as well as international stakeholders such as the EU, must develop and implement new priorities for reform. These priorities should focus on both the technical shortcomings and the political dynamics that enable them, in order to establish effective reforms.

Considering both the blurred line between the public and the private spheres that exacerbates the problem of state capture in the region and the difficulties involved in changing well-established political dynamics and structures, reforms should aim to enrich the already existing political dynamics in the seven countries. This effort requires the introduction of integrity-based incentives and perspectives into policies, and the nurturing of pro-integrity constituencies and approaches that engage different stakeholders in society.

More detailed country-specific recommendations can be found in the country reports for each of the seven countries. The following recommendations require the involvement of all stakeholders, from EU and national decision-makers to local officials and citizens.

RECOMMENDATIONS AGAINST STATE CAPTURE

- Introduce indicators to increase understanding of political practices and structures that undermine independent and accountable judiciaries and parliaments.
- Combine the strengthening of systems and regulations with political measures that take into account how power and interests determine the implementation of reforms.
- Link EU membership conditionality to the reform process itself, rather than to concrete quantitative outcomes only.[159]
- Incentivise the adoption of mechanisms for implementing anti-corruption and anti-undue influence legislation, including through conditions for accessing multilateral finance.
- Define the relationships, activities, positions, assets, interests, past offences and other eligibility issues that constitute incompatibilities for appointees in the civil service.
- Introduce a sound legal definition of conflict of interest that assumes the prevalence of the public interest over the private interest suited to the social, political and economic context of the country.
- Establish a coherent and operational framework for the management and resolving of conflict of interests, and identify specific at-risk sectors positions, activities or duties subject to that framework, including advisory and experts roles.
- Define in the law legitimate forms of political appointments and removals by high-level political power holders at different levels of government.
- Identify and empower public officials who can act as change agents and drive integrity-based politics within established government systems.
- Adopt a collective action approach – where individual behaviour is shaped by the expected behaviour of the collective – by nurturing informal

constraints against corruption to shift social norms tolerant with corruption and to bring about alternative incentives and structures in politics, combining top-down and bottom-up measures.[160]
- Strengthen existing coalitions and organise new ones that can put pressure on rule enforcement agencies by combining shared collective interests.
- Use the power of social norms to promote society-wide opposition to impunity for grand corruption and the creation of tailor-made laws by supporting civil society and awareness campaigns.
- Further promote and empower a civic culture supportive of integrity-based politics and democracy by creating spaces for dialogue between different stakeholders within countries.
- Enable and empower social networks at the regional level to demand political integrity by creating spaces for dialogue and exchange.

RECOMMENDATIONS ON POLITICAL PARTIES

- Promote the adoption of consistent and coherent political programmes by political parties as the basis for their connection with their constituencies, other political parties and policy-making. Do so by identifying the structural conditions that might act as enablers of programmatic politics, the factors that can trigger programmatic engagement, the institutional rules that might contribute to securing programmatic gains, and the driving agents and capable leaders to transition to programmatic politics.[161]
- Promote a shift of attention in political parties from ethno-nationalistic identification and clientelistic dynamics to long-term programmes and policies focused on questions of nationwide interest beyond the identification with a specific group. Identify the incentives, enablers and triggers for politicians to engage in programmes.
- Reform political finance frameworks to establish:
- Both the incompatibilities and the limits for donations by individuals and legal entities with vested interests in public policy-making and resource allocation
- Compulsory reporting and disclosure of all income and expenditures in freely accessible, machine-readable formats, as well as commensurate sanctions in case of non-compliance
- Frameworks for direct and indirect public financing of political parties and candidates
- Identify and collaborate with the driving agents of reform within political parties to shift towards political activity focused on political programmes.

RECOMMENDATIONS ON THE PERFORMANCE OF THE JUDICIARY

- Ensure an accurate recognition of corruption crimes in the criminal code and relevant legislation.
- Enhance the capacity and protection of prosecutors and judges in order to ensure their independence.
- Harmonise legislation against corruption and undue influence to avoid legal contradictions and loopholes.
- Promote cooperation among the actors and institutions involved in the prosecution of corruption by determining clear and complementary responsibilities.
- Establish mechanisms to prevent political appointments in the judicial system.
- Establish incentives for more efficient performance of the judiciary.

RECOMMENDATIONS ON LAW-MAKING AND THE PERFORMANCE OF THE PARLIAMENT

- Promote measures to cancel unjustified privileges in the content and implementation of laws.
- Create mechanisms to prevent the illegitimate abuse of urgent and special procedures.
- Ensure the coherence and consistency of legislation.
- Promote laws on lobbying where there are none and enforce those that do exist.
- Reassert that lobbying can play a positive role in the decision-making process, if properly regulated by comprehensive public consultation and a robust legal framework.
- Establish incentives for broader, transparent and participatory consultation in law-making.
- Build in safeguards that make laws invalid in the case that transparency or participation rules have been violated.
- Foreign donors (such development agencies and export credit agencies), international financial institutions and private financial institutions should be obliged by law and their internal regulations to cancel or rescind their contracts, in the case that the project they finance is facilitated by any tailor-made law.
- Bring together all stakeholders to define and commit to a constructive oversight process.
- Foster coalitions and collaborations between parliamentarians, civil society and other oversight institutions – with the support of the general public – for effective parliamentary oversight.

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