

# Judiciary in the Western Balkans:

## The long road from political dependence towards EU standards

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Western Balkans:**  
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towards EU standards**  
SELDI policy brief no. 12, December 2020

## KEY POINTS:

# Judiciary in the Western Balkans: the long road from political dependence towards EU standards

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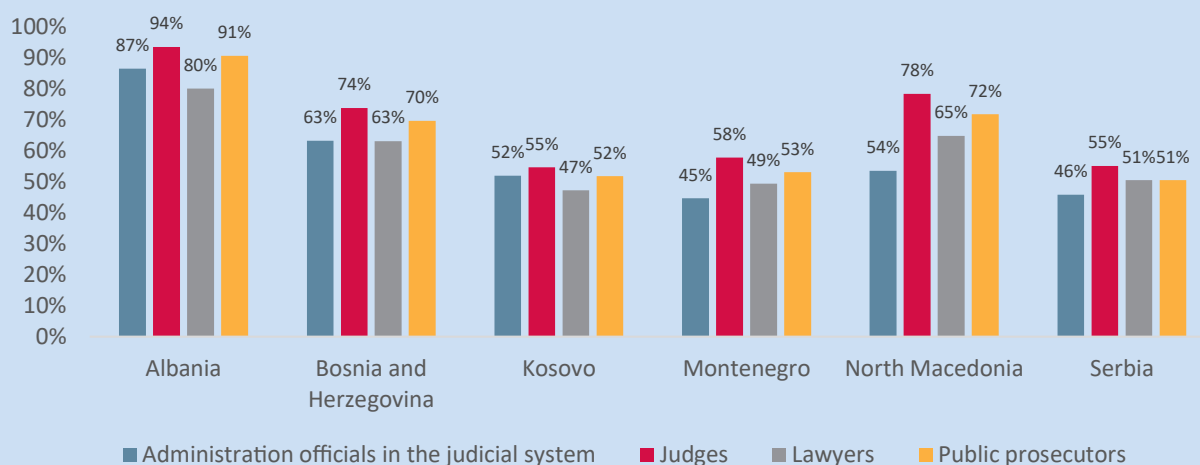
- Corruption, lack of independence and undue influence are still prevalent in the judiciary systems of the Western Balkans. As a result, public perception of judiciary corruption is grim. According to the SELDI Corruption Monitoring System 2019, between 55% and 94% of the citizens believe that judiciary officials are corrupt.
- Although judicial reforms have been ongoing for more than a decade in the region, significant progress has not been observed beyond the formal legislative approximation mandated by the EU. The reforms stop short of enforcement and still lack concrete results. The number of final convictions of public officials implicated in corruption remain in the single digits despite public knowledge that indicates otherwise.
- Corruption is compounded and blurred by many additional challenges across the judiciaries in the region. Public prosecutor's offices remain underfunded. There is a lack of specialized competence, such as for example financial forensics. Management structures are unclear and competences overlap.
- In recent years, Western Balkan countries have introduced the practice of an initial training and evaluation (or vetting) of judges as part of the judicial reform process, the effects of which have yet to be fully observed. Albania has introduced checks into the candidate judges' assets. North Macedonia applies integrity tests.
- There are many steps that the Western Balkan countries need to undertake to achieve EU standards of law enforcement. The independence of the judiciary should be increased, reducing political meddling and oligarchic capture; the appointment, promotion and dismissal of judges and prosecutors need to be transparent; codes of ethics should be amended to address corruption; prosecutors' and judges' colleges should be split up and continuous training for holders of judicial office should be made compulsory.

## INTRODUCTION

It is a common assessment of international organisations and the public that there is a high presence of corruption in the judiciary systems of the Western Balkans. The results of the *SELDI Corruption Monitoring System 2019* confirm that between 55% and 94% of the citizens believe that judiciary officials in the Western Balkans are corrupt. It might be concluded that the presence of corruption and political influence are major obstacles to judicial indepen-



**Figure 1. Perception of corruption among judiciary officials in Western Balkans countries, 2019**



**Source:** SELDI Corruption Monitoring System, 2019.

\* The designation "Kosovo" is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

dence. The lack of convictions in corruption cases, in particular such relating to high level corruption, supports this claim.

Although judicial reforms have been ongoing for more than a decade in the countries of the Western Balkans, no significant progress has been observed. The essence of these reforms has been limited to improving the legislative framework and other technical matters, but implementation and anticorruption performance has remained poor. The judiciary in the Western Balkans is under political and oligarchic pressure, including through undue influence and corruption. In theory, the principle of independence should protect the judges and prosecutors from undue influence, both criminal and political. But comparative analyses of available data, reveal that the legislative and the executive still exercise a strong influence on the judiciary election process and budget allocation. All of these issues present major hurdles on the EU accession path of the Western Balkan countries (Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia).

The lack of independence of the judiciary in the Western Balkans directly hinders the fight against corruption. This is indicated by very low number of corruption-related sentences, especially in cases related to high-level public officials. Besides the political interference, the system is also weakened by the lack of institutional capacity and weak institutional cooperation. The European Commission offers continuous reminders, through its reports on the Western Balkan countries, that results have been very limited in the enforcement of disciplinary accountability and of the codes of ethics for judges and prosecutors.

## INTEGRITY OF THE JUDICIARY

### Judicial independence: challenges for judicial office holders

The European rule of law standard calls for an independent judiciary and prosecutors. In the Western Balkans, however, the establishment of an independent judiciary

often necessitates changes in the constitutional and legislative framework, as well as considerable functional improvements. When setting up institutions, the policy-makers of the Western Balkans often forget (on purpose) that their independence, success and even legitimacy depend not only on the formal requirements for their establishment, but also on how new employees gain access to them.

A common denominator for Western Balkan countries is the role of the Judicial and Prosecutorial Councils in the selection, promotion and dismissal of judges and prosecutors. The requirements for entering judicial office are also similar across the countries from the region. Moreover, judges hold permanent appointments, except in Serbia, where judges are first appointed for a three-year probation term. In recent years, Western Balkan countries have introduced the practice of an initial training and evaluation of judges as part of the judicial reform process, that influence the appointment and promotion process. In all of the countries analysed herein, promotion is conditioned by the extent of professional experience, which usually entails a specific duration of work experience for different judicial offices, as well as positive performance evaluations. Countries are phasing in performance evaluation systems, the effects of which have yet to be fully observed.

In **Albania**, the insufficiently-funded courts tend to succumb to political pressure and undue influence, despite provisions by the constitution for an independent judiciary. For this reason, an important condition in the selection of judges, apart from having graduated from the School of Magistrates,

is a check into candidate judges' assets. This serves as an anti-corruption measure implemented by the High Council of Justice.<sup>1</sup> Despite this, corruption in the judiciary remains a serious problem, and senior judges are seldom convicted for corruption and abuse of office.<sup>2</sup>

In order to strengthen judicial independence from private, political and criminal interests, Albania has embarked on a vetting process that entails the disclosure of assets, potential ties to criminal groups and probes into integrity of all judges and prosecutors. More than a hundred judges and prosecutors have resigned or been dismissed in the process, and more are expected to follow suit. This is yet another testament to the existence of widespread corruption. It should serve though as the starting point for further prosecution. On the downside, the vetting has resulted in a sharp reduction of the candidates for new judges, which might as well indicate the effectiveness of the process in removing undue motivation for the profession.

In **Bosnia and Herzegovina (BiH)**, the High Judicial and Prosecutorial Council (HJPC) has the exclusive right to appoint judges and prosecutors at the state, entity, cantonal, district, basic and municipal level.<sup>3</sup> The criteria includes the candidates' ability to perform the function for which they applied, their professional impartiality and reputation, and out-of-work behavior in a responsible, independent and impartial manner. The HJPC was established in 2004 in order to strengthen the independence, accountability and efficiency of the judiciary.

<sup>1</sup> Law no. 96/2016, "On the status of judges and prosecutors in the Republic of Albania"

<sup>2</sup> Freedom House, *Freedom in the World 2019, Albania*

<sup>3</sup> Excluding the Constitutional Courts of the Entities of Bosnia and Herzegovina

ry, at the request of the European Union.<sup>4</sup> It is largely organized in line with European standards.<sup>5</sup>

However, a major problem in BiH constitutes the ethnic quotas applied when electing judges and prosecutors, where the criteria of ethnicity supersedes expertise. This often leads to the elimination of best candidates for judicial office, as other candidates that belong to a particular ethnicity are given preference. Since the best candidates usually do not make the cut, this leads to the appointment of candidates that are easier to pressure politically. Judging by public surveys, independence is not a characteristic attributed to judicial office holders in BiH.<sup>6</sup>

**Kosovo\*** is in the initial stage of establishing a functioning judiciary. The European Commission has noted a high prevalence of corruption in the judiciary and a lack of rule of law. In line with the current legal framework, the appointment of judges is within the purview of judicial and prosecutorial councils. Despite being established in line with EU standards, the councils should be more responsive in protecting the judiciary from political pressures and undue influence.<sup>7</sup>

The implication of judges and prosecutors in numerous corruption affairs is generally perceived as one of the key problems of Kosovo's anti-corruption system. There is an obvious political interference in the work of courts and selection of judges, which unequivocally compromises judicial independence.<sup>8</sup>

In **Montenegro**, the Judicial and Prosecutorial Council appoints the judges, who have passed the national judicial exam, an interview and a written test. After an initial training, the candidate is granted judicial appointment. Despite an improved legislative framework, the new system for election and promotion of judges has never been consistently implemented in practice. The process of electing judges is accompanied by numerous allegations of abuse of office, breach of procedure and conflict of interest.<sup>9</sup> Moreover, there are no sufficient guarantees of independence and impartiality of members of the Judicial and Prosecutorial Council coming from the ranks of eminent lawyers, given that some of them are former representatives of political parties and the executive branch.

The European Commission has warned that the process of election of judges is not sufficiently transparent and merit-based in Montenegro. The Council of Europe has also noted that their recommendations to strengthen the Judicial Council's independence against undue political influence have not been observed.<sup>10</sup>

Similarly, in **North Macedonia**, judges and presidents of the courts are elected and dismissed by a Judicial Council. The council introduced a test of integrity as a mechanism for assessing the ethics and morality of the judge before their appointment, which is also intended to contribute to preventing corruption and conflict of interest. According to the European Commission,

4 This was the request contained in the European Commission's Feasibility Study as one of the conditions for the launch of negotiations for the conclusion of the Stabilization and Association Agreement between the EU and BiH.

5 Fagan, Adam „Judicial Reform in Serbia and Bosnia-Herzegovina Is EU Support and Assistance Augmenting Independence?“, Maxcap, June 2016

6 Spaić, Bojan; Papović, Biljana „Appointment and promotion of judges and prosecutors: knowledge, training and education requirements“, CDT/Cepris, mart 2018.godine

7 European Commission, *Kosovo\* 2019 Report*, Brussels, May 2019

8 Dr.sc. Azem HAJDARI, MSc. Shpresa IBRAHIMI, MSc. Albulena HAJDARI „Reforming of the Judicial System of Kosovo based on the Law no. 03/L-199 on Courts and its challenges“

9 Papović, Biljana „Judiciary in the shadow of consecutive mandates“, CDT, Podgorica, March 2020.

10 GRECO, Council of Europe, COE Second Compliance Report Montenegro, IV evaluation round, December 2019.

though, North Macedonia has not yet ensured the consistent implementation of the new rules for the appointment and promotion of judges.<sup>11</sup>

For some time, North Macedonia has been planning a vetting process for its judges and prosecutors, which has stirred a heated public debate. Those against it invoke what they believe to be the bad experiences of Serbia, Bosnia and Herzegovina and Albania. Judges, prosecutors and experts claim that the vetting of the entire judiciary is unnecessary and might instead be applied only to some judges suspected of being politically corrupt or having ties to business circles.<sup>12</sup>

The Constitution of **Serbia** foresees a role for all three branches of government in the functioning of the judiciary. Hence, many experts believe, there is a need of a constitutional reform to strengthen the independence of the judiciary against political influence.<sup>13</sup> The Constitution of the Republic of Serbia provides for two procedures for the appointment of judges, depending on their status. The first is where the National Assembly elects a judge for the first time based on a proposal by the High Judicial Council (VSS), for a term of three years. The second procedure is the election of judges for permanent tenure, which is an exclusive competence of the VSS.

In 2007, the Venice Commission of the Council of Europe challenged the legislative position of the High Judicial Council in Serbia, calling into question the composition of the Council and noting that the fact that it consists of three members by virtue of office and eight elected members is just an illusion of pluralism. The selection of all of

the Council's members by the Assembly implies political influence just as strong as the direct appointment of judges.

### **Ethics and disciplinary measures: lacking enforcement**

In general, the codes of ethics for judges in the Western Balkan countries do not contain any explicit provisions related to corruption among judges. The practices of bribery and corruption are typically mentioned very briefly in the texts in only general terms. In particular, they do not seek to prevent conflicts of interest and to preserve the independence of the judiciary. Judicial councils are mainly in charge for disciplinary proceedings.

Official data on disciplinary proceedings related to judiciary corruption is still lacking in many countries in the Balkans. This hinders the elaboration of comparative analyses on the topic. However, it should be noted that anecdotal evidence suggest that the number of disciplinary cases related to corruption is very limited and the imposed sanctions, if any, are symbolic. This calls into question the deterrence effect of disciplinary proceedings in the judiciary systems of the Western Balkans. In the entire region there are few dismissals of judges or criminal proceedings launched against them. Disciplinary sanctions are also very rare. This lack of punitive or preventive measures does not correspond to the many publicly known cases of judges entangled in corruption scandals and having inexplicable wealth.

High levels of corruption and a lack of integrity and accountability within the judiciary have posed significant challenges in

<sup>11</sup> European Commission, Report on North Macedonia, 2019.

<sup>12</sup> Teofil Blaževski and Goran Rizaov „Judiciary Reforms: laws adopted, EU satisfied, experts with divided opinions“, Metamorphosis, Skopje, mart 2020

<sup>13</sup> Bojan Spaić, Biljana Papović „Appointment and promotion of judges and prosecutors: knowledge, training and education requirements“, CDT/Cepris, mart 2018.godine



**Albania's** judiciary. Following recent constitutional changes, the control over the judges will be ceded to the High Inspector of Justice, who will be appointed by the Parliament. Until then, the High Council of Justice and existing inspectorates will continue to decide on disciplinary measures on the proposal of the Minister of Justice, and suspend implicated judges according to a procedure and criteria provided by the law.

In **Bosnia and Herzegovina**, the HJPC is in charge of disciplinary proceedings. These are implemented through the Office of the Disciplinary Prosecutor, which may receive and act on complaints, conduct investigations, initiate disciplinary proceedings and propose sanctions to disciplinary bodies within the HJPC (Disciplinary Commissions). These proceedings may be carried out with respect to all judges, prosecutors, including court presidents and chief prosecutors, lay judges and associate judges appointed by the HJPC.<sup>14</sup>

Revising the current law on HJPC is necessary to better regulate disciplinary proceedings against the judicial office holders. For instance, disciplinary lawsuits against top court officials are dismissed without grounds – that is, without substantial verification of merits, even when high corruption is suspected.<sup>15</sup> Moreover, the limited results in judicial reform implementation might discourage continued financial assistance from the EU to the HJPC.

In **Kosovo\***, the Judicial Council (KJC) is in charge of holding judges accountable for misbehavior or misconduct in their decision-making, following the initiation of

disciplinary proceedings. There are two important institutions that facilitate this process: the Office of the Disciplinary Counsel (ODC) and the Disciplinary Committee.<sup>16</sup>

While disciplinary procedures are in place, they are subject to long delays and have proven inefficient. Poor results in this area were the reason for the adoption of the 2018 law on the disciplinary liability of judges and prosecutors. Although the law provides clear disciplinary mechanisms with rigorous deadlines and a clear division of powers and responsibilities, more assertive implementation is needed to strengthen judiciary accountability.<sup>17</sup>

In **Montenegro**, disciplinary liability and the procedure for dismissal of judges are precisely by the law. While formal mechanisms exist regarding the filing of complaints against judges, the system is widely seen to lack objectivity as these complaints rarely result in sanctions. Moreover, the work of the commissions is not adequately overseen. Judges or prosecutors against whom proceedings have been instituted may appeal against decisions of the Code of Ethics Commissions, but not the petitioners. The European Commission's conclusion is that Montenegro's case-law, both on disciplinary accountability and violating the code of ethics, remains to be developed.<sup>18</sup> The Council of Europe has further identified problems in the disciplinary framework for judges.

In **North Macedonia**, the Judicial Council may remove a judge on the grounds of a heavy disciplinary offence, as well as for their unprofessional and non-ethical ex-

<sup>14</sup> Fočo, Edis "Assessment of Bosnia and Herzegovina's Progress in Meeting Political Criteria in Negotiations with the EU, Part Two: Judiciary" Why not?, December 2018

<sup>15</sup> Ajanovic, Aida „Reform challenges and the current situation“, Why Not, Sarajevo, March 2020

<sup>16</sup> Center for International Legal Cooperation, FOL Movement and Kosova Democratic Institute (KDI)/Transparency International, *Kosovo Justice Sector Integrity Scan*, 2017

<sup>17</sup> European Commission, *Kosovo\* 2019 Report*, May 2019.

<sup>18</sup> European Commission Working Paper on Chapters 23 and 24 in Montenegro, November 2019

ercise of power. Disciplinary offences may include a heavy violation of public order; a heavy violation of the rights of participants in the proceedings that breaches the dignity of judges and the court; a violation of the principle of non-discrimination on any ground; or failing to reach expected results for a period of more than eight months.

The disciplinary responsibility of judges has been improved through the Amendments to the Law on Courts and to the Law on the Judicial Council, which introduce the possibility for anyone to initiate a procedure before the Judicial Council. However, the implementation of these accountability improvements is still pending.<sup>19</sup>

The disciplinary procedures in **Serbia** are run by its Disciplinary Commission – a body composed of judges appointed by HCC.<sup>20</sup> The Commission may issue a warning measure, impose a salary reduction, ban the promotion of the judge in the next three years or propose the dismissal of the judge for major offences.<sup>21</sup>

The main purpose of these disciplinary proceedings has been to deal with vocal judicial officials, whose criticisms of the Serbian judiciary in public is worrying.<sup>22</sup> Neither courts nor the prosecution procedure for submitting complaints have been adequately transparent, which has allowed the authorities to use it for silencing its critics. It is thus necessary to harmonise the existing code of ethics with European standards.<sup>23</sup>

## Judiciary in the fight against corruption: institutional response

International standards do not provide a contextually-specific model for combating corruption –possible methodologies and measures used vary widely, and the same legal solutions produce significantly different results. For example, they do not prescribe the establishment of special prosecutors' offices or courts dedicated solely to corruption and cases of organised crime. Even so, best practices emphasise the need for professional specialisation of various bodies (prosecutors, police, courts) involved in criminal proceedings related to corruption and organised crime.

Despite some positive legal changes, challenges have been identified in the lack of resources of the public prosecutor's offices, lack of financial forensics, unclear management structures and overlapping of competences. Police actions related to tackling corruption are usually carried out by specialised organisational units responsible for combating corruption.<sup>24</sup>

**Albania's** judicial reform has resulted in the establishment of the Special Court for Judgment of Criminal Offenses of Corruption and Organized Crime (SPAK). SPAK is composed of two sections: one dealing with organized crime, and the other with anti-corruption. By 1 June 2020, 11 prosecutors of SPAK have passed the vetting process.<sup>25</sup> However, this structure suffers from personnel shortages given the high number of cases, and the Special Courts judges are yet to be appointed. The National Bureau of Investigation is a specialised section of judicial police which investigates criminal

19 European Commission, Report on North Macedonia 2019, Brussels, May 2019

20 Law on Judges, Article 93

21 Law on Judges, Article 91

22 Jarakovic, Vladana „Judiciary in Serbia, independence on hold“, CRTA, Belgrade, March 2020

23 European Commission Working Paper on Chapters 23 and 24 in Serbia, November 2019

24 [European Western Balkans: Percepcija korupcije zavisi od resavanja slucajeva visoke korupcije](#), Accessed on: 9.2.2020

25 [Announcement of the Special Anti-Corruption Prosecution Office \(SPAK\)](#), 2020

offences under the jurisdiction of the Special Prosecution Office, in accordance with the provisions of Criminal Procedure Code. The National Bureau of Investigation also maintains the Judicial Police Services.<sup>26</sup>

Two negative trends have plagued SPAK and hurt public interest. First, in many cases the prosecution and the courts, especially prosecutors who have not complied with the vetting process, rush to close cases that should have passed under the jurisdiction of the SPAK. Second, cases that involve high state authorities – such as the ones involving damage to the state budget and mismanagement of public funds, and corruption – are often removed from the jurisdiction of the SPAK. Despite the large number of cases handed over to SPAK, there is thus a tendency to “supply” SPAK with peripheral issues.

The State Court of **Bosnia and Herzegovina** has three divisions: criminal, administrative and appellate. The Criminal Division comprises sections for Organized Crime, Economic Crime and Corruption. The Special Department for Organized Crime, Economic Crime and Corruption was established alongside the formation of the Prosecutor’s Office<sup>27</sup> in 2003. The prosecution of perpetrators of criminal offenses related to organised crime, economic crime and corruption is within the jurisdiction of the Special Department. Each entity in Bosnia and Herzegovina has its own judicial system, which is hierarchically organised. While there are 14 anti-corruption bodies at different levels of government in BiH, their work is not coordinated.

The judiciary’s response to corruption is poor, particularly regarding cases of high-level cor-

ruption and organised crime. Key challenges remain in the areas of resolving conflicts of jurisdiction, harmonising jurisprudence on corruption-related offenses, drafting indictments, gathering evidence, the oversight of judges during indictment review, reasoning in court decisions and sentencing for corruption crimes.<sup>28</sup>

A special court for corruption has not been established in **Kosovo\***, despite interest expressed in 2018 to do so.<sup>29</sup> There is no specialised prosecutors’ office for dealing with corruption, nor separate police units dealing specifically with corruption-related cases. However, the seven basic courts, and the State Prosecutor with its seven basic prosecution offices, have a legal obligation to fight against corruption and economic crime. Within the Kosovo Police, the Directorate for Investigation of Economic Crimes and Corruption is part of the Division for Crime Investigation.<sup>30</sup>

The European Commission has emphasised that the adoption of new legislation on the judiciary and the fight against corruption have marked a significant step forward and these now require full implementation. However, the lack of capacity to conduct financial investigations, confiscate assets and effectively protect witnesses does not instil optimism towards this goal.<sup>31</sup>

In **Montenegro**, there is a specialised department at the High Court in Podgorica for organised crime, corruption, terrorism and war crimes. The Special Prosecution Office (SPO) is in charge of prosecution of perpetrators of organised crime, high-profile corruption, money laundering, terrorism, war crimes and violation of election

26 Justice reform Collection of Law, 2017.

27 <http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=5&jezik=e>

28 USAID, Fact sheet: Judiciary against corruption activity in Bosnia and Herzegovina, February 2020

29 *Koha Ditore* (2018). *Kosova synon të themelojë Gjykatë Speciale për Korrupsion*.

30 Kosovo Police. Departamenti i Hetimeve. Kosovo Police website.

31 European Commission, Kosovo\* 2019 Report, May 2019.

rights. SPO has at its disposal the Special Police Unit (SPU).<sup>32</sup> While the Chief Special Prosecutor for the Fight Against Organised Crime appoints the Head of the SPU, s/he does not appoint his superior i.e. the head of the police department. This hierarchy has led to warnings by the EC of a risk of the executive power's de facto stronger control regarding investigations into organised crime.<sup>33</sup>

Challenges to the SPO's effectiveness include its broad legal mandate, a lack of human resources and poor working conditions. Financial investigations and the fight against money laundering have merely prompted larger investigations that have yielded no concrete results.

The Prosecutor's Office for Corruption and Organized Crime in **North Macedonia** is in charge of investigating the highest forms of crime and corruption. It operates within the framework of the Public Prosecutor's Office. A specific feature of the North Macedonian system was the existence of a Special Public Prosecutor's Office (SPO)<sup>34</sup>, established at the end of 2015. It had an initial mandate of five years. Since September 2019, however, SPO has ceased operations following allegations of corruption.<sup>35</sup> All of its ongoing cases were transferred to the Prosecutor's Office. However, the very same prosecutors from SPO that were previously in charge are leading the cases again.

In **Serbia**, in 2018, four special departments of high public prosecutor's offices for the

fight against corruption were established, as well as special department within the high courts in the same areas.<sup>36</sup>

Despite expectations of better detection and prosecution of corruption crimes as a result of increased technical expertise and better coordination between institutions, tangible improvements remain unclear. Particularly poor results have been observed in high-level corruption prosecutions, financial investigations, and the seizure and confiscation of criminal assets.<sup>37</sup>

### Track record: Fight without major results

The European Commission has emphasised that the Western Balkan countries show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests. The EC has repeatedly asked for the establishment of a concrete and sustained track record in tackling corruption, money laundering and organised crime.<sup>38</sup> Recent results in the region, however, have not been impressive.

According to the European Commission, **Albania's** judiciary has achieved some good initial results in its conviction of high-level state officials. In 2018, an Appeals Court judge was sentenced by the Serious Crime Court (case currently at appeal level ) and a prosecutor was sentenced by the Court

32 "Katanić, Veljović and Baković in the Special Police Unit: Even more powerfully against crime", *AntenaM*, 18 September 2018. Accessed on: 12 November 2018.

33 European Commission, Non-paper on the state of play regarding chapters 23 and 24 for Montenegro, November 2019

34 Full name: Public Prosecutor's Office for Criminal Offenses which derive from the contents of the illegal tracking of communications,

35 Lukic, Filip *The Fallen Anti-Corruption Heroine – Katika Janeva*

36 Cvejic, Željka, Treći deo: "Korupcija i organizovani kriminal u Srbiji - u potrazi za integritetom", CRTA, 2019, p.16, p.16, Accessed on: 29 September 2019

37 European Commission, Report on Serbia 2019, May 2019.

38 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, February 6, 2018



of Appeal for Serious Crimes (case currently at the Supreme Court). There were 102 new cases against high-level state officials sent to prosecution in 2018 (7 persons indicted), which was an increase compared to 61 in 2017 (10 persons indicted). However, these frequent investigations in recent years have not yet yielded a convincing number of final convictions for corruption of high-ranking state officials.<sup>39</sup>

In **Bosnia and Herzegovina**, the prosecutor's offices filed 12,201 indictments in 2018, 218 of which were for corruption. This figure is 6% less than the number for 2017. In 2018, the State Prosecution filed only six indictments against 12 persons for corruption offences, while nine indictments were filed against 64 persons for organised crime. Also in 2018, the Court of Bosnia and Herzegovina pronounced ten verdicts for corruption offenses, eight of which were final. This was an increase from the previous year 2017, with five indictments against six persons for corruption.

In 2017, **Kosovo's** prosecution processed (completed) 412 criminal reports against 902 persons. Direct indictments (3.33%) were filed for 30 persons and 282 persons (31.26%) were indicted after investigations.<sup>40</sup> In 2018, prosecutions processed 772 corruption cases per person. Out of these, 21 persons (2.72%) were charged with direct indictment while the indictments of 229 individuals were filed after investigations.<sup>41</sup>

In **Montenegro**, in 2018, four final and enforceable judgments were charged with

high-level corruption, resulting in one conviction reached through a plea-bargain agreement. Trials are ongoing in 24 other cases of high-level corruption against 61 individuals and 3 legal entities. In 2018, indictments for corruption-related offences were lodged in 12 cases of high-level corruption (compared to 10 in 2017) against 31 individuals, including mayors and public officials, and 2 legal entities. New investigations were launched into six cases (16 in 2017) of high-level corruption.<sup>42</sup>

The European Commission's 2019 Report on **North Macedonia** shows that its Special Prosecutor's Office (SPO) filed 21 indictments for serious criminal offences. A total of 164 individuals are on trial in 26 cases,<sup>43</sup> and one indictment is pending confirmation by the Court. In 2018, the courts issued five sentences against 19 individuals, including three verdicts based on guilty pleas. Final sentences were pronounced against the former Prime Minister, his assistant, the former Minister of the Interior and the former Director of the Bureau for Security and Counterintelligence. The Public Prosecutor for Prosecuting Organised Crime and Corruption has opened five new investigations involving seven individuals in high-level cases (compared to six in 2017 involving 10 suspects). There are, together with four cases still under investigation since 2017, a total of nine ongoing cases involving 17 individuals.<sup>44</sup>

In **Serbia**, in 2018, 41 individuals were convicted (compared to 50 in 2017) in relation to high-level corruption offences (based on indictments by the Prosecutor's Office

39 European Commission, 2019 Albania Report, May 2019

40 Kosovo Prosecutorial Council. *Raporti vjetor 2017 i komisionit mbikqyrës: Për zbatimin e planit strategjik dhe të veprimit në luftimin e korrupsionit dhe krimeve ekonomike.*

41 Kosovo Prosecutorial Council. *Raporti vjetor 2018 i komisionit mbikqyrës: Për zbatimin e planit strategjik dhe të veprimit në luftimin e korrupsionit dhe krimeve ekonomike*

42 European Commission, 2019 Montenegro Report

43 European Commission, Update on the Report on North Macedonia, March 2020.

44 European Commission, 2019 North Macedonia Report

for Organised Crime). Out of these, 13 were based on plea bargain agreements.<sup>45</sup> CSOs expressed doubts in the credibility and the transparency of statistical data in this field, as well as the tendency of the Government to try to present the results in a favourable light.<sup>46</sup>

## POLICY RECOMMENDATIONS

The judiciary is the institution providing **the key checks and balances to state capture**. Hence, it is very critical that the judiciary itself is preserved from undue political and oligarchic influence. Despite continuous attempts at reforms, **judicial independence and freedom of corruption has not yet been achieved** in any of the countries of the Western Balkans.

**The independence of** the Judiciary and Prosecutorial councils in the Western Balkans should be secured by having its judges elect its members, and by creating their own procedural rules. These should be public and open for scrutiny. The participation of government ministers (typically of justice) in judicial self-governing bodies should be minimized or abolished altogether. Countries where the majority of judicial self-governing bodies are not elected among judges and by judges should adopt reforms to increase relevant voting powers.

**The processes of appointment, promotion and dismissal of judges and prosecutors need to be transparent to the public while following legal procedure.** All information on the candidates applying to become judges and prosecutors should be made public, along with detailed justifications for their nomination.

**Existing codes of judicial ethics should be amended to address corruption, since there are no specific legal provisions and bodies dealing with judiciary corruption.** Issues related to the integrity of judges, disciplinary proceedings and dismissal of judges should be made more transparent.

**In countries where both the prosecution and the courts are governed by the same body, two colleges – for prosecutors and for judges – need to be separately set up.** Prosecutors and judges would only be elected to the respective college.

**Continuous training for holders of judicial office should be made compulsory and accessible to all.** This will ensure their competence in terms of knowledge and qualifications. The attendance to training should be taken into account in judges' performance evaluations, and stand as a criterion for the selection for judicial functions.

<sup>45</sup> European Commission, 2019, Serbia Report, p.19

<sup>46</sup> Đokić, Katarina et.al. *Preugovor alarm izveštaj o napretku srbije u poglavljima 23 i 24*, Beogradski centar za bezbednosnu politiku, Beograd, p.30, accessed on: 29.9.2020.



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