





Political Economy of Organized Corruption and Anti-Corruption in the Western Balkans

UGLJEŠA UGI ZVEKIĆ AND SUNČANA ROKSANDIĆ

### THE INFRASTRUCTURE OF INTEGRITY SERIES CONSISTS OF:

- PART 1. Executive summary
- PART 2. Political economy of organized corruption and anti-corruption in the Western Balkans
- PART 3. Western Balkans anti-corruption pledges monitor
- PART 4. National assessments

# INFRASTRUCTURE OF INTEGRITY

Political Economy of Organized Corruption and Anti-Corruption in the Western Balkans

Uglješa Ugi Zvekić & Sunčana Roksandić

#### **ACKNOWLEDGEMENTS**

The authors would like to thank Walter Kemp and Kristina Amerhauser for their support. Special thanks to our national experts for their contribution, cooperation and support: Krisela Hackaj (Albania), Eldan Mujanović (Bosnia and Herzegovina), Mentor Vrajoli (Kosovo), Dejan Milovac (Montenegro), Slagjana Taseva (North Macedonia) and Miodrag Milosavljević (Serbia). This publication was produced with the financial support of the United Kingdom's Conflict, Stability and Security Fund. Its contents are the sole responsibility of the Global Initiative Against Transnational Organized Crime and do not necessarily reflect the views of the United Kingdom

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### **FOREWORD**

e are delighted to welcome this "Infrastructure of Integrity" series prepared independently by the Global Initiative Against Transnational Organized Crime's Civil Society Observatory to Counter Organized Crime in South Eastern Europe. The reports provide an insight into the patterns of organized corruption and review progress made in implementing the anti-corruption pledges made by the six governments of the Western Balkans – Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia – at the London Summit in 2018 within the Berlin Process. These pledges cover public-private partnerships, public procurement, tax, whistleblowing, beneficial ownership, asset recovery and enforcement capabilities. Implementing these pledges is crucial in building resilience to corruption and organized crime, and in creating the conditions for prosperity across the region.

We welcome a growing focus on anti-corruption under the auspices of the Berlin Process and we hope that these reports will help inform delivery of ongoing and future anti-corruption initiatives, such as the Illicit Finance and Anti-Corruption Roadmap.

Of course, we find ourselves in extraordinary times. The coronavirus pandemic poses new challenges for us all in the fight against corruption, both in the immediate and longer term. It has reinforced the need to ensure integrity in our responses and to mobilize concerted international action.

Sadly, some organized-crime groups have quickly adapted to the pandemic and are exploiting the crisis for their own gain – for example, smuggling and selling counterfeit medical goods and increasing their use of cybercrime, such as online fraud. Unparalleled levels of government spending in response to the crisis provide further opportunities for the corrupt to exploit any weaknesses in our systems. Corruption undermines national security and prosperity, and corrodes trust in institutions. It diverts precious resources from where they are badly needed, like healthcare. Bribery, weak anti-corruption laws and the absence of effective law enforcement prevent businesses from competing on even terms in new markets – an issue of increasing concern given the expected global economic impact of the pandemic. As such, the reports highlight the important role that can be played by the private sector in the fight against corruption.

In the face of these challenges, civil society also has a crucial role to play in monitoring how governments are honouring their pledges. These reports provide a good basis for systematic monitoring of the implementation of anti-corruption pledges. We believe that cooperation between civil society and governments, as well as international cooperation, will strengthen our armour against corruption. Fighting corruption is an attitude and a culture – it must go beyond what is statutory and reach into civil society. Corruption is a transnational issue and we all have a role to play in tackling it.

The UK will continue to stand with the Western Balkans and to uphold the principles of transparency and accountability. We hope you find these reports useful.

John Penrose MP Prime Minister's Anti-Corruption Champion United Kingdom

and

Mark Shaw

Director of the Global Initiative Against Transnational Organized Crime

### **ACRONYMS AND ABBREVIATIONS**

**CoE** Council of Europe

**CPI** Corruption Perceptions Index

**EC** European Commission

**EU** European Union

GI-TOC Global Initiative Against Transnational Organized Crime

**GRECO** Group of States against Corruption

**MP** Member of Parliament

**NGO** non-governmental organization

**SDGs** Sustainable Development Goals

**UNCAC** United Nations Convention against Corruption

**UNESCO** United Nations Educational, Scientific and Cultural Organization

**UNODC** United Nations Office on Drugs and Crime

WB6 Western Balkans Six

## ABOUT THE INFRASTRUCTURE OF INTEGRITY SERIES

his report is part of the Infrastructure of Integrity series that focuses on corruption and anti-corruption in the Western Balkans. It is an output of the civil society monitoring implementation of anti-corruption pledges made at the London Summit of the Berlin Process in 2018.

The Infrastructure of Integrity series was launched with the release of the Executive Summary in 2020. This first report looks at the political economy of organized crime and anti-corruption in the Western Balkans. It is followed by the Western Balkans Anti-Corruption Pledge Monitor, which tracks implementation of the pledges made at the 2018 London Summit, as well other commitments made to strengthen integrity, particularly in relation to the UN Convention against Corruption and the EU acquis. National case studies will also be published as part of the Infrastructure of Integrity series.

Our hope is that this series can contribute to the implementation of the anti-corruption pledges that have been made in the Berlin Process, as well as to wider efforts to fight corruption and strengthen integrity in the countries of the Western Balkans.

### **Summary**

The Western Balkans continue to struggle with corruption. The problem affects so many aspects of life – from petty corruption and paying bribes to nepotism and major fraud. While significant progress has been made in putting in place appropriate anti-corruption legislation, institutions and strategies, the effective use of these measures and bodies is too often lacking. The result is what this report calls 'organized corruption' – a symbiosis of organized crime, criminal methods and high-level corruption, which creates a crooked ecosystem that enriches and protects those with access to power. The report provides recommendations on how to transform a culture of crime and corruption into a climate of integrity in order to ensure that the law is equal to all.



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### INTRODUCTION

### **Current challenges for the Western Balkans<sup>1</sup>**

fter centuries of colonialism (the Ottoman and Austro-Hungarian empires), national liberation struggles, two world wars, the tragic conflicts in the former Yugoslavia, a mass outflow of refugees, the fall of one-party and authoritarian political regimes, the collapse of socialist economies and the deprivation and frustrations linked with their nascent economic and political systems, citizens of the Western Balkans anticipate a better future. However, the region is today one of the world's most challenging transit hubs for transnational organized crime.

The region is at the crossroads of major trafficking routes and is a gateway to and from Europe. The Balkan route is one of the most used for trafficking from the East to the West and, increasingly, from the South to the West. It has expanded both in geographical width and in terms of its illicit content and organized-crime portfolio. Drugs (including heroin, cannabis and, increasingly, cocaine and new psychoactive substances), human trafficking, the smuggling of migrants, tobacco smuggling, arms trafficking and other various forms of illicit trade (such as counterfeit goods, fraudulent documents and cybercrime), with their accompanying high levels of corruption and money laundering, illustrate the broad scope of criminal activities and their impact on the region.

In the Western Balkans, transnational organized crime is not only a criminal enterprise per se, it also has a wider impact on the region's political economy. Conversely, the geopolitics of the region have an impact on criminal markets. Because of its history and geography, the Western Balkans is a region where the interests of major

world powers such as the EU, the US, Russia and China compete, along with other influential outside powers, such as Turkey and the Gulf states. Furthermore, the internal political climate and corrosive links between the political, economic and criminal elites threaten to undermine democratic and economic stability.

Organized crime in the region is dynamic and takes different forms: from hierarchical organized-crime groups to flexible associative groupings; from clan- and family-based membership to internet-based arrangements; and from groups based on ethnicity through multi-ethnic regional groupings to truly sophisticated networks operating in Latin America, Western Europe, Turkey, Africa and Asia. Many of these groups show a high capacity of adapting to new markets, use the latest technology, move and invest money and build alliances in the 'upperworld' of business and politics.<sup>2</sup>

Organized crime and corruption are not new to the Western Balkans, yet, despite their pervasiveness, research on the topic is scarce. Information is often anecdotal, and data is limited and unreliable. More information would provide a more accurate picture and enable more effective responses to the problem. However, new studies from the United Nations Office on Drugs and Crime (UNODC), the Siracusa International Institute for Criminal Justice and Human Rights, and the Global Initiative Against Transnational Organized Crime (GI-TOC) provide a wealth of information on the nature, extent and impact of organized crime and corruption in the Western Balkans.<sup>3</sup>

These studies and the recommendations of the Wilton Park regional conference held in February 2020<sup>4</sup> encapsulate the multiple links between the political, economic and criminal elites. Corruption – in its many forms and manifestations – and money laundering are strategic instruments embedded in this particular configuration. Corruption is one of the main reasons why organized crime flourishes, economic growth is hindered and trust in the judiciary is very low in all Western Balkan countries. The latter is particularly problematic since strong and independent institutions are crucial to prevent and tackle corruption and conduct more effective investigations and prosecutions, leading to final court rulings that are enforced and include dissuasive sanctions. This particular point is highlighted in the UN Sustainable Development Goals (SDGs)<sup>5</sup> and in the UN Convention against Corruption (UNCAC).

The situation is so acute that, in 2018 and again recently in 2020, the European Commission (EC) warned that Western Balkan countries show clear elements of state capture, including links with organized crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests.<sup>6</sup> Therefore, a concrete and sustained track record in tackling corruption, money laundering and organized crime must be established as a matter of urgency. As part of the Berlin Process launched in 2014 and in particular its London Summit 2018 all six countries of the Western Balkans made anti-corruption pledges. This report is part of the civil society monitoring of the implementation of those Pledges and intends to provide the better understanding of the wider corruption context and anti-corruption challenges and efforts.<sup>7</sup>

Tackling organized crime and corruption is vital for the attainment of long-term sustainable economic development, political democracy and regional stability, and is among the most important preconditions for EU integration.

Corruption is one of the main reasons why organized crime flourishes, economic growth is hindered and trust in the judiciary is very low in all Western Balkan countries.

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## REGIONAL OVERVIEW OF NATIONAL RESPONSES TO CORRUPTION

t has become a truism to say that corruption is present almost everywhere in the Western Balkans: from petty bribes given to public officials sitting behind the counter in the municipality office to sophisticated forms of corrupt transactions related to public works and/or the financial sector. Furthermore, state capture – the ultimate form of organized corruption – is not unknown in the Western Balkans.

Corruption is not a new issue for the region. As in some other parts of the world, bribery in its petty and elementary forms is almost a part of the culture: small gift giving is expected even if prohibited. Such cultural patterns sit well with inefficient public administration in which many issues are solved at the entry level based on the decision of the clerk who, in return for a small gift, may expedite a request.

Nepotism is another example of a cultural pattern in the region which stems from particularistic societies in which loyalty to people of importance and to one's own group are crucial. The 'people of importance' are then expected to favour their own kind: such a cultural pattern is meant to reinforce the position of and respect for the person of importance and to solidify the social loyalty network. This cultural pattern, although publicly condemned, is today pervasive in public employment practices and in the creation, maintenance and expansion of the support networks of party leaders or parties themselves, particularly during election periods. The result is patronage networks based on favours and connections rather than a social contract built on fairness and merit.

Despite these embedded cultural norms, in the past 30 years, efforts have been made to enact legislation, formulate strategies and develop specialized structures to prevent and fight corruption. However, as analyzed in the following subsections, the lack of implementation is worrying. In addition, little or no effort has been made towards promoting strategies to prevent corruption and build integrity.

### Legislative responses

As mentioned, in the Western Balkans petty corruption tends to be ignored in anti-corruption legislation and management – it is considered a part of life. In some cases, certain types of 'gift giving' are regulated by law, for example the Serbian 2019 Law on Health Care which prescribes the value of small gratuities that may be given to health-service personnel. That said, there have been significant attempts to implement public-administration reform by introducing legislative and policy interventions against corruption in recruitment and career advancement in the public sector.

A good example can be seen in Albania with the process of vetting the police and judiciary. These reforms have been applauded and supported by the international community, although it is too early to judge their effectiveness. But it is worth noting that both initiatives are based on approved laws, and both set up specific mechanisms for implementation, including an appeals procedure. This raises hopes that things will improve in the future. So too does the new Law on the Judicial Council, the Law on Courts, and the draft Law on Prosecution in North Macedonia. In other Western Balkans countries there are other examples of similar efforts to promote transparency, honesty and accountability in the law-enforcement and judicial sectors, most of them internationally prompted and guided.

Such initiatives are important, as they are not only part of public-administration reform but are meant to establish public trust in the criminal-justice system. Law enforcement and the judiciary are often considered the weakest links within the inadequate anti-corruption infrastructure in the region. Many corruption cases are not reported, not processed, dropped by the prosecution or reluctantly brought to the courts only to be dismissed. Conviction rates are relatively low, and even if successful, sentences are sometimes below the prescribed minimum. It appears that 'alternatives to imprisonment' (often suspended conditional sentences) are readily applied to big corruption cases in the region. Similarly, plea bargaining is often used by the defendants and public prosecution for corruption cases. Kosovo and Bosnia and Herzegovina illustrate this pattern, where making a deal outside the law is easily extended to making a deal within the law when it comes to big corruption cases.

As a consequence, the general public in the region lacks trust in the police, the prosecution and the judiciary.<sup>8</sup> Not only are the latter perceived to be highly corrupt, but several big corruption cases have involved high-level officials in those very institutions. Needless to say, these public institutions are meant to be the most reliable and should have the highest integrity when it comes to combating corruption. If they themselves are a part of the problem rather than the solution, it is little wonder that corruption is seldom reported and that it has become normalized, legitimized and even institutionalized.



Very few cases of highlevel corruption in the Western Balkans result in convictions. © *Getty Images* 

The introduction of anti-corruption legislation in the region has been dynamic and exponential. Much of this has been the result of attempts to fulfil EU requirements and, to a lesser extent, implement the UNCAC. Various reviews, in particular GRECO and EU annual reports, but also the UNCAC review mechanism, have played an important role in improving the regional legislative panorama and content. However, in some cases, national parliaments – particularly in the absence of opposition – passed certain laws and/or amendments that were not in line with the main objectives of anti-corruption. Moreover, in some countries such as Serbia, certain pieces of legislation were fast tracked. As a result, most of the anti-corruption legislation was developed and promulgated without serious and sufficient public or parliamentary debate. And, if the legislation is to be implemented by 'loyal' administrators, state attorneys and judicial officials, it is not surprising that there is a pervasive failure to follow through on corruption cases.

In spite of so many efforts and recommendations issued by the EU and GRECO, the overall picture is that the regional legislative landscape is still weak and with a number of shortcomings, particularly with regard to specific critical issues such as access to and transparency of public information; money laundering; financing of political parties and electoral campaigns; public procurement; private-sector corruption, conflicts of interest and illicit enrichment. Furthermore, there have been criticisms that, on the one hand, regional anti-corruption law-making has been too 'internationally inspired', dependent and reactive, while on the other hand, it has not been transparent enough and with too little public debate. Despite all this, the regional legislative picture is much better than some other components of the anti-corruption landscape: what exists on paper is usually better than what is done in practice.

### **Anti-corruption strategies**

Adopting an anti-corruption strategy is considered the first sign of a country's commitment to tackle corruption. Following the adoption of the UNCAC, its entry into force in 2005 and the subsequent ratification by all countries in the Western Balkans (although Kosovo is not a member of the United Nations), anti-corruption bodies were established and anti-corruption legislation and strategies were adopted.

A typical national anti-corruption strategy in the Western Balkans created an anti-corruption agency, described its mandates, provided it with basic resources and capacity, and set out how this new structure would relate to other governmental bodies and actors in the anti-corruption arena. Some countries developed action plans and/or bylaws. In parallel, in some countries, sectoral policies were promoted to deal with specific challenges.

In some cases, the measures and institutions introduced were not in line with international practice. For example, in Albania the prime minister declared a seven-point 'Catch what you can' package of measures to 'squeeze' organized crime and corruption, called Anti-KCK, to be promoted as a special law, giving extra powers to the general directorate of the state police and creating a special structure with extraordinary powers. This anti-corruption policy, which has been criticized by civil society, was later approved by the parliament.

Despite well-intentioned and well-crafted strategies and policies, a lack of political will has undermined implementation. In Kosovo, for example, a draft strategy was not approved because of the complex political situation related to the previous elections: the current draft is old and needs to be updated to reflect many new laws and to review the position and the mandate of the anti-corruption agency. In Serbia, the anti-corruption strategy expired two years ago and there is no new draft. Rather, the action plan for chapter 23 (on judiciary and fundamental rights) of the EU negotiations serves to guide the anti-corruption approach. This clearly narrows the strategic approach as well as limiting accountability for implementation. To overcome this situation, the Anti-Corruption Agency (itself to be



Poster from an anti-corruption campaign in Serbia in 2013 warning of the impact on healthcare.

changed yet again) has recommended consideration of a new strategy as an amendment to the action plan for chapter 23.

Still, there are some examples of positive evolution of national strategies based on feedback and support from external assessments. As a result, the strategies have become more targeted, methodologically sound (with performance indicators and other ways of evaluating implementation), richer in content and, in some cases, with a degree of participation by civil society. One such example is a newly drafted anti-corruption strategy for North Macedonia (2020–2024) which has yet to be approved by the parliament. This draft strategy is aligned with the Law on Prevention of Corruption and Conflict of Interest and the establishment of the State Commission for the Prevention of Corruption. It is all-encompassing, but targets specific sectors such as public procurement, employment, the political system, the judiciary, law enforcement, health, education and urban planning, and envisages an active role for the media and civil society.

Yet, in some cases, implementation of proposed measures and changes is complicated. In countries such as Bosnia and Herzegovina, even the development of a national strategy is challenging. The constitutional, political and administrative set-up of Bosnia and Herzegovina, based on the Dayton Agreement, is very complex. As a result, any national strategy has to deal with two challenges: complexity and decentralization, which require respect for diverse interests, and enormous capacity for coordination. All four anti-corruption strategies up to now have had little impact. The current anti-corruption strategy, which expired in 2019, was comprehensive, built on consultation with all levels of government (including local administration) and reflected many recommendations received over the years from GRECO, the EC, the UNCAC and the international donor community. Yet, while no final evaluation has been made, it is thought that only one-third of its objectives have been achieved.

As with anti-corruption legislation, the Western Balkans has made progress in strategizing against corruption but suffers from shortcomings in terms of implementation. The results have fallen well short of the stated objectives. Nevertheless, some new drafts and political commitments give some hope for the future.

### **Anti-corruption structures**

As mentioned, one of the first steps taken by governments in the Western Balkans was to draft an anti-corruption strategy and a special law to establish an anti-corruption body, in line with article 6 of the UNCAC. Indeed, following the entry into force of UNCAC, many countries created such bodies, to the extent that an International Association of Anti-Corruption Authorities was established. In the Western Balkans, all countries except Albania have set up anti-corruption bodies. Most of these have a rather restricted mandate focusing on prevention, public awareness, training of public-administration officials and the collection and monitoring of asset declarations from high-level public officials. These bodies also have an important coordinating role, as opposed to Albania, where the implementation of the anti-corruption strategy is in the hands of a variety of different actors.<sup>11</sup>

However, the reach of these bodies is sometimes limited. For example, Bosnia and Herzegovina's anti-corruption body was established in 2009 with nationwide jurisdiction, but its outreach and effectiveness are limited due to the complexity and decentralized administrative system of the country, in which each entity, district and canton has its own anti-corruption arrangement with different mandates and focuses. Such different normative arrangements, jurisdictions and positions within the administrative structure of each government level places systemic limits on the agency's performance.

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International donors have paid a lot of attention to strengthening the role of these anti-corruption bodies, including through mentoring arrangements. For example, for several years the Serbian anti-corruption agency hosted an EU-funded twinning project composed of Italian and Spanish experts. However, most

anti-corruption bodies – usually agencies – are not independent and are highly politicized. Some have experienced abrupt or frequent changes in leadership, as in the case of Serbia, and many have also had capacity and funding problems. Even those that were proactive received no response from law enforcement, prosecution or other specialized anti-corruption institutions to their reporting of infringements or initiation of criminal cases.

Anti-corruption agencies can get caught up in politics.

Another common anti-corruption structure in the Western Balkans is specialized law enforcement, prosecution and/or courts. A good example is in Albania which, as noted, does not have an anti-corruption body but relies heavily on other specialized prosecutorial bodies. Established in 2003 and 2004, respectively, a serious-crimes court and a serious-crimes prosecution office deal with cases of corruption committed by senior officials including judges and prosecutors. In 2007, joint investigative units composed of prosecutors and judicial officers were established to deal with economic crimes. In 2019, the Special Anti-Corruption and Organized Crime Structure was created.

There are often conflicts in jurisdiction between regular and specialized law-enforcement and prosecutorial bodies, and among the specialized anti-corruption organs. Furthermore, anti-corruption agencies can get caught up in politics. For example, in Kosovo in 2018 there was an open conflict between the chief state prosecutor and the special prosecution office over a high-level political corruption case: pressure from above eventually resulted in the resignation of one of the special prosecutors. This was a relatively direct interference, but generally more subtle pressures are exerted or no pressure is needed at all if the politicized appointments do their 'job' and specialized bodies and/or anti-corruption agencies perform as 'expected'.

Another common feature of specialized anti-corruption bodies in the Western Balkans is that they tend to be formed through a *lex specialis* – usually through a rapid procedure, and often given exceptional powers. However, these powers are rarely used against political incumbents; rather, anti-corruption processes are instrumentalized to go after the predecessors or opponents of the government. Very rarely do high-profile cases against leading politicians in power result in prosecutions. Even if initiated, there is seldom a final verdict or confiscation of assets.

Another problem is corruption among specialized enforcement bodies. The most recent example was in North Macedonia in 2019, where the special prosecutor was dismissed over corruption charges and the special office was dismantled. The following section explores examples of different types of organized corruption in the Western Balkans.



Major road construction in northern Montenegro in 2019 along a new highway being built from the port of Bar on Montenegro's Adriatic coast to Boljare in Serbia by a Chinese company.

© Savo Prelevic/AFP via Getty Images

## CASES OF ORGANIZED CORRUPTION IN THE WESTERN BALKANS

nfortunately, the Western Balkans states experience corruption at a widespread level. Yet most of these cases – from petty incidents to major fraud – never enter any public or official registry. Not surprisingly, the perceived level of corruption in countries of the Western Balkans, for example as measured through Transparency International's Corruption Perceptions Index (CPI), is high in relation to global rankings.

Western Balkans: CPI TI rank (2020) and scores (2015–2020)								
Countries	Rank (2020)	Scores						
		2020	2019	2018	2017	2016	2015	
Montenegro	67	45	48	45	46	45	44	
Serbia	94	38	39	39	41	42	40	
Kosovo	104	36	36	38	38	39	38	
Bosnia and Herzegovina	111	35	36	38	38	39	36	
Albania	104	36	35	36	38	39	36	
North Macedonia	111	35	35	37	35	37	42	

**FIGURE 1** Transparency International's Corruption Perception Index rank and scores for the Western Balkans countries.

Other corruption surveys carried out in the Western Balkans reveal the same picture. Needless to say, the dark figure for corruption in all six countries is very high. It relates both to petty corruption and to organized or high-level corruption by senior figures in politics, the public sector and business. Some of these cases are reported by the media, NGOs or whistle-blowers, bringing them to public attention. Others come to light because of the work of anti-corruption and anti-organized-crime bodies. Most, however, are never processed or become stuck in the criminal-justice system and judicial proceedings. These types of crimes are committed at a political, economic or personal level.

### Political: Financing of parties and elections

Financing of political parties, funding of electoral campaigns and methods of assuring the maintenance of political power are among the most critical items in the regional anti-corruption agenda. Although all countries in the Western Balkans have laws regulating these issues, most are considered to be inadequate. Therefore, this issue remains high on the anti-corruption agenda, including among the Berlin Process' anti-corruption pledges and in the process of EU accession. Three cases related to the financing of political parties and assuring the maintenance of power illustrate the methods used: the Envelope case in Montenegro, the Pronto case in Kosovo and the Talir case in North Macedonia were all characterized by the involvement of top ruling-party politicians who attempted to obtain funding through illicit means.

In the Envelope case (which occurred in 2016), money was given to a top official of the ruling party and a senior associate of a high-ranking politician. Funds were also collected for an election campaign by allegedly manipulating limits to individual contributions to a political party. No action was taken except against the person who made the case publicly known.

Similarly, the Pronto case involved top-level officials from the then ruling party regarding political appointments made across the state apparatus. The case was initiated by the European Union Rule of Law Mission in Kosovo<sup>12</sup> in 2011, then dismissed, then brought forward again thanks to an initiative in the media and civil society which led to a public showdown between the chief state prosecutor and the leading prosecutor from the special prosecution. Although the nine-year procedure ended in an acquittal, the case illustrates political pressures on the judiciary and how independent prosecution and civil society can make a difference – to a certain extent.

The Talir case concerns illicit party financing of the ruling party during the years 2009–2015 through a series of cash donations that violated the rules governing party funding. The case involved the prime minister at the time, Nikola Gruevski, who has since left the country and has been granted asylum in Hungary. He was indicted for abuse of public office and money laundering. As of February 2021, the trial is still ongoing, but the court authorized the seizure of the former ruling party's property, with only one defendant pleading guilty to money laundering and convicted to two years' imprisonment with a suspended sentence. This case is one among several in North Macedonia against people who were in power during the previous regime and indicates the need for more open international judicial cooperation.



Paying bribes for favours is endemic in the political economy of the Western Balkans. © Getty Images

Too often, cases involving high-level public officials pass through the anti-corruption control system without resulting in a verdict. However, there are rare and important cases in which high-ranking officials are brought to justice. One example is the case of the Albanian Supreme Court judge who used his influence in a decision over a real-estate case. Corruption within his family circle was uncovered and led the prosecution to indict the judge for a criminal offence of passive corruption. He received a suspended sentence of four years' imprisonment.

## **Economic: Fraud in public procurement and privatization processes**

The change in the economic systems of previously socialist countries after the fall of the Berlin Wall brought new developmental opportunities, but also new criminal challenges. An economic system does not rest only on economic and financial parameters, the markets and profit-driven performance: it also requires respect for fair competition, financial and organizational integrity and values. The advent of illicit activity in the Western Balkans, particularly during and after the war in the former Yugoslavia and the fall of the Albanian version of socialism, embedded organized crime into the political economy of the region. Corruption, with its pervasive presence in the political system, became a widespread instrument for bringing illicit gains and/or money laundering into the establishment.

Privatization was carried out with little respect for prescribed rules and regulations: it was often referred to as 'Wild-West privatization'. For example, in Serbia alone some 24 instances of privatization between 2000 and 2010 were considered suspicious,

and the EU representative called for an investigation. These included the privatization of banks, a telephone company, the reconstruction of the Belgrade airport and the privatization of one of the biggest mineral water companies in the Balkans, Knjaz Milos. However, no investigations were undertaken, even after a change in government. This situation is not unique to the Western Balkans. In many parts of the world, the ruling party may pursue a few symbolic anti-crime actions against political opponents or some businesses, while maintaining 'healthy' links to individuals and groups (including in business and crime) that can enable power and patronage.

Major organized corruption cases linked to large construction projects are guite common in the Western Balkans, and they almost always involve public procurement. An example of this involves the highway between Priština (Kosovo) and Skopje (North Macedonia). The contract was obtained by a Turkish-US company, but due to a number of delays involving the terms of the contractual payments, the company asked the government of Kosovo to pay very high compensation fees. Negotiations between the company and both the old and new governments resulted in an agreement of €53 million. The Kosovo police and the special prosecution service started an investigation because of alleged corruption, including claims that a much higher amount had been paid than necessary, but all documents were kept secret by the then minister of infrastructure. Despite the efforts of civil society and even the special prosecution office, it is still not known whether the investigation will go ahead.

Another example is the Trajektorija procurement case concerning the building of two sections of a major highway in North Macedonia. Collusion between the former prime minister and several top officials resulted in the unlawful appointment of a company to carry out the construction. The defendants were indicted for abuse of office and position, trading in influence and embezzlement of public funds. Several hearings were held, and the former prime minister was put on trial in absentia as the first defendant. The first-instance verdict included a detention order for the first defendant.

Montenegro has also seen a highway case that is currently under way. Bar-Boljare is the most important highway in Montenegro (spanning 129 kilometres), with a particularly difficult section due to the configuration of the land. The public bid was awarded to a Chinese company, and six subcontractors were engaged, including local Montenegrin companies. The average cost of construction per kilometre was set at US\$19.7 million but, due to delays and lack of proper planning documentation, the cost increased to US\$25 million. No documentation was ever provided, despite efforts to obtain it. Construction of the highway is said to be endangering the Tara river, a UNESCO World Heritage site. Warnings from UNESCO, the European Parliament and the EC, as well as local civil-society actors, produced no response, nor was any action taken to investigate the procurement contract, designated a state secret by the government.

While the highway cases in Kosovo and North Macedonia at least reached the courts, and in North Macedonia there was a trial that resulted in a verdict, in Montenegro the highway case was met with silence from the criminal-justice

Privatization was carried out with little respect for prescribed rules and regulations.

system. It is worth noting that, in all three cases, the public procurement and contractual documentation are considered state secrets. These cases confirm that the construction sector is among the most vulnerable to organized crime and corruption.

Corruption also manifests itself in local governance. An example of this is the misuse of public funds intended to build a local water-treatment facility in Raca, Serbia. Raca's mayor, at the time a supporter of the ruling party, awarded the project to a local company after a procurement process. Several years later no work had been done, and yet the funds have been doubled. A whistle-blower reported the abuse of public funds and was immediately fired (to be reinstated much later by a court decision) while the mayor changed parties and joined the current governing party. He even made a public appearance on a local TV station claiming that the water-treatment facility was in operation, although there were only a couple of huts erected on the spot of land envisaged for it. The first instance tribunal adjudicated in favour of the whistle-blower (who was reinstalled) but he case is still pending at the District Court of Appeals.

Briefly, this is how the corruption of public funds in Raca worked:



### Personal: illicit enrichment

Although UNCAC provides for the possible inclusion of illicit enrichment as a criminal offence, it is listed among the optional offences – that is, even countries that ratify the convention are not obliged to introduce it into domestic criminal law. Indeed, the first UNCAC review in 2017 showed that, at the time, together with corruption in the private sector and trading in influence, illicit enrichment had only been criminalized by very few countries.<sup>13</sup>



Countries in the Western Balkans have introduced mechanisms for asset declaration, usually within the mandate of the anti-corruption agency. While this mechanism appears to be working in terms of reporting of assets, there is usually no adequate monitoring of such declarations, and 'fake' ones are easily overlooked, or even used at court level to reduce the original charge for unjustified assets. Albania's High Inspectorate of Declaration and Audit of Assets and Conflict of Interests reported that 84 officials (such as former ministers, parliamentarians, judges and prosecutors) were referred to the prosecution office during 2015 for the false declaration of assets. The overall estimated amount of assets uncovered with legal documents and/ or financial sources, subject to these referrals, was €40 million.

Serbian social media and civil society were very much interested in pursuing a case – known as 'the case of the aunt from Canada' – of a minister who bought a luxury apartment without being able to explain the origin of the purchase money. The story was that his wife's aunt from Canada gave them the money, but there was no trace of any transaction. Serbia's anti-corruption agency looked at the case several times and reported to the prosecution service for organized crime, who dropped the case, and then again to the prosecutor, who also dropped the case on the grounds of no jurisdiction. As so often happens in the Western Balkans, the case faded away.

Similarly, in Montenegro, cases of illicit enrichment never reach the judicial stage. There are examples of high-level public officials, including the president, the deputy president of the parliament, and a judge of the Supreme Court of Montenegro, who own offshore companies in Cyprus or educate their children abroad without even declaring the assets as they are obliged to do. Neither the anti-corruption agency, the judicial authorities nor the prosecution took any action.

Anti-government protests in the region have raised societal awareness of state-level corruption.



all spheres of Western Balkan society.

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# SUMMARY MAIN FEATURES OF CORRUPTION AND ANTI-CORRUPTION IN THE WESTERN BALKANS

### **Coruption**

orruption is not only a criminal phenomenon, nor are laws and structures sufficient to counter it. The political economy of corruption reaches into all spheres of society. In the Western Balkans, the geopolitical context is complicated and turbulent; political relations within and between countries are tense and polarized despite so many internationally supported initiatives and meetings: from time to time, territorial, political and ethnic tensions still flare up. Wild-West privatization deprived the region of some of its major economic potential, and some countries are heavily dependent on international aid and remittances. High unemployment rates, especially among young people, accompanied by brain drain and economic migration as well as the difficult economic situation in general, are indications of vulnerability in the regional economy.

This is a fertile environment for both the informal and criminal economies. Some of this stems from the period of the Yugoslav war of the 1990s and its immediate aftermath. The nexus between politics and business maintains old links while making new alliances with actors who operate on the margins between licit and illicit activities. These channels are used by elites to maintain political support through expanding social clientelism and dependency. They are also used by controversial businessmen to create an umbrella of protection. Political corruption is not only

about illicit financing of political parties, but also about dependence based on political support networks – from the control of social welfare (like pensions, assistance to the poor and war veterans, and access to health services) through politicized employment in public administration (still one of the largest employers in the region) to appointments in important positions in the state apparatus, including criminal justice and the judiciary, and state-owned public enterprises. Economic loyalty based on meeting existential needs is still one of the most powerful instruments of support and control.

Political loyalty offers potential enrichment. The entry point is often public contracting – mostly public procurement, direct contracting and public–private partnerships. This functions as a payback mechanism

used by political parties in power to enable their supporters to claim their rewards. Public contracting is captured by politics, often with strong participation from loyal economic partners and criminal groups. This erodes a culture of lawfulness and integrity, cheats the public and rewards bad behaviour. In short, limited licit opportunities prompt a search for illicit opportunities for enrichment and power. Alliances form between the political, economic and criminal establishments that enable mutual protection and enrichment at the expense of development, democracy and the legitimacy and capacity of public institutions. This, in turn, creates further vulnerability that is exploited by organized crime and corruption.

### **Anti-corruption**

As we have seen, the region is reasonably well equipped with anti-corruption legislation, strategies and structures. The normative framework seems to be well aligned with international standards, but there are still deficiencies which the Berlin Process' anticorruption pledges are designed to correct. This can hopefully address the discrepancy between the level of international expectation, which is high, and the impact of anti-corruption instruments in the region, which is low. Producing anti-corruption strategies seems to have reached a satisfactory level in terms of meeting the expectations of the international community, yet many of those strategies are coming to an end or have expired without being renewed. Worse still, most of these national strategies have never been evaluated to assess their impact.

Governments in the Western Balkans have ticked many of the boxes in terms of creating anti-corruption institutions. However, they almost all suffer from a lack of independence and face limitations. Often, their inputs are disregarded or ignored by other bodies in the anti-corruption system. Furthermore, the leadership of these anti-corruption bodies is often changed – particularly when they become too effective. In addition, their very creation was often a reflection of the international community's lack of confidence in existing criminal-justice institutions that didn't have the independence or capacity to deal with corruption cases.

Thus, the region has a plethora of special corruption prosecutors, courts and joint multi-agency teams. But most of them are hampered by political interference, pressure and control.

The Western Balkans rates low in terms of freedom of the press and cooperation of governments with civil society. The relative absence of independent media is an indicator of the low level of democracy, and there are many cases of pressure being exerted on the media by coalitions within the political, business and criminal establishments. Many journalists have been publicly and even physically threatened and attacked – some have even been killed, but the culprits are seldom found. Still, investigative journalists courageously reveal highlevel corruption cases. Civil society is less active in this field – local NGOs addressing corruption are generally small and underfunded, and organized crime and corruption are not widely covered in academia.

In conclusion, anti-corruption efforts in the Western Balkans are very much oriented around an international agenda (particularly EU accession) rather than domestic pressures. While there is a reasonable normative basis, there is a notable absence of political will, limited implementation of legislation, almost no cooperation with civil society, and limited assessments of impact or effectiveness. When it comes to high-level organized corruption, there is de jure and/or de facto impunity.

#### CASE STUDY

### How political control is exerted in Serbia

Recent research in Serbia identified seven ways in which political control is exerted over independent institutions. These seven factors are also applicable to the Western Balkans as a whole and reflect some of the main features of the political economy of anti-corruption in the region:

- Limited accountability: the system for holding judges and public prosecutors
  accountable is ineffective and inconsistent; a lack of proactive disciplinary bodies and
  insufficient transparency helps conceal political pressure.
- **2.** Political appointments: Political bodies are involved in appointing public prosecutors and court presidents. Similarly, the criteria and selection processes for police officials are not transparent. Political influence is further exercised through a reluctance to appoint certain key positions in the police on a permanent basis with a full mandate.
- **3.** Too much discretion: Law-enforcement bodies have significant discretionary powers when they decide whether to investigate and prosecute a given case. Similarly, they do not provide adequate explanations of why they have decided to abandon an investigation. This means that possible political motivation can be hidden behind apparently routine police and prosecutorial decisions.
- **4.** Media manipulation and discrimination: Inappropriate relationships between the media and law-enforcement agencies, the judiciary and politicians take several forms: leaking information, using the media for defamation, violation of the presumption of innocence in criminal matters, favouring some media and shunning others, selective attacks on media, and inconsistent court decisions in media-related cases.
- **5.** Misuse of statistics: Manipulation of statistics about the outcomes of police work, prosecutors and courts for political gain.
- **6.** Abuse of political powers: Politicians directly influence the work of repressive state apparatus (e.g. the participation of politicians in coordinative law enforcement bodies, political influence over the appointment of senior police etc.).
- 7. Dysfunctional criminal investigations: Weaknesses in the handling of criminal investigations (misuse of the statute of limitations, failure to remove obstacles in laws, procedural mistakes and ungrounded decisions), followed by the suspicion that a decision or omission is politically motivated.

SOURCE: Open Society European Policy Institute et al, When law doesn't rule: State capture of the judiciary, prosecution, police in Serbia, 2017 (updated 2018), p 5–6, https://www.opensocietyfoundations.org/uploads/23713906-635a-429d-9107-4a9b05023378/when-law-doesn%27t-rule-20181009.pdf.



### CONCLUSION: THE CHALLENGES OF CORRUPTION

The regional academic community needs to promote anticorruption in the curriculum. © Alamy

ighting corruption demands constant efforts, education, prevention and communication. All six Western Balkan countries show signs of progress, but also setbacks. Corruption remains a constant issue and some of the Western Balkan countries struggle more than others in tackling it due to internal political turmoil. In some, a deep-rooted belief that corruption is the way of functioning is still present.

Corruption is one of the main challenges for the rule of law, life chances and livelihoods in the Western Balkans. It is closely linked to organized crime and to political and economic power bases. It has elements of state capture and goes hand in hand with money-laundering, tax evasion, selective public procurement, clientelism, patronage, impunity, lack of clear division of powers and no civil oversight. Corruption is an important ingredient in the prevailing criminal-culture paradigm.

## Key considerations for the regional anti-corruption agenda

In the Western Balkans, organized crime and corruption are not confined to the criminal underworld but are part of the political and economic establishments. This criminal, political and economic nexus must be dismantled by addressing key issues:

**Prevention**. Anti-corruption implementation is lagging behind anti-corruption legislation and infrastructure. Prevention is not only about awareness-raising and training, it should also focus on the organization and management of anti-corruption culture and practice. Reporting corruption, the protection of whistle-blowers, transparency, and implementation of local and organizational integrity plans are all crucial prevention strategies. Systematic, well-funded and accountable prevention needs to be promoted at all levels and throughout the region.

Criminal-justice systems in the Western Balkans have been subject to numerous reforms in the past 25 years. Much of their capacity has been improved and the region is fully integrated into the international and EU normative platforms and instruments. Yet, too often national approaches are either not well equipped or not well placed to professionally and effectively tackle corruption. Strategic management, high-level professionalism and political independence are essential for an effective criminal-justice response. More objective and impartial assessments are needed for the effective performance of law enforcement and the judiciary as well as for training such professionals. Particular attention should be paid to installing the culture of professionalism, integrity, lawfulness and independence.

**Civil society**. Anti-corruption needs to be promoted within civil society in the region. Media independence – and sometimes existence – in the Western Balkans is under constant strain. Investigative journalists have created several international and regional networks which are carrying out exemplary work – such efforts and networking are much needed and should be further promoted and supported. There is an urgent need to promote freedom of the press and to ensure free and lawful access to public information. Governments must provide adequate conditions and protection for the media.

The few NGOs in the region devoted to fighting organized crime and corruption experience a lack of sufficient cooperation from governments. Local NGOs and media are of crucial importance for promoting community resilience against local organized crime and corruption. Special attention should be paid to increasing community resilience, in particular in hotspots of organized crime and corruption, through, among other initiatives, donors' funding of local NGOs. NGOs need to be assisted in further promoting regional networking and mutual support.

Research in corruption and organized crime is limited in the region, and evidence-based policymaking and evaluation are almost totally absent. Promoting independent and critical research on corruption and anti-corruption will strengthen an informed civil-society. Although it might be difficult, and may face resistance from ruling elites, the academic community needs to discuss this topic in public and promote active anti-corruption education.

**Private-sector** positioning against corruption is of the utmost importance. There are some efforts by the international community, in particular by the UNODC, which have promoted such engagement of the private sector. For example, the Belgrade Outcome Statement, which was adopted in 2019, highlights weak justice systems, grand corruption, impunity, and shrinking space for civil society and the media, as well as insufficient transparency and opportunity for civil-society involvement in government decision-making and a lack of accountability among political parties.

In the Western Balkans, private-sector entities are not part of the donor community funding anti-corruption activities. This may be an indicator of a tacit acceptance of corruption as a form of business as usual and insufficient corporate social responsibility. There is definitely much more room to promote active engagement by the private sector against organized crime and corruption: both within its own scope and together with civil society and governments. Enhancing private-sector engagement in anti-corruption is fundamental for a more effective strategy and impacts.

**Regional cooperation** is a key element for comprehensive impact-oriented strategies and approaches against corruption and organized crime. Countries of the Western Balkans need to place much more emphasis on the exchange of experience, good practice and operational knowledge. Networking and regular contacts between all stakeholders in the region are essential. Efforts on this front, supported by the donor community, need to be further promoted. This will make an important contribution to building trust.

All stakeholders need to focus on fundamental reforms and the implementation of anti-corruption. It is crucial to continue with the systematic monitoring of trends in corruption and challenges and achievements in anti-corruption. The law is equal for all.

### **NOTES AND REFERENCES**

- 1 The WB6 are Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo. References to Kosovo are made without prejudice to positions on status, and are in line with UNSC Res 1244/1999 and the International Court of Justice Opinion on the Kosovo declaration of independence.
- 2 A series of Gi-Toc research reports on organized crime in the Western Balkans: Walter Kemp, Crooked Caleidoscope: Organized Crime in the Balkans, GI-TOC, June 2017; Hotsposts of organized crime in the Western Balkans, Gi-TOC, May 2019; Walter Kemp, Transnational Testacles: Global Hotspots of Balkan Organized Crime, GI-TOC, July 2020.
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- 4 With support from the UK Foreign and Commonwealth Office, the UK Home Office and in partnership with the GI-TOC, the UNODC and the Siracusa Institute, the regional conference on Tackling Serious and Organized Crime in the Western Balkans was organized and hosted by Wilton Park on 24–26 February 2020. Its report and key recommendations are available here: https://globalinitiative.net/tackling-serious-and-organized-crime-in-the-western-balkans/.
- 5 United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development. Resolution 70/1 of 25 September. A/RES/70/1 of 21 October 2015.
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- 7 For more, see the Berlin Process, Information and Resource Centre, https://berlinprocess.info/about/. The Report on Anti-Corruption Monitor Pledge deals in detail with the anti-corruption pledges.
- 8 See Regional Cooperation Council, Balkan Barometer 2019: Public opinion analytical report, https:// www.rcc.int/seeds/files/RCC\_BalkanBarometer\_ PublicOpinion\_2019.pdf.
- 9 Also due to organized corruption, which has infiltrated the highest levels of some governments.
- 10 The country comprises two entities: the Federation of Bosnia and Herzegovina itself, consisting of 10 cantons, and Republika Srpska. In addition, Brčko District has a special status.
- 11 These include the national coordinator, the directorate for programmes and projects in the field of anticorruption as part of the Ministry of Justice as well as the multi-ministerial coordinating committee for the implementation of the strategy and the inter-institution task force.
- 12 EULEX Kosovo was launched in 2008 as the largest civilian mission under the Common Security and Defence Policy of the European Union. It's mission is to assist the Kosovo authorities in establishing sustainable and independent rule of law institutions. EULEX works within the framework of UN Security Council Resolution 1244.
- 13 UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law enforcement and International Cooperation, 2017.





### **ABOUT THE GLOBAL INITIATIVE**

The Global Initiative Against Transnational Organized Crime is a global network with over 500 Network Experts around the world. The Global Initiative provides a platform to promote greater debate and innovative approaches as the building blocks to an inclusive global strategy against organized crime.

www. globalinitiative.net