



**FIGHTING CORRUPTION
IN THE WESTERN
BALKANS AND TURKEY:
PRIORITIES FOR REFORM**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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EXECUTIVE SUMMARY

Since the early 1990s, with the ever-increasing prospect of integration into the European Union, the countries of the Western Balkans and Turkey have taken important steps to develop and strengthen their anti-corruption systems. Progress has been slow, however, and the implementation of laws and policies lags far behind what is envisaged on paper.

This report is based on the findings of in-depth research into anti-corruption efforts conducted by Transparency International chapters and partners in Albania, Bosnia and Herzegovina (BiH), Kosovo¹, Macedonia, Montenegro, Serbia and Turkey between 2014 and 2015. Focusing in particular on the justice and law enforcement system, political system and non-state sectors, it highlights common trends and challenges across the region and provides the governments of these countries with a set of priorities for reform.

A consistent feature across all seven countries is the phenomenon of state capture – whereby powerful executive branches and political parties dominate all other institutions – coupled with a lack of cooperation and coordination among state actors. Both these factors undermine the ability of supposedly independent judicial, law enforcement and anti-corruption bodies to provide meaningful oversight of government activities and effectively investigate and prosecute corruption. At the same time non-state actors, in particular the media and civil society organisations (CSOs), lack sufficient capacity and independence to effectively and consistently hold governments to account. In a context of persistent social fragmentation and ethnic and religious divides, this creates the ideal conditions for favouritism and uneven application of the law to thrive. The end result is a situation in which laws and anti-corruption polices, while good on paper, are selectively enforced and corruption in public office goes largely unsanctioned.

Weak justice and law enforcement



In the Western Balkans and Turkey the responsibility for investigating and prosecuting corruption is spread out among numerous judicial, law enforcement and anti-corruption bodies. The fragmentation of punitive functions across institutions is not problematic per se, as long as these institutions can operate free from undue political interference and are able to cooperate and coordinate activities effectively. Unfortunately, experience in the region demonstrates that this is not the case, making these bodies more susceptible to manipulation and less able to perform their functions. Key problems include institutional overlap in fighting and preventing corruption (Kosovo, Serbia, Turkey), limited cooperation between the prosecution and police (Kosovo, Macedonia, Montenegro, Serbia) and regular infighting between key judicial and law enforcement actors (Albania, BiH). The region also suffers from widespread political interference in appointments, transfers and removals of judges, prosecutors and police, as well as unwarranted interference in the day-to-day operation and decision-making processes of anti-corruption and judicial bodies.

As a result, the region holds a very poor track record for prosecuting corruption, especially among high-level public officials. Even when such cases are investigated,

they generally suffer long delays and often end in acquittals or result in light and inconsistent sentences (Albania, BiH, Montenegro, Serbia)². Indictments are often poorly written and inadequately investigated, while complex corruption cases are poorly understood by prosecutors and judges (Albania, Kosovo)³.

Despite this bleak picture, there have been some important attempts to strengthen the independence of the judiciary in the region, demonstrating that, where the political will exists, reform is possible. Montenegro, for example, has introduced the principle of the immovability of judges, placed limits on political influence on the process of appointing judges and improved cooperation between the prosecution and the police by providing the grounds for the establishment of a special investigation team when it is deemed necessary. In Kosovo, meanwhile, judicial and prosecutorial councils now have greater discretion in drafting and proposing their budgets to the assembly, while the judiciary has a more prominent role in appointing members to the judicial council. In other countries, positive reforms have suffered setbacks or even been reversed, as has been the case with the loss of political independence of the High Judicial and Prosecutorial Council of BiH over the past ten years.

1 Kosovo is not a member of the United Nations. As of 8 July 2016, the Republic of Kosovo has received 113 diplomatic recognitions as an independent state, in all other countries it is still seen as territory of the Republic of Serbia, governed under UN Security Council Resolution no. 1244. No term used in this publication (e.g. country) is aimed to interfere with this dispute or to support one or another point of view.

2 See NIS assessments for Albania, BiH, Montenegro and Serbia

3 See NIS assessments for Albania and Kosovo



Captured political systems

Weaknesses in law enforcement in the Western Balkans and Turkey can be attributed in large part to the captured political systems which have developed over recent decades. Political actors wield enormous influence across almost all walks of public life, often maintaining close links with wealthy private businessmen and organised crime networks, thus undermining the rule of law. Examples of direct and indirect manipulation of the political system abound in the region, including allegations of attempts to buy votes (BiH, Montenegro), the manipulation of media coverage related to political opponents (BiH, Macedonia, Montenegro, Serbia, Turkey), the firing of public servants not associated with the ruling elite (Macedonia), the dissolution of opposition parties on the grounds of state security (Turkey), the provision of limited state aid to smaller opposition parties (Montenegro, Turkey), the abuse of public resources for election purposes (Montenegro, Serbia) and political party control of state-owned enterprises (all Western Balkan countries).

The situation is exacerbated by the weak oversight over, and limited transparency of, political parties, which means that breaches of election and campaign regulations are almost never sanctioned. One common weak link in almost all the electoral systems in the region is the electoral management bodies, which operate in five out of the seven countries covered here, and which consistently perform poorly compared to other institutions. Among other things, this may be attributable to the inadequate resources of such bodies, institutional fragmentation, limited mandates but also politicisation. One notable exception is Serbia, which has seen significant legislative improvement regarding the transparency of political parties' financial information over the last five years and an improvement in financial oversight of political parties in practice. These improvements have not yet resulted in greater confidence among the public that the financial reports of political parties are comprehensive, however.

All in all, it may not be surprising that political parties are seen by citizens as among the most corrupt institutions, with almost three-quarters of citizens in the region considering them to be corrupt or extremely corrupt.



Media and civil society under threat

In the absence of strong horizontal accountability and functioning enforcement mechanisms, it is even more critical that non-state actors have both the capacity and the freedom to hold political actors to account. However, the media and civil society both suffer from direct and indirect forms of pressure throughout the region, including physical threats and attacks (Albania, BiH, Macedonia, Montenegro, Serbia, Turkey), smear campaigns and defamation lawsuits (Albania, BiH, Macedonia, Serbia), the use of government or political party advertising to finance pro-government media, on the one hand (BiH, Macedonia), and the use of tax inspections and unequal application of the law to intimidate media critical of the government, on the other (BiH, Macedonia, Turkey), the use of anti-terror legislation to censor and prosecute journalists and activists (Turkey) and the co-optation of CSOs to promote the interests of government (Albania, Macedonia, Serbia).

With regard to the media in particular, the situation is most critical in Turkey, which has recently seen the imprisonment of journalists on false charges, internet service restrictions, restrictions on foreign journalists, violence against media personnel and facilities, and sudden changes in media regulations⁴. Nevertheless, the media sector in all countries is characterised by tight government control, external interference and self-censorship, which undermines the ability of the media to act as an independent and impartial watchdog.

4 Freedom House, 2016, 'Freedom of the Press 2016' <https://freedomhouse.org/report/freedom-press/freedom-press-2016>

KEY RECOMMENDATIONS

In order to address the weaknesses identified in this report, the Western Balkans and Turkey must take urgent steps to implement a number of priorities for reform. As long as those who abuse their positions of power remain unpunished and there is general impunity for their actions, however, there will be no trust in the legal system and no popular support for reforms. It is equally critical to ensure that the positive reforms achieved so far are not reversed, as has been the case all too often in the region. The European Union also has a critical role to play in supporting national governments in these reform efforts as part of the EU accession process.

A selection of more detailed country-specific actions is presented in the annex of this report, while a comprehensive list of country-specific recommendations can be found in each of the seven National Integrity System assessment reports (see methodology section)



Justice and law enforcement

- Reduce executive influence over the judiciary and prosecution by ensuring transparent and more objective systems for the appointment, transferral and dismissal of judges and prosecutors.
- Reduce the politicisation and strengthen the professionalisation of the police by applying strict sanctions on members of the police force who engage in political activity in the course of their duties and by ensuring merit-based appointment of police personnel.
- Strengthen cooperation between bodies responsible for investigating and prosecuting corruption and improve the quality and sharing of information regarding the prosecution of corruption offences.
- Minimise delays in processing corruption cases and provide transparent justifications for decisions not to prosecute.



Political system

- Improve the transparency of political party finances, including full publication of parties' incomes and expenditures.
- Develop stronger and more coordinated oversight of political party and campaign finances and activities and ensure that violations of electoral and campaign regulations are consistently punished.
- Apply strict penalties for the abuse of public resources for election campaigns.
- Ensure the integrity of those running for political office, for example by establishing checks on candidate backgrounds and excluding those faced with criminal charges.



Media and civil society

- Investigate all allegations of threats and violence against media and civil society representatives without delay and apply strict sentences when these are proved to be well founded.
- Ensure full transparency in terms of media ownership and civil society organisation funding.
- Ensure fair and transparent procedures for the allocation of state subsidies and tax exemptions for civil society and media organisations and establish clear rules for state-sponsored advertising in the media.
- Ensure effective and apolitical regulation of media and civil society organisations.

INTRODUCTION

The National Integrity System Methodology⁵

This report is based on the findings of seven National Integrity System assessments implemented by Transparency International chapters and partners in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey between 2014 and 2015⁶ as part of a project funded by the European Commission aimed at improving good governance in EU accession countries by decreasing corruption⁷. The National Integrity System assessment approach provides a framework to analyse the robustness and effectiveness of a country's institutions in preventing and fighting corruption. When the institutions and sectors that make up the National Integrity System work together effectively, they allow the anti-corruption system to run smoothly. When one or more of the institutions is particularly weak, cracks appear, allowing corruption to seep into the system.

The National Integrity System is generally considered to comprise the following institutions: legislature, executive, judiciary, public sector, law enforcement agencies, electoral management body, ombudsman, supreme audit institution, anti-corruption agencies, political parties, media, civil society and business. For this research, the public prosecutor was assessed separately from the judiciary/law enforcement agencies, while state-owned enterprises were also included.

Each of the institutions and sectors included in the National Integrity System is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity
- the extent to which the institution fulfils its assigned role in the anti-corruption system, such as providing effective oversight of the government (for the judiciary) or preventing and investigating corruption (for anti-corruption agencies).

The National Integrity System assessment examines both the legal framework and the actual institutional practice, thereby highlighting discrepancies between the formal provisions and the reality on the ground.

The assessment is primarily qualitative, using a combination of primary and secondary data, including national legislation, secondary reports and research, field tests and interviews with key experts.

National Integrity System assessments have been conducted in over 100 countries to date, providing Transparency International chapters with strong evidence to push for much-needed reforms to strengthen the anti-corruption systems in their countries. Since the assessment exercise seeks to involve the wider anti-corruption community in its process, strong local ownership, widespread consultation and buy-in from key anti-corruption actors help ensure an effective uptake of the emerging recommendations into advocacy and policy reform initiatives.

Background and Context

Since the early 1990s the Western Balkans have embarked on a slow but steady path towards democratisation. With the prospect of integration into the European Union, all Western Balkans countries, as well as Turkey, have signed and ratified the United Nations Convention against Corruption and taken steps to develop and strengthen their anti-corruption systems. Progress is slow, however, and the implementation of laws and policies lags far behind what is envisaged on paper.

It is important to note that historical differences between the countries of the former Yugoslavia and Turkey (and to some extent Albania) have resulted in very different legal and institutional settings. It is also worth noting that this research was carried out at a time of significant internal developments within Turkey, which have rapidly reversed decades of reforms. Notwithstanding these differences, there are a number of trends that can be identified across the region.

A key determinant of whether a given set of anti-corruption institutions and laws is likely to prove effective is the social and political foundations on which these institutions and laws rest. In the Western Balkans and Turkey, these foundations are fragile, with social fragmentation and ethnic and religious divides creating a context in which favouritism and uneven application of the law are the norm rather than the exception.

⁵ See www.transparency.org/whatwedo/nis for more on the National Integrity System assessment methodology.

⁶ All findings in this report are drawn from the seven NIS reports, unless otherwise stated: Albania, BiH, Kosovo, Macedonia, Montenegro, Serbia, Turkey

⁷ See http://www.transparency.org/whatwedo/activity/turkey_and_western_balkans_national_integrity_systems

In BiH, a key challenge to anti-corruption efforts is the complicated constitutional structure and the oversized and ethnically divided state apparatus. The use of divisive rhetoric by some politicians has had a negative impact on cooperation between the entities that make up the country. In the absence of a unifying narrative, nationalism and ethnic division thrive, and are often used as a political tool by self-interested politicians. As a result, societal integration has not received much public support, with citizens voting almost exclusively along ethnic lines. This creates the ideal conditions for patronage networks to emerge and become embedded, which is a serious obstacle to tackling corruption in the country.

Inter-ethnic tensions are also a feature of Kosovar and Macedonian society. In Kosovo, such tensions are especially apparent in four northern municipalities, where the dominant Serb population seeks to maintain the presence of Serbian institutions, while the Kosovo government looks to fully establish its control. The political dialogue with Serbia to normalise relations has not seriously advanced despite active support and significant investment on the part of the European Union. In Macedonia, divisions are most stark between Macedonian and Albanian citizens. While the Ohrid Framework Agreement, established in 2001 between political parties representing ethnic Macedonians and ethnic Albanians, provides the basis for inter-community relations, there are insufficient financial and human resources and inadequate cooperation between the authorities concerned to implement the agreement effectively. As a result, the main political players continue to be divided between Macedonian and Albanian ethnic blocs.

Similarly, in Montenegro, there is a form of duality in many fields. For example, there are two Orthodox Churches, which do not recognise each other and have occasional verbal conflicts. Moreover, citizens of the Islamic faith are divided between those who consider themselves Muslims and those who consider themselves Bosniaks. When it comes to the Albanian minority, there are also two groups, Catholic and Muslim Albanians. Divisions among citizens are particularly conspicuous when it is in the interest of the ruling structures, usually ahead of elections.

Social incohesion is also a feature of Serbian society, albeit for different reasons. Key drivers are the socio-economic disparities between the regions and continuing poverty, exacerbated by austerity measures imposed since 2011. Ethnic minorities have access to media in their own languages and their own political parties and other types of associations. The political leadership has sought to integrate national minorities, but occasionally faces problems, in particular with the ethnic Albanian majority municipalities in southern Serbia and the predominantly Muslim/Bosniak region in the south-west.

Strong patron–client relationships have been evident in Turkey ever since the Ottoman Empire. In modern-day Turkey, these relationships are particularly evident in local elections, when the political elite offers resources and favours in exchange for political support. Thus political associations and affiliations are important determinants of access to resources. Social exclusion and marginalisation are felt on a variety of levels: from ethnicity to gender, and religion to sexuality. The official number of minorities in Turkey is unknown because ethnicity and religion are not included in the state census. Nor does the constitution mention the rights of minorities. In addition, it is very difficult for minorities to have their voices heard, because, with a 10 per cent share of the vote in the general elections being required to gain a seat in parliament, such groups remain unrepresented in mainstream politics. The Kurdish population in particular has been engaged in a long-standing conflict with the state, which has led to the death of upwards of 30,000 people from both sides and a significant internally displaced population.

Albania stands somewhat in contrast to most of its neighbours. Albania's religious coexistence has become a trademark of the country in the outside world. The Interreligious Council in Albania has often gathered leaders of different religious communities together in addressing issues of common concern. Moreover, religious leaders frequently attend celebrations of other religious groups as a sign of respect. Albania is also a somewhat more ethnically homogeneous country, with an overall climate of tolerance and good inter-ethnic relations. Despite the generally positive climate, however, and as is the case throughout the Western Balkans region, Roma and Egyptian communities continue to be marginalised, with less access to education, healthcare, social services and the labour market.

The Western Balkans region as a whole is also characterised by a stark urban–rural divide, whereby vast resources have been centralised in the countries' capitals, with rural dwellers migrating to urban areas or abroad. The situation has not been helped by an absence of strategies for rural and regional development, particularly access to education and jobs – a long-term sustainability problem that is leaving large areas of the countryside vacant with limited future prospects.

KEY FEATURES OF NATIONAL INTEGRITY SYSTEMS IN THE WESTERN BALKANS AND TURKEY

In general, the National Integrity Systems of the Western Balkans and Turkey are characterised by relatively strong independent oversight agencies (supreme audit institutions, ombudsmen and anti-corruption agencies), while non-state actors and law enforcement/prosecutorial bodies are among the weakest institutions. In the middle lie the three branches of state power (legislature, executive and judiciary).

A consistent feature across all countries is the dominance of the political parties over the executive branch and all other institutions, and a lack of cooperation and coordination among state actors. Both these factors undermine the ability of independent oversight agencies to provide meaningful oversight of government activities and decisions. Thus, while they are somewhat stronger than other institutions in terms of their capacity to function, the influence of independent oversight agencies is seriously jeopardised by consistent failures on the part of governments and parliaments to act upon their recommendations.

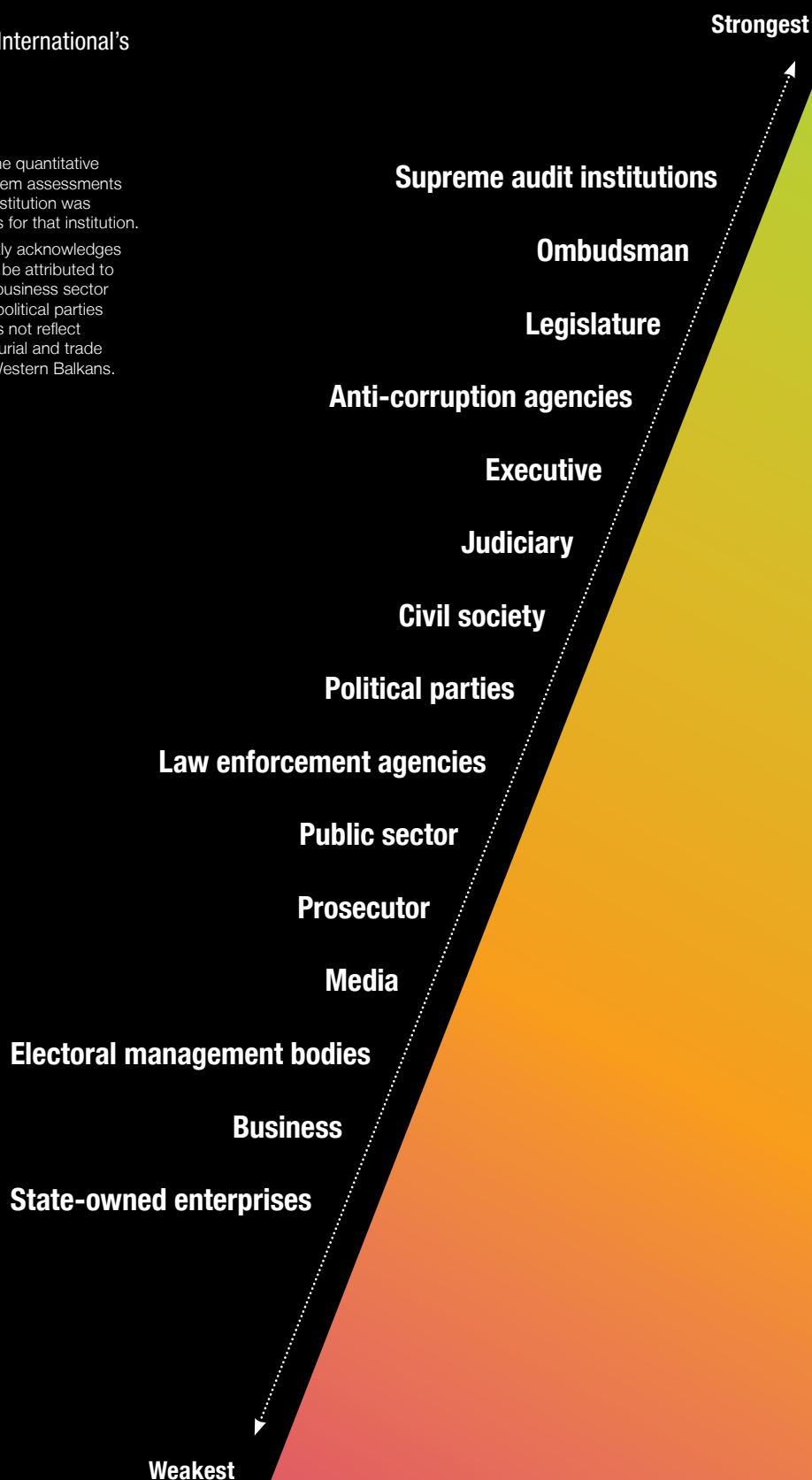
Neither are non-state actors, in particular the media and civil society, sufficiently capacitated and independent to effectively and consistently hold governments to account. This situation is exacerbated by widespread political interference in the work of supposedly independent law enforcement and judicial bodies. These imbalances have serious repercussions for the functioning of the National Integrity Systems of the respective countries. The end result is a situation in which laws and anti-corruption policies, while good on paper, are selectively enforced and corruption in public office goes largely unpunished.

How do the institutions of the National Integrity Systems in the Western Balkans and Turkey compare⁸?

Own elaboration based on Transparency International's National Integrity System assessments.⁹

⁸ Institutions in order of relative strength based on the quantitative information presented in the National Integrity System assessments of seven countries. An aggregate score for each institution was calculated by averaging each of the country scores for that institution.

⁹ The National Integrity System methodology explicitly acknowledges that weaknesses in any given institution may often be attributed to the actions of (an)other(s). Thus, for example, the business sector is intrinsically linked to the influence/ownership of political parties and other powerful interests in the region and does not reflect the suppressed but traditionally vibrant entrepreneurial and trade community of family and small businesses in the Western Balkans.





JUSTICE AND LAW ENFORCEMENT

1.

WEAK JUSTICE AND LAW ENFORCEMENT

The United Nations Convention against Corruption (UNCAC) recommends that states establish a body (or several bodies) to combat corruption, alongside law enforcement agencies, the judiciary and the prosecution. According to the Organisation for Economic Co-operation and Development (OECD), existing models for such specialised bodies include: (a) multi-purpose agencies with law enforcement powers and preventative functions; (b) law enforcement type institutions; and (c) preventative, policy development and coordination institutions.¹⁰

In the Western Balkans and Turkey, existing anti-corruption bodies fall overwhelmingly into the latter category. This means that, in most cases, the responsibility for investigating and prosecuting corruption lies elsewhere, or is spread out among numerous bodies. The fragmentation of punitive functions across institutions is not problematic per se, as long as these institutions can operate free from undue political interference and are able to cooperate and coordinate activities effectively. Unfortunately, the region holds a very poor track record for prosecuting corruption, especially among high-level public officials.

FIGURE 2 FUNCTIONS OF THE PRIMARY ANTI-CORRUPTION BODIES IN THE WESTERN BALKANS AND TURKEY

Own elaboration based on Transparency International's National Integrity System assessments.

Function	Policy Coordination	Prevention	Education	Political Finance Oversight	Investigation	Prosecution
Albania: High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI)	No	Yes	Partially	No	No	No
BiH: Agency for Prevention of Corruption and Coordination of the Fight against Corruption	Yes	Yes	Yes	No	No	No
Kosovo: Kosovo Anti-Corruption Agency	Yes	Yes	Yes	No	Partially	No
Macedonia: State Commission for the Prevention of Corruption (SCPC)	Yes	Yes	Yes	No	Partially	No
Montenegro: Agency for Prevention of Corruption	Yes	Yes	Yes	Yes	No	No
Serbia: Anti-Corruption Agency	Yes	Yes	Yes	Yes	Partially	No
Turkey: Inspection Boards	Yes	Yes	Partially	No	Partially	No

¹⁰ OECD, 2013, 'Specialised Anti-Corruption Institutions: Review of Models' <https://www.oecd.org/corruption/acn/specialisedanti-corruptioninstitutions-reviewofmodels.htm>

Institutional fragmentation and infighting

Regardless of the legal and institutional set-up in place, anti-corruption, judicial and law enforcement bodies need to work closely together to be effective. Failure to cooperate can lead to political isolation, which makes such bodies both more susceptible to manipulation and less able to perform their functions. Unfortunately, the lack of institutional cooperation is a common feature of most of the countries in the region, albeit for different reasons.

In Kosovo, the problem stems partly from the institutional overlap in fighting and preventing corruption, which causes confusion amongst citizens. Currently there are numerous institutions that play a role in addressing corruption, including the President's Anti-Corruption Council, the Kosovo Anti-Corruption Agency (KACA), the Anti-Corruption Task Force in the Special Prosecution's Office, the networks of prosecutors coordinating corruption cases in six basic prosecution offices and in the Pristina Office, and the EU Rule of Law Mission in Kosovo (EULEX). This fragmentation is exacerbated by the fact that the State Prosecutor's office lacks initiative, integrity and resources, and is therefore largely ineffective in the fight against corruption.

Limited cooperation between the prosecution and the police in conducting investigations is also a problem in **Montenegro**. The vast majority of criminal complaints submitted to the State Prosecutor's Office come from the public (non-governmental organisations and private firms). Criminal complaints are rarely submitted by the police, while those submitted by oversight bodies or auditing agencies are extremely infrequent.

The Serbian Anti-Corruption Agency's position is weakened by unclear division of mandates for monitoring the implementation of the country's anti-corruption strategy between the government's Anti-Corruption Council, the Ministry of Justice and the governmental coordination body headed by the prime minister. Strengthening of the agency's role in all anti-corruption fields is envisaged by the 2013–2018 National Anti-Corruption Strategy, though progress has been slow due to a lack of support from the government and parliament. Furthermore, the public prosecution does not make sufficient use of the findings of either the Anti-Corruption Agency or the Anti-Corruption Council for criminal investigations, nor does it collaborate sufficiently with the police. Much the same can be said of Turkey, where inspection boards suffer from a lack of clarity between their objectives, roles and responsibilities vis-à-vis internal audit units.

Albania's justice system is also characterised by various institutional conflicts. Parliament has rejected 14 presidential nominations to the High Court since 2008. The role of the High Council of Judges (HCJ), meanwhile, has been undermined as a result of a conflict between the president and parliament over the latter's removal in 2014 of two HCJ members who had been appointed by the previous parliament.¹¹

In BiH, institutional conflict takes the form of frequent, bitter and public accusations between prosecutors' offices, courts and law enforcement agencies. In several instances such mutual accusations have resulted in the filing of criminal charges against senior officials in prosecutors' offices and law enforcement agencies. Such practices create an atmosphere of distrust among the key actors who are supposed to ensure impartial application of the law. To make matters worse, the fact that BiH has four nearly completely autonomous legal systems (state, two entities – one of which has ten cantons – and Brčko District) makes inter-institutional cooperation even more challenging. These systems are virtually detached from each other. Legislative activity that regulates the work of the judiciary and law enforcement agencies takes place within those jurisdictions without sufficient harmonisation. This set-up also has negative implications for judicial resources, as funding comes from 14 different local budgets, which undermines stability and predictability and makes the judiciary vulnerable to political interference through budgeting processes. All these factors open up room for uneven judicial practices, inconsistent application of laws and unequal treatment of the same factual and legal situations, while criminals continue to operate unhindered across these administrative boundaries.

In Macedonia, cooperation among the judiciary, the State Commission for the Prevention of Corruption and the Prosecution Office for Organized Crime and Corruption is consistently reported to be weak or non-existent.¹² In an attempt to address this fragmentation and in light of the political crisis that erupted following the publishing of a series of wiretapped conversations in late 2015 (see below), the government established the Special Public Prosecutor's Office as an ad hoc body to address issues of high-level corruption in the country. The extent to which this new body will prove effective remains to be seen.

¹¹ See NIS assessment for Albania

¹² See NIS assessment for Macedonia

Political interference

Appointments, dismissals and promotions

Best practice suggests that senior officials of anti-corruption, judicial and law enforcement bodies should be appointed through a process that ensures their independence, impartiality, neutrality, integrity, apolitical stance and competence. It is essential for the heads of anti-corruption bodies to have security of tenure, and dismissal procedures should involve parliaments, ideally through a two-thirds majority.¹³ In the Western Balkans and Turkey, such principles are by no means universally applied.

In Serbia, representatives of the executive and legislative branches participate in bodies that appoint judges and prosecutors. Although judicial professionals make up the majority in these bodies, appointments of prosecutors and court presidents based on political ties have been evident in several prominent cases.

In BiH, political interference in the selection and appointment of management personnel is also believed to be commonplace. The election of the president of the High Judicial and Prosecutorial Council (HJPC) in 2014 is one such example. The media had previously widely reported on his ties to organised crime while holding the position of president of the District Court in Banja Luka¹⁴. Despite such warnings, rather than being met with disciplinary or preliminary investigation proceedings, he was promoted to one of the highest judicial offices in the country. Since then the HJPC has reverted to operating under the strong influence of political elites and has reversed a decade of painful integrity and professionalisation reforms¹⁵.

In Macedonia, the appointment of members of the State Commission for the Prevention of Corruption and the selection and promotion of judges are also politicised. A series of wiretapped conversations that emerged in late 2015 revealed, among other things, that the director of the security service and the first cousin of the prime minister kept a list of eligible candidates for judges and issued orders regarding whom to promote and whom to prevent from being appointed to senior positions¹⁶.

In Albania, it is the position of the Prosecutor General that presents a particular concern. S/he is appointed by proposal of the president and only simple majority consent in parliament. The Prosecutorial Council, which oversees the work of prosecutors, is a very formal and weak structure, unable to keep a check on the Prosecutor General's power over prosecutors' careers and discipline. As a result, almost 80 per cent of prosecutors believe that the current appointment

STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY IN MONTENEGRO AND KOSOVO

Montenegro has undergone some important judicial reforms in recent years. The latest amendments to the constitution, adopted in 2013, followed by the adoption of a new legal framework in 2015, have strengthened the independence of the judiciary. Refoms include the introduction of the principle of the immovability of judges and limits on political influence on the process of appointment of judges. The new law has also created grounds for improving cooperation between the prosecution and the police through the establishment of a special investigation team, which, if necessary, may be set up by the Chief Special Prosecutor. Apart from the Chief Special Prosecutor, the team may consist of police officers from the Police Department, investigators and civil servants from other competent bodies. While these developments are promising, it is too early to judge to the extent to which they will have an impact in practice.

Kosovo has also undergone some important judicial reforms. The laws on the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) were amended in June 2015, giving both institutions greater discretion in drafting and proposing their budgets to the Kosovo Assembly. In addition, legal amendments in March 2016 in line with the recommendations of the Venice Commission now require that seven members of the KJC be appointed by the judiciary and only two members by the Kosovo Assembly. Previously, the KJC consisted of 13 members, nine of whom were appointed by the assembly.

formula for the Prosecutor General lacks guarantees of independence and should be changed. Of the four Prosecutor Generals who have held office since the entry into force of the 1998 constitution, two have been discharged from office through parliamentary investigative committees. Both cases were challenged at the Constitutional Court, which ruled in favour of the Prosecutor Generals, though those decisions were never enforced. Political interference in Albania is also evident in the police force, which suffers from massive turnover after changes in government, and, to a lesser degree, during the same administration. Thus, for instance, during the first year of the new left-wing government (September 2013 to September 2014) more than 60 per cent of the police force were dismissed, demoted, transferred, admitted or readmitted.

13 Transparency International, 2013, 'Best Practices for Anti-Corruption Commissions', 21 March http://www.transparency.org/whatwedo/answer/best_practices_for_anti_corruption_commissions

14 See NIS assessment for BiH

15 Bertelsmann Stiftung, 2016, 'BTI 2016: Bosnia and Herzegovina Country Report' https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Bosnia_and_Herzegovina.pdf

16 See NIS assessment for Macedonia

The situation in Turkey is particularly concerning. In 2010 Turkey implemented a range of significant constitutional amendments for judicial administration. One outcome of the amendments was to strengthen the presence of the minister of justice and Undersecretary in the Higher Council of Judges and Prosecutors (HSYK), which cast a shadow over the independence of the judiciary. Numerous reassignments and dismissals of judges and prosecutors followed, as well as reassignments, dismissals and even the detention of a large number of police officers. Later, following the eruption of a far-reaching corruption scandal in December 2013, in which more than 50 individuals associated with the ruling Justice and Development Party (AKP) were arrested on corruption charges, as many as 784 judicial and 104 administrative judges and prosecutors linked to the investigation were reassigned to different positions. The situation deteriorated further following the failed July 2016 coup attempt. Within days the Higher Council of Judges and Prosecutors had issued a list of 2,745 judges and prosecutors to be suspended on suspicion of being members of the Gülen movement (see below).

In addition, 48 members of the Council of State, two members of the Constitutional Court, 140 members of the Court of Cassation and four members of the HSYK were to be investigated. On 27 July 2016 the minister of the interior announced that 1,684 judges and prosecutors had been jailed.¹⁷

Operations and decision-making

As well as interference in appointments, transfers and removals, there are numerous instances of unwarranted political interference in the day-to-day operation and decision-making processes of judicial and anti-corruption bodies.

In BiH, the executive openly exerts pressure on prosecutors' offices by issuing demands and making threats in public. In one example of such pressure, the president of Republika Srpska (RS: one of BiH's two entities) threatened to abolish a local court, following its ruling to freeze the bank account of a company that had been taken over by the government after its failed privatisation. A further example was the arrest of the party president of the Union for a Better Future of BiH (SBB BiH) and former minister of security, Fahrudin Radončić. Holders of the highest state functions attempted to exert direct pressure on the judiciary to change its decision regarding the custody of Radončić. Of particular concern were the statements made by members of the presidency of BiH, requesting the judiciary to alter its decisions and accusing it of trying to damage the ruling coalition¹⁸.

KOSOVO'S POLICE: INDEPENDENT AND TRUSTED

Compared to its neighbours, institutional independence of the police is relatively strong in Kosovo. This is because the criteria for the selection, nomination and dismissal of officials are comparatively objective and transparent. To ensure that rules are applied in practice, there are a range of inspectorates that supervise police activities. Moreover, the Kosovo police force has grown more transparent over the past five years, preparing daily reports, which may be accessed upon request. As a result, the police are the most trusted law enforcement institution in Kosovo.

A similar situation exists in **Serbia**, where the executive has recently adopted the practice of publicly commenting on trials and announcing arrests and detentions in the media ahead of court decisions. This is seen as detrimental to the independence of the judiciary and is compounded by the fact that there is little visible follow-up on such cases once media interest has subsided. Independence is further endangered by the politicisation of investigations and the creation of ad hoc teams for investigating cases prioritised by politicians.

In Turkey, the operational independence of prosecutors is compromised because the chief prosecutor or deputies can transfer prosecutors' cases to others without proper justification. Moreover, deputy prosecutors have to approve files completed by public prosecutors before they can be forwarded to the court even though such an approval mechanism does not exist in the legislation.

In Albania and Macedonia, reports of political intervention in judicial decisions are also common. None of the criminal cases against serving government officials in Albania have resulted in convictions, with the High Court and the prosecution blaming each other for the failures. The only politicians to have been found guilty by the High Court are opposition members of parliament accused of libel by members of the executive or close associates. In Macedonia, meanwhile, such practices are illustrated by the case of the minister of interior's alleged intervention to request that the Public Prosecutor drop the indictment against the deputy prime minister, who was accused of a crime related to official duties¹⁹. The Public Prosecutor did not pursue the case.

17 Human Rights Watch, 2016, 'Turkey: Judges, Prosecutors Unfairly Jailed', 5 August www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed

18 <http://www.fokus.ba/vijesti/bih/bakir-izetbegovic-fahrudin-radoncic-zasluzuje-da-se-brani-sa-slobode-foto/205715/>

19 See NIS assessment for Macedonia

Selective justice

The end result of the weaknesses identified above is a consistently poor track record in terms of punishing corruption, especially among high-level officials. This is the key reason for the lack of public trust in institutions, their integrity and any commitment to fighting corruption.

In BiH, penal policy for acts of corruption is weak. There is a noticeable tendency among judicial institutions at higher levels to ignore corruption cases altogether. Even when investigations are launched against middle-ranking or high-ranking officials, they generally drag on for years and end in acquittals. As a result, only 19 per cent of all such cases resulted in prosecution during the period from 2009 to 2014.²⁰ Sentences, meanwhile, are usually close to the legal minimum prescribed by law, and in some cases even lower, with only 20 per cent of convicted persons being sentenced to prison, the rest receiving only conditional sentences.

In Kosovo, the number of corruption-related cases brought to justice is small and on the decline, with corruption convictions falling by almost a half between 2009 and 2012, coinciding with the withdrawal of the international community and a gradual takeover by national authorities. Indictments are poorly written and not well investigated, while many of the intricacies of corruption cases go beyond the comprehension of the State Prosecutor, making it difficult for judges to make informed and well-reasoned decisions.

In Montenegro as well corruption proceedings are too lengthy, while penal policy remains uneven. Almost every initiated court proceeding is related to petty corruption. There have been only a few proceedings against middle-ranked state officials for larger corrupt acts, and even fewer convictions. Even when such convictions are handed down, punishments are mild, unequal and inconsistent. On the other hand, lower-ranked officials convicted of petty corruption are sentenced to prison, which boosts official prosecution statistics.

In Serbia, the number of reported and prosecuted cases of corruption increases every year, but convictions in high-profile cases are extremely rare and trials last a very long time. At the same time, there are numerous media reports of undue interference in the work of media and independent institutions that are not investigated.

Albania's track record for punishing corruption is equally poor. Annual convictions for corruption offences have varied from two to 24 over 2009 to 2014, predominantly of low and medium-level offenders in the public sector. Convictions of high-level officials are extremely rare. Judges apply lenient sanctions, using probationary sentences and summary judgments, and failing to justify them in a timely manner, or at all. Furthermore, judges demonstrate poor understanding of key notions in corruption cases, fail to exercise their right to ask for more evidence and decide inconsistently on issues such as the admissibility of evidence. In 2013 the prosecution reported no cases of high-level officials, judges or prosecutors being sent to court.

²⁰ TI-BiH, 2015, 'Monitoring procesuiranja korupcije pred sudovima i tužilaštvima u Bosni i Hercegovini' <https://ti-bih.org/wp-content/uploads/2015/12/Monitoring-procesuiranja-korupcije-16-12-2015.pdf>



CAPTURED POLITICAL SYSTEMS

2.

CAPTURED POLITICAL SYSTEMS

Weaknesses in law enforcement in the Western Balkans and Turkey can be attributed in large part to the captured political systems, which have developed since the early 1990s. Political actors wield enormous influence across almost all walks of public life, often maintaining close links with wealthy private businessmen and organised crime networks, undermining the rule of law. The situation is exacerbated by weak oversight over, and limited transparency of, political parties, which means that breaches of election and campaign regulations are almost never punished. It is perhaps not surprising, therefore, that political parties are seen by citizens as among the most corrupt institutions, with almost three-quarters of citizens in the region considering them to be corrupt or extremely corrupt (see below).

Political patronage and intimidation

Political parties in BiH are little more than interest groups representing the personal, financial and political interests of their own leaders, rather than the interests of citizens. In practice there are often conflicting interests within the parties themselves, mainly concerning the distribution of functions or profits generated by public enterprises and institutions. Furthermore, the existing regulations do not separate party functions from professional functions in public enterprises and institutions, and there are no restrictions on public officials using their position to promote their political party or themselves as candidates. Manipulation of the political system by political parties was illustrated by a leaked audio recording of the then candidate for the prime minister of the government of Republika Srpska following the general election in 2014, in which she appeared to suggest buying the votes of MPs in the RS National Assembly.²¹ The case also demonstrated the extent to which the police of RS are under the control of the ruling party. The police subsequently raided the premises of the media outlet that had published the recording and initiated an investigation into who was responsible for the leak, but failed to conduct a proper investigation of the vote-buying allegations, despite the fact that the MPs mentioned in the recording later switched sides and were instrumental in ensuring that the ruling party maintained its majority in parliament.

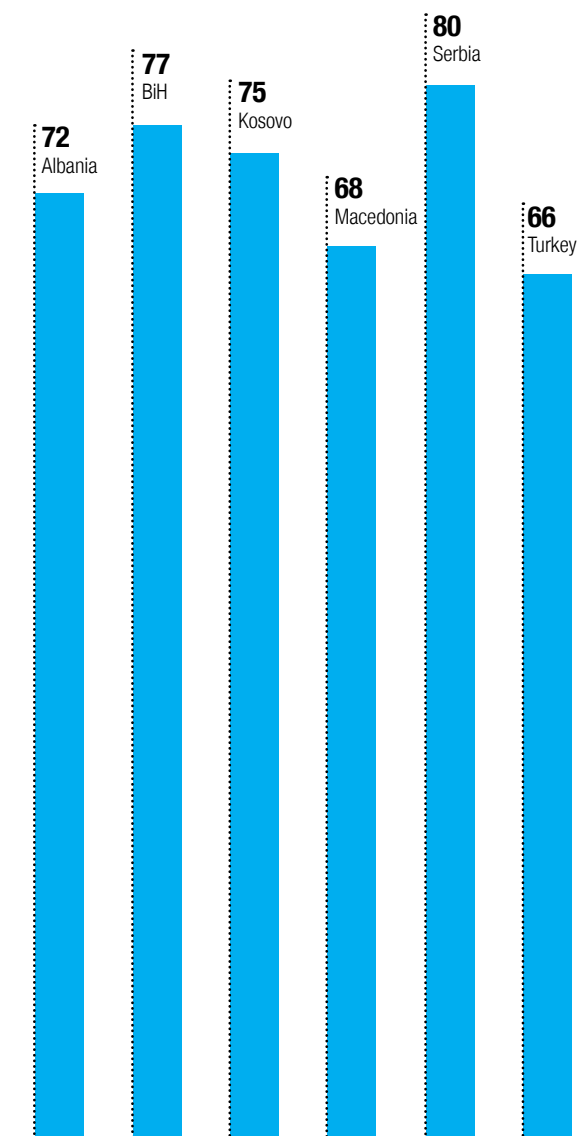


FIGURE 3 PERCENTAGE OF CITIZENS WHO BELIEVE THAT POLITICAL PARTIES ARE CORRUPT/EXTREMELY CORRUPT*

Transparency International, 2013, 'Global Corruption Barometer'

²¹ See NIS assessment for BiH

In Macedonia, the political landscape is dominated by the ruling coalition led by VMRO-DPMNE, which applies pressure on members from smaller parties to join the coalition. As a result, several politicians from small political parties have joined VMRO-DPMNE in order to increase their chances of winning elections. A series of wiretapped conversations leaked throughout 2015 revealed the extent of harassment and attacks on political opponents. For example, among the recordings were conversations between leading members of the government regarding media coverage of the arrest of Ljube Boshkoski, an opposition party leader, and the firing of people employed in public institutions who were not members of VMRO-DPMNE.

In Turkey, the dissolution of political parties has been used as a political tool to drown out dissent. Two cases in particular illustrate this trend. The first case was opened against the ruling Justice and Development Party due to alleged actions against the secular establishment of the state in 2008. The AKP narrowly avoided being dissolved when six of the 11 members of the Constitutional Court voted against the move. The second case was against the pro-Kurdish Democratic Society Party (DTP) for alleged action against the indivisibility of the state in 2009. The DTP was dissolved and the 37 party members, including two members of parliament and four regional mayors, were banned from politics for five years.

Political control in **Montenegro** is maintained largely via pressure on the financial resources of smaller opposition parties: companies and individuals are afraid

to make donations to opposition parties because of the fear of retaliation from the authorities. At the same time, the main ruling party has generated considerable income by lending its premises to the government during election campaigns, thus effectively abusing state funds for election purposes. A series of recorded conversations, published by one of Montenegro's daily newspapers in early 2013, revealed discussions among senior officials about vote-buying strategies, including offering employment opportunities to voters and providing one-time social benefits, subsidies and other benefits in exchange for votes. The conversations also revealed attempts to manipulate the electoral register, raising serious concerns about the validity of election results.

Political control in **Kosovo** is most blatantly exercised through state-owned enterprises, a feature that Kosovo shares with many of its neighbours. SOEs in Kosovo are effectively run by political parties, which have direct influence on the day-to-day activities and strategic decisions of the SOEs, the largest employers and economic drivers. For instance, political parties have the final say in appointing, controlling and dismissing the members/directors of SOE boards. It is also at their discretion to appoint the CEOs of SOEs, who are subjected to pressure to sign contracts, make decisions and implement board policies on behalf of companies or interest groups that financially support political parties. Similar practices to control trade flows, subsidies and procurement and appoint loyal individuals through SOEs exist throughout the Western Balkans.

FIGURE 4 INSTITUTIONS RESPONSIBLE FOR POLITICAL FINANCE OVERSIGHT

Own elaboration based on Transparency International's National Integrity System assessments.

Type of Oversight Institution	Electoral Management Body	Auditing Agency	Court	Anti-Corruption Agency	Other
Albania	X				
BiH	X				
Kosovo	X				
Macedonia	X	X		X	X
Montenegro	X		X		
Serbia		X		X	
Turkey			X		X

Weak oversight of political finance

In a context of widespread interference in the political system, it is even more important that strong oversight of political parties is ensured and that the sources of political finance are transparent. For various reasons, however, such oversight is either largely absent or too fragmented to be effective. Even where sanctions are imposed, they are often too lenient to deter political parties from violating the law. One common weak link in almost all the electoral systems in the region is electoral management bodies, which operate in five out of the seven countries covered here, and which were consistently assessed as performing poorly compared to other institutions in the National Integrity Systems.

In BiH, the oversight of political parties is hampered by the inadequate resources of the Central Election Commission (CEC), which supervises the financial reports of political parties. Furthermore, as the CEC is not mandated to conduct detailed control of how parties' resources are spent, political parties are left to spend taxpayers' money as they choose. In addition, the fact that the law does not require political parties to use a single bank account for all ingoing and outgoing transfers results in the use of cash and hinders financial control. Although some progress has been made in terms of eliminating the barriers to publishing the identities of individual donors to parties, there are many aspects of parties' operations that remain extremely opaque. The absence of detailed audits of parties' costs and the limited public availability of parties' expenditure figures, due to the imprecisely defined mandate of the CEC, leaves ample room for irregularities.

A similar picture emerges in **Kosovo**. While political parties are required to present financial reports to the Central Election Commission (CEC), in practice these reports are incomplete and inaccurate, particularly when it comes to revealing the sources of income from private donors. Meanwhile, the CEC has insufficient capacity to track political parties' funds more closely. All party annual financial reports and campaign financial disclosures are subject to auditing, but under the new law the CEC is no longer responsible for auditing. Instead, at least ten licensed auditors are to be elected by the Committee for the Oversight of Public Finances through an open public announcement, which has yet to take place. As a result of this gap, the auditing of party financial reports for 2013 and 2014 did not take place.

The exercise of financial control over political parties in **Macedonia** is dispersed among different institutions and is undermined by the weakness of audit and verification mechanisms. Thus, the practice of parties spending amounts that exceed deposits on specially opened bank accounts is not uncommon. Such cases have not been effectively audited and verified by the responsible entities. Nevertheless, cooperation between the supreme audit institution and the other entities involved

AN IMPROVING PICTURE IN SERBIA

There has been significant improvement regarding the transparency of political parties' financial information over the last five years in Serbia. The improvement is mostly a result of compliance with the new legal provisions, in force since 2012. There has also been a notable improvement in the financial oversight of political parties in practice. All major parties deliver their annual financial reports, reports on donations and reports on election campaign costs to the Anti-Corruption Agency. Nevertheless, the significant legislative improvements in the last five years, and the increased transparency and oversight, have not resulted in greater confidence among the public that financial reports are comprehensive. Furthermore, the influence of political parties in the public sector is still considered to be among the main causes of corruption.

in the supervision of political financing (the State Election Commission and the State Commission for the Prevention of Corruption: SCPC) has improved, and a track record of penalties has begun to develop.

In Albania, the Central Election Commission (CEC) is responsible for the oversight of both public and private political party funds, while the High State Control Office may audit political parties for funds allocated by the state budget. The inadequate independence of both bodies leaves room for partial and discriminatory decision-making, a common complaint among smaller parties. The CEC, for example, has only two members of staff to manage the process of overseeing political party finances and relies on external certified accounting experts. Furthermore, financial report submission deadlines are not fixed and there is no obligation at all to disclose financial information during campaigns. The donation threshold above which the disclosure of donors' identities is mandatory is high and unclearly formulated, leaving room for the artificial splitting and subsequent hiding of funds, while the threshold of campaign expenditure is far too high to be relevant. Very few parties submit their financial reports on time, with only ten per cent of parties registered in court submitting theirs in 2014.

Unlike its counterparts in Europe there is no independent agency in **Turkey**, which is mandated to oversee the operations and finances of political parties in Turkey. Instead, the Constitutional Court is authorised with auditing the financial accounts of political parties and dissolving them.



MEDIA AND CIVIL SOCIETY UNDER THREAT



3.

MEDIA AND CIVIL SOCIETY UNDER THREAT

In the absence of strong horizontal accountability and functioning enforcement mechanisms, it is even more critical that non-state actors have both the capacity and the freedom to hold political actors to account. The picture in this regard is rather bleak across the region. Direct and indirect forms of pressure on both the media and CSOs include physical attacks; smear campaigns and defamation lawsuits (especially against those receiving foreign funding); the use of government advertising to finance pro-government media, on the one hand, and the use of tax inspections and unequal application of the law to intimidate media critical of the government, on the other; the use of anti-terror legislation to censor and prosecute journalists and activists; and the co-optation of CSOs to promote the interests of government.

It is not surprising, then, that – according to Freedom House's 2016 'Freedom of the Press' ranking – the countries covered in this report represent seven out the nine worst performers for press freedom in Europe.²² Turkey and Macedonia stand out as recording the biggest declines on the index. In Turkey, the fall is attributed to the imprisonment of journalists on false charges, internet service restrictions, restrictions on foreign journalists, violence against media personnel and facilities, and sudden changes in media regulations²³. Macedonia, meanwhile, is the only country in South-east Europe (excluding Turkey) with an imprisoned journalist. The journalist in question was sentenced to four and a half years for allegedly revealing the identity of a protected witness in a murder trial. He was well known for his political blog, which was critical of the government.²⁴

Although the imprisonment of journalists is not widespread elsewhere in the region, the media sector in all countries is characterised by tight government control, external interference or self-censorship, which undermines the ability of the media to act as an independent and impartial watchdog.

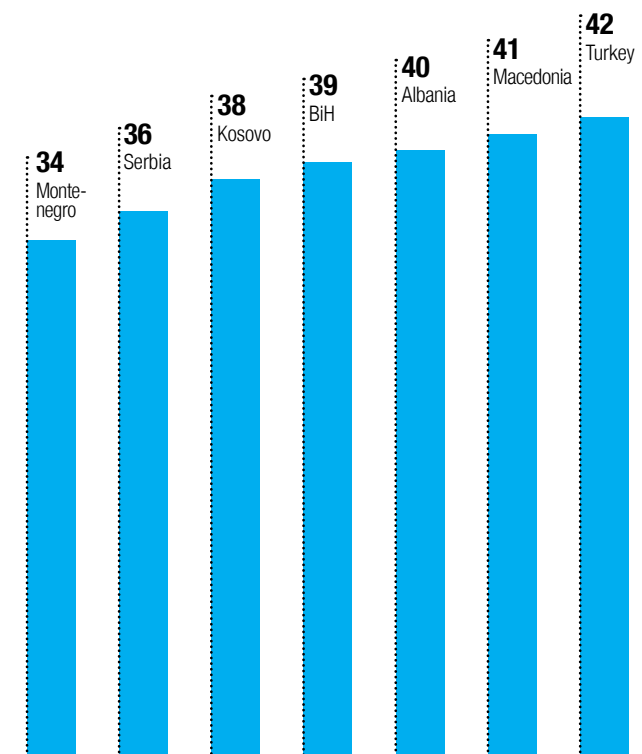


FIGURE 5 FREEDOM OF THE PRESS IN THE WESTERN BALKANS AND TURKEY

Freedom House, 'Freedom of the Press 2016'.

Note: 0 represents the most freedom and 100 represents the least.

²² Freedom House, 2016, 'Freedom of the Press 2016' <https://freedomhouse.org/report/freedom-press/freedom-press-2016>

²³ Ibid.

²⁴ Ibid.

Government control and intimidation

In **BiH**, the majority of media are dependent on and controlled by the ruling elite and powerful oligarchies. Government institutions remain the biggest advertisers, which they use as leverage to finance outlets whose editorial policies promote their interests. This is particularly evident during election campaigns, when they openly put themselves at the service of ruling parties. On the other hand, media outlets that are critical of the government very often face pressure and threats, as well as physical violence from politicians or criminal groups. The few media outlets that do practise investigate journalism are additionally exposed to impromptu investigations, and fiscal and tax controls. Moreover, even when media outlets are successful in exposing a high-level corruption case, they generally receive a very limited response from law enforcement and judicial institutions, which either fail to investigate the cases properly or do so only once the person in question has fallen from power. Intimidation and violence against activists and civil society organisations are also evident, mostly involving human rights advocates and activists investigating alleged corruption. There are still cases of external interference in the operation of CSOs, including media-led smear campaigns aimed at tarnishing their image, arrests of activists and a failed attempt to introduce a 'foreign agents' law', which would have imposed even greater government control of civil society organisations receiving foreign support.²⁵

Much the same can be said of **Macedonia**, where the state exerts strong control over the media through unlimited and unregulated government advertising. On 1 July 2015, as a result of international pressure, the government proclaimed a moratorium on government advertising campaigns in national media outlets through the Przino Agreement, although, at the time of writing, the political parties have not reached a consensus on legal amendments to ensure compliance with the agreement. One recent case of political interference in media operations is particularly illustrative. With reference to the wiretapped conversations that appeared to reveal the involvement of political figures in criminal activities, corruption, misappropriation, a murder cover-up, vote-buying and other serious offences, the state prosecutor issued a statement warning the media about the possible legal consequences of publishing information that could be used as evidence by criminal justice institutions. The statement was widely criticised as an attempt to stifle media freedom. A further challenge in Macedonia is the fact that the media regulator, AAVMS, is neither politically nor financially independent.

At the same time, the majority of journalists from the pro-government media have re-established the Macedonian Association of Journalists (MAN). MAN has been criticised for stifling pluralism and any criticism of the authorities.

Politicisation of the regulatory institution (the Audio-Visual Media Authority) and the public broadcaster is also a feature of government control in **Albania** and has resulted in their failure to carry out their mandates effectively. Albanian journalists have also faced political and criminal pressure in the form of threats and violence. At least seven such cases have been publicly registered over the past two years. While police protection is sometimes provided and investigations are initiated, there has been no indication of any prosecutions or convictions. Libel charges against journalists are rare, but hostile statements from politicians against journalists have been noted. CSOs in Macedonia are equally subject to political pressure, including frequent defamation and libel lawsuits. CSOs have been subjected to violence and intolerance in recent years, including an attack on an LGBT centre and homophobic articles in the media. Foreign-funded CSOs critical of the government are often attacked in the media as 'traitors' and 'enemies of the state'.

The same is true of **Montenegro**, where journalists who investigate corruption cases are often accused of endangering alleged national interests and branded by top-level government officials as 'traitors to the nation'. Frequent attacks and threats to journalists serve to silence those who dare to investigate sensitive issues and criticise the government or other powerful interest groups, which effectively fosters self-censorship.

In **Serbia**, there is a growing trend of self-censorship and undue influence on editorial policies and websites. According to the Independent Journalists' Association of Serbia, there were 22 attacks on journalists in 2014 – 12 physical assaults and ten verbal.²⁶ The most severe attack has yet to be solved. The minister of interior claimed that the attacked journalist could not recognise his attackers in a line-up, despite the fact that the journalist claimed he had never been asked to do so. In contrast, CSOs in Serbia are generally free to operate independently of the government. Nevertheless, there are still attempts by the government and political parties to co-opt and manipulate CSOs for their own interests. CSOs dealing with sensitive issues, such as corruption and abuse of public funds, as well as CSOs operating at local level, are more often subject to verbal attacks, pressure and negative campaigns in the pro-government media. There have been cases of captured CSOs promoting the interests of the government or launching campaigns against independent bodies or other CSOs that criticise the government.

²⁵ Reuters, 2015, 'Bosnian Serb lawmakers withdraw "Putin's bill" as anti-European', 19 May <http://www.reuters.com/article/bosnia-law-ngo-idUSL5N0YA2FG20150519>

²⁶ <http://inserbia.info/today/2014/12/nuns-22-attacks-on-journalists-in-serbia-this-year/>

One such example involved two organisations joining the Ministry of Justice campaign against the Anti-Corruption Agency following its recommendation that the minister be dismissed. Meanwhile, political party officials continue to establish their own CSOs in order to access public funds through education or training for party members and officials. Some prominent CSO members are incorporated into governmental structures, such as the head of one prominent CSO dealing with elections and party financing, who was appointed as the head of the Government Office for Reconstruction and Flood Relief.

The co-optation of CSOs is also evident in **Albania and Macedonia**. In the former case, examples include the accession of CSO leaders to government or political posts, the establishment of CSOs by politicians and the inclusion of advocacy leaders in government structures. In Macedonia, such CSOs are seen as an extended hand of government. For example, the recently registered Association for the Spiritual Unification of Setinci, Popadinci and Krushodari from Lerin has no staff, funds or website, but nonetheless donates monuments worth millions of euros.

The situation in **Turkey** is particularly critical. There is serious concern surrounding the Law on Anti-Terror and the Turkish Penal Code, which have been repeatedly used to censor and prosecute journalists. Freedom House and the Committee to Protect Journalists have named Turkey as the world's leading jailer of journalists, followed closely by Iran and China. The government's actions to suppress freedom of speech increased following a major corruption scandal in December 2013 and have further intensified since the attempted coup in July 2016. A number of journalists who investigated and reported on the details of the 17 and 25 December 2013 corruption cases have since been sentenced. By 2015, there were 120 ongoing cases against 70 journalists who covered the scandal. Again, in December 2014, 31 people, including journalists and television producers, known to be close to a US-based Muslim cleric Fethullah Gülen, were detained. According to the Turkish Journalists' Association, 1,037 journalists were fired in the first six months of 2014 because of news coverage on corruption cases.

TURKEY: CIVIC PROTEST LIVES ON DESPITE INCREASING PRESSURE

Despite, or perhaps because of, the escalating crackdown on civil society in Turkey, the Third Sector Foundation (TUSEV) suggests that Turkish citizens are moving from high-profile protests to sustained, alternative engagement. Since the Gezi Park protests of 2013, new forms of mobilisation have emerged to counterbalance and challenge power. Local neighbourhood assemblies were established throughout Turkey following the Gezi protests, solidifying the resistance in neighbourhoods and providing living examples of face-to-face direct democracy.

More recently, according to Amnesty International, the Turkish authorities arbitrarily blocked access to more than 20 news websites in the days following the July 2016 coup attempt and the government revoked the licences of 25 media houses in the country. In addition, 34 individual journalists have had their press cards cancelled and at least one journalist has had an arrest warrant issued against her for her coverage of the attempted coup. It is not surprising, in this context, that many journalists practise self-censorship in order to avoid government scrutiny and reprisals. CSOs in Turkey suffer similar repression, including arbitrary application of the law, unequal treatment and frequent and wide-ranging audits by authorities, particularly against those working on human rights. As with the media, interpretations of civil society activities based on the Law on Anti-Terror often hinder freedom of speech and association and often result in aggravated prison sentences and pre-trial detention periods. Concepts of 'general morality', 'Turkish family structure', 'national security' and 'public order' are also widely used to hinder freedom of speech and association.

ANNEX: COUNTRY-SPECIFIC RECOMMENDATIONS



Justice and law enforcement system

- **Reduce executive influence over the judiciary and prosecution by ensuring more objective, transparent and merit-based systems for the appointment, transferral and dismissal of judges and prosecutors.**

Turkey: the government should transfer the selection of judges and prosecutors from Ministry of Justice to the HSYK and put an end to interference in the work of the prosecution, including intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liabilities.

Macedonia: the Judicial Council should ensure full implementation of the principle of the merit-based appointment and promotion of judges in order to strengthen the independence, impartiality and integrity of the judiciary.

Montenegro: the judiciary should publish decisions on the selection and promotion of judges based on clear and detailed criteria.

Serbia: the High Judicial Council should implement procedures for the appraisal of judges and conduct procedures for establishing the accountability of judges for omissions in their work, indicating the length of the proceedings, ignorance of the law or unprofessional conduct.

Albania: political parties in parliament must adopt justice reform through wide cross-party consensus, ensuring, inter alia, appropriate independence and accountability for judicial institutions and the prosecution.

- **Limit the discretionary powers of chief prosecutors and increase the capacity of prosecutors to handle complex corruption cases.**

Turkey: the prosecution should restrict the authority of the chief public prosecutors over public prosecutors. The practice of the approval and redistribution of cases, which is at the sole discretion of chief public prosecutors, should be abandoned.

BiH: mechanisms to oversee prosecutors' unlimited discretionary powers to initiate/call off investigations should be introduced; The High Judicial and Prosecutorial Council of BiH should strengthen the capacity of prosecutors' offices to conduct complex financial investigations and improve coordination with police at different government levels.

Serbia: the State Prosecutorial Council and prosecution offices should increase the number of prosecutors who investigate cases of corruption in order to conduct proactive investigations on the basis of identified patterns of corrupt behaviour, which can be assumed or for which there are indications that it occurs elsewhere.

- **Reduce the politicisation and strengthen the professionalisation of the police, including through the application of strict sanctions on members of the police force who engage in political activity in the course of their duties.**

Macedonia: the Ministry of Interior should establish effective mechanisms, including a whistleblowing mechanism, to prevent political activities on police premises. This is necessary in order to strengthen police officers' ability to resist undue political interference, and their ability to resist being instrumentalised during elections or political rallies as tools of political parties.

Montenegro: strict sanctions should be applied for Police Directorate staff who abuse or neglect their duties or who are engaged in political party activities. The introduction of an internal whistleblowing mechanism would also help identify misconduct.

Albania: parliament's multi-party inquiry committee on the police should agree on and publish a work calendar and eventually a thorough report on career decisions and dismissals in the police, accompanied by recommendations for the way forward. A parliamentary resolution committing parties to stability and professionalism in the police should be considered at the end of this process.

- **Significantly strengthen cooperation between bodies responsible for investigating and prosecuting corruption and improve the quality and sharing of information and data regarding the prosecution of corruption offences.**

Turkey: deficiencies in coordination and cooperation between inspectorates should be resolved through the formation of a regulatory anti-corruption framework.

Kosovo: the Assembly of Kosovo should review the law enforcement/ investigation competence of the KACA, following a general review of the institutional set-up of all the country's anti-corruption mechanisms.

BiH: prosecutor's offices and the police across different executive levels should strengthen cooperation, particularly in terms of documenting corruption-related crimes.

BiH: the government should strengthen cooperation with all institutions with anti-corruption mandates, as well as cooperation with institutions in the preparation, implementation and monitoring of integrity plans.

Serbia: the government and the Ministry of Interior should establish the anti-corruption unit envisaged by the National Anti-Corruption Strategy and clarify the position of SBPOK (Service for the Fight against Organised Crime) and its relation with the new unit.

- **Minimise delays in corruption cases, provide clear justifications for decisions not to prosecute, and extend statute of limitations for corruption-related crimes.**

Montenegro: the judiciary should publish all plea agreements, decisions on deferring criminal proceedings and decisions on dismissing criminal charges.

Serbia: the High Judicial Council and courts should conduct an analysis of procedures in cases of allegations of corruption crimes, which take a long time, and present the reasons for delays to the public.

Albania: the Judicial Inspectorate should conduct a thematic inspection of corruption adjudications as a first basis for improving judicial practice in this area.



Political system

- **Significantly improve the transparency of political parties, including the regular and comprehensive auditing of party finances.**

Kosovo: the CEC should prioritise the external auditing of party financing.

Turkey: the campaign finances of all candidates for local, parliamentary and presidential elections should be regulated and subjected to auditing.

BiH: the Law on Political Party Financing should introduce an obligation for political parties to use single bank accounts for all their financial transactions. The law should also introduce auditing for parties' expenditures (not only revenues), in order to ensure their effective control. The formats of financial reports should be more detailed to include information on all expenses.

Albania: political parties should proactively publish comprehensive biographies of election candidates, and funds and expenditure details, at regular intervals during the upcoming 2017 electoral campaign and before election day.

- **Develop stronger and more coordinated oversight of political party activities and finances and ensure that violations of electoral and campaign regulations are consistently punished.**

BiH: the law should expand the range of sanctions that the country's Central Election Commission can impose on political parties and candidates (such as the denial of budget funding to parties that repeatedly violate the rules).

Serbia: the government should propose, and parliament should adopt, amendments to the Law on Financing Political Activities as envisaged by the National Anti-Corruption Strategy and Action Plan, so as to clearly set out and divide the responsibilities of the Anti-Corruption Agency, the State Audit Institution and other authorities in the process of controlling political activities and political entities, and to precisely determine the obligations and mechanisms for the transparent financing of political entities.

- **Apply strict penalties for the abuse of public resources for election campaigns.**

BiH: the Law on Political Party Financing should introduce detailed restrictions on the use of public office and institutional resources for the purpose of the pre-election promotion of candidates and parties.

Serbia and Montenegro: both governments should propose, and both parliaments should adopt, legal amendments to regulate the misuse of office by public officials to promote their parties in election campaigns.

- **Ensure the integrity of those running for political office.**

Kosovo: political parties should promote a more democratic culture by introducing guidelines that require politicians under indictments to resign from their political party and any public position they hold.

Albania: political parties should establish strict checks on election candidate backgrounds, introduce selection criteria for election candidates that give weight to public credit, community service and distinct professional achievements and combine professional and financial backgrounds, with a view to countering the growing trend of businessmen entering office. They should involve communities and party structures in candidate selection.



Media and civil society

- **All countries should actively investigate all allegations of threats and violence against media and civil society representatives and apply strict sentences when these are proved to be well founded.**
- **Ensure full transparency in terms of the ownership and funding of media and civil society organisations.**

Turkey: to ensure transparency and eliminate self-censorship, media ownership structures need to be regulated by an independent Radio and Television Supreme Council (RTÜK) and media owners' other businesses made public knowledge.

Serbia: parliament should amend the Law on Public Information and Media in order to require media outlets to make public details on major financiers and advertisers.

- **Ensure fair competition and a level playing field among media and civil society organisations.**

Turkey: the legal framework regulating tax exemptions and collections of donations should be reviewed in order to eliminate inequalities and create an enabling environment for civil society. Public benefit status given to associations and foundations should be objectively defined and the granting of public benefit status should be freed from political influence.

Macedonia: The government should amend the Law on the Media and ensure that political advertisements are not allowed in the public media service, and will be regulated with national licences.

BiH: to ensure equal treatment for all media in the market, the government should ensure transparent and competitive procedures for the allocation of state subsidies and establish transparent rules for advertising in the media, in order to enhance media independence and competition.

Montenegro: the government should allocate funds to non-governmental organisations from the state budget through a public competition, laying down clear and objective criteria and detailing how these were matched, and establish mechanisms for overseeing the implementation of financed projects.

- **Ensure effective and apolitical oversight and regulation of media and civil society organisations.**

Turkey: administrative autonomy and political neutrality of the Radio and Television Supreme Council should be ensured and the provisions on freedom of expression should be strengthened to ensure editorial independence.

BiH: the government should ensure the independent election of members of the management boards in the public broadcasters, through public and competitive procedures.

BiH: the government should further define procedures for the registration of CSOs so as to prevent them from being owned or manipulated by the individuals in power.

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