



Tailor-made laws in the Western Balkans – state capture in disguise

Gjergji Vurmo

Abstract

State capture in the Western Balkan countries has been ignored since the launch of the region's EU accession process, despite the many examples highlighted by civil society and independent media. While the EU first acknowledged the clear signs of state capture in an official document in 2016, Western Balkan political elites had already built powerful networks of corrupt interests around them. Not only that, they had already reached the highest point of state capture – tailor-made laws.

Gjergji Vurmo is Programme Director of the Institute for Democracy and Mediation, Albania.

CEPS Policy Insights offer analyses of a wide range of key policy questions facing Europe. As an institution, CEPS takes no position on questions of European policy. Unless otherwise indicated, the views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

978-94-6138-778-3

Available for free downloading from the CEPS website (www.ceps.eu) © CEPS 2020
CEPS • Place du Congrès 1 • B-1000 Brussels • Tel: (32.2) 229.39.11 • www.ceps.eu

Imagine you are the leader of a corrupt political elite in a Western Balkan country transitioning to a consolidated democracy. You are pressured to fight “widespread corruption in all areas”, but you cannot afford to lose control of the power you have acquired over the years. How do you navigate away from all that pressure?

Here is a guide that will help buy you some time... decades literally.

First, you start fighting petty corruption. You will need to show results, especially to international community and the European Union (EU), who are offering financial support to your country. This is not all bad, as you will soon realise that fighting corrupt low-ranking officials does not threaten your position.

This will not last long, however, maybe a decade or two, depending on how badly you want the reward of EU membership that is being dangled by Brussels. The EU will make its financial support conditional on ‘democratic laws’. Have no worries! They will only look at laws on paper, not the quality of their implementation.

This will buy you another decade or so, time that you can use to gain full control over the institutions implementing those nice laws on paper, to match your interests of course. Beware, this is a historic moment – it is the start of state capture by you and your increasingly powerful network. But it is not yet the ‘state of the art’ of state capture.

Over time, more pressure will come from international community. You and your network have grown so much that you are causing [trouble beyond your state borders](#). Internationals now want results in practice, the fine laws implemented and even more – they want you to fight “high-level corruption”. Put on a good show for them! Arrest somebody... you can always release them later.

This is a crucial moment for you as a corrupt network. It is time to finish your masterpiece.

For decades you had to break the laws, you had to control processes and institutions so that they implemented the laws to serve your interests. But guess what? You don’t have to do that anymore. Instead, you tailor the laws to match your corrupt interests.

1. Urban legend or reality?

Is it possible to make laws that are tailored to corrupt ambitions? Has state capture in the Western Balkans really evolved to that level?¹ How does it work? What does it take for a well-connected group to control processes and outcomes serving its corrupt interests?

¹ State capture in the WB region was long considered an urban legend until recently when it was exposed in [North Macedonia’s Gruevski regime](#) (2015/2016). The 2016 Communication on EU Enlargement Policy found that several WB countries continued to show clear symptoms and various degrees of state capture (p. 3), while two years later the EC stated that “[today the \[WB\] 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](#)”.

Unfortunately, tailor-made laws are a reality.

Let's say your country is about to become a NATO member and you have a lot of old weapons and ammunitions that you need to get rid of. Why not make some money out of them? You just need the right '[war dogs](#)' to [repack and ship that ammunition](#) under lucrative contracts made possible by orders from your Minister for Defence. To keep costs low and your profits high, you build a (sort of) mobile factory employing low-skilled workers, and even [children](#). However, if anything goes wrong – a deadly [explosion](#) for example, that destroys an entire village – you will have to protect your [minister](#) and [yourself](#).

Although you did everything right by taking advantage of the legal loopholes, you still had to go a lot of trouble because of a [Prosecutor General](#) who was not on your side. How many times and for how long can you use the legal gaps to your benefit? Imagine if there was a way for you to embody your corrupt interests in the law itself. You wouldn't have to bother with prosecutors, because your interests are now legal.

2. Tailor-made laws, Albanian style

Would anyone be suspicious if a seemingly well-intended draft law that limits the expansion of a harmful industry, such as the gambling industry, ends up doing exactly the opposite due to last-minute amendments adopted by the parliament?

The gambling industry has been a serious concern in Albania. Not only for the negative socioeconomic effects it has on youngsters or its clear links to domestic violence, but also in the context of [organised crime and money laundering](#). At the end of 2015, the government announced a law that would limit the effects of this industry through higher taxation (25% tax), rigid criteria of 200 m distance from education or religious institutions, and through limiting the number of stations up to a maximum of 500 units per gambling licence. However, 24 hours before the parliament's plenary session, a few amendments dramatically changed the law and provided for a massive expansion of gambling in Albania over the next two years. The amendments included: i) a reduction of the tax to 15% on gross revenues; ii) a reduction of the distance criteria to 100 m; and iii) a doubling of the number of gambling stations per licence to 1000 units.²

Investigative media have collected evidence that the legislation adopted in 2015 has directly contributed to the expansion of the gambling industry. In 2017, the [profit generated by this sector increased by 68%](#) compared to 2015. Powerful interests of the gambling industry had succeeded in influencing the parliamentary majority, as Prime Minister [Edi Rama](#) himself admits.

² In 2015 a gambling company licence cost ca €1.6 million for 10 years. By doubling the number of stations (from 500 to 1000 units) the price of the 10-year licence decreased in practice by 50%.

And there are more examples. Let's talk about the public private partnerships (PPPs) and concessions, which are now even dubbed "the new mantra of grand corruption" in Albania.

In its 2018 report on Albania, the European Commission questioned the [technical skills and capacities](#) of state institutions to design, assess and monitor the more than 200 approved PPPs and concessions. Civil society and independent media have exposed facts which demonstrate that many of the PPP projects were part of a grand corruption scheme. This is especially the case for those PPPs approved by special laws, such as law no. 52/2019 date 18.07.2019 for the construction of the [Milot-Balldren highway](#) and its 13-year concession, or the PPP for the construction of the [National Theatre in Tirana](#).³ Other highly suspicious PPP projects were contracted in [healthcare](#), [road maintenance](#), [waste management](#) and other areas between 2014 and 2019.

This PPP boom was enabled through [amendments made to the law](#) 'On concessions and PPPs' in 2014 and 2015. For example, the 2013 law on concessions and PPPs had a mechanism that awarded a 10% bonus for unsolicited proposals by private entities in the hydropower sector. This provision was criticised by the EU at that time. Yet, instead of removing the 10% bonus for unsolicited proposals, as requested by the EU, the ruling coalition did precisely the opposite. Parliament expanded the 10% bonus for unsolicited proposals to all areas of the law and hence allowed for the boom of lucrative PPP and concession contracts to a [network of clients](#).⁴

These are just a few examples of tailor-made laws⁵ that illustrate to what level state capture may develop.⁶ But what does it take to build such a powerful network of political and economic interests that controls processes and outcomes to their benefit?

3. Control of corrupt networks over the legislative process

If we look back at the past 30 years in the region, we realise that the corrupt network of political and economic interests has been more innovative than our measures to counter them. The current situation of state capture in the Western Balkan countries has been planned by networks of illegitimate interests for some 10 years. [At that time](#), most WB countries were ticking as many boxes as possible to sign association agreements with the EU as well as to satisfy the various recommendations made in the country reports. Meanwhile, not only did the EU

³ Read also Exit.al "Albanian National Theatre Building – Suspicious Tender Tailored to Government's Usual Contractors". Source: <https://exit.al/en/2019/08/05/albanian-national-theater-building-suspicious-tender-tailored-to-governments-usual-contractors/>

⁴ This move was subsequently criticised by all EC reports on Albania until 2019 when it was finally abolished. See EC report for Albania 2015 (p. 34) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_albania.pdf.

⁵ A Transparency International research project in WB and Turkey has analysed numerous tailor-made laws over the period 2008-19. The database of tailor-made laws will be published in 2020. The author of this article has led the research on tailor-made laws in Albania over the last decade, hence this article draws on this experience.

⁶ Between 2016 and 2019 Albania dropped 23 places according to TI's Corruption Perceptions Index. Source <https://www.transparency.org/cpi2019?/news/feature/cpi-2019>.

have no monitoring mechanisms in place, but it was also overly preoccupied with political stability and security in the WB region.

This created a perfect environment for corrupt networks to plan their next decade. The further weakening of oversight institutions was the first step towards state capture and tailor-made laws. Logically, decision-making processes are more easily captured with fewer political actors, flawed checks and balances mechanisms that keep governments accountable, and [strongmen](#) silencing the [media](#).

The [2008 constitutional amendments in Albania](#) did precisely that. They introduced an electoral system that favours establishment parties (as opposed to new or smaller parties) and bolsters political leaders' control of parliamentary groups. This paved the way to negotiate tailor-made laws within a small group of powerful people. Further, the 2008 amendments also affected the checks and balances mechanisms, offered more space for the PM to control the parliamentary majority by means of a confidence vote – failure of which would dissolve the parliament, and allowed for a simple majority to elect the President of the Republic, an institution whose independence provided for some of the checks and balances instruments. Additionally, the parliamentary majority could now reject the president's veto of laws passed by the parliament with a simple majority, instead of a qualified majority.

With a powerful prime minister dominating the legislative branch, and an already inefficient system of oversight institutions, the next step was the independent media. An efficient strategy to control the media is by killing media pluralism, decreasing the number of 'players' (ownership concentration) and concentrating economic interests in just a few hands. Considering the [economic interests and political ties](#) of media owners – most of the mainstream media did not resist the control.⁷ The fight is still on for control of [online media](#), which has exposed many corruption scandals in the last few years.

Albania's path to tailor-made laws and state capture does not differ much from that of [Serbia](#), [Montenegro](#), or even [Gruevski's](#) regime in North Macedonia.

Years of increasing state capture, abuse of power, and strongman tactics employed by Aleksandar Vučić in Serbia and Milo Djukanović in Montenegro have tipped those countries over the edge. For the first time since 2003, they are no longer categorised as democracies according to Freedom House.⁸ The 2020 Nations in Transit report highlights the domination of the executive over the legislative branch in the WB region and other countries through “patterns of rushed law making”, “restrictions on the opposition's participation” and the very “hollowing out of Parliaments” which altogether have made a mockery of the legislative process. Tailor-made laws therefore serve the corrupt political and economic networks

⁷ EC reports have repeatedly urged the country to address increasing media ownership concentration since 2016. According to the Media ownership Monitor project (MOM Albania) the families, owning the biggest TV media companies not only dominate the audience but also benefit from more than half of the advertisement expenditures. See <https://albania.mom-rsf.org/en/findings/media-concentration/> and <https://albania.mom-rsf.org/en/findings/advertisingmarket/>.

⁸ Freedom House “Nations in Transit 2020 – Dropping the democratic façade”, p.2. Source: <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

throughout the region through similar forms (e.g. [legal vacuum](#), PPPs and [concessions](#), [special laws](#)) and even create conditions for [transnational](#) and [other alliances](#).

A paralysed system of checks and balances, ineffective oversight institutions, captured media and, not least, an [unambitious EU](#) accession process have all helped WB corrupt networks seize not only states, but even to reach for *society capture*.⁹

So, what is the next step for state capture networks?

4. Divide and rule

As anti-corruption researchers and practitioners are analysing the past processes, state capture networks in the WBs and [other countries in Europe](#) are planning their next decade. [Alternative facts](#) and [populism](#), or [foreign influences](#) in the WBs as an alternative to EU integration suggest that the strategy is ‘divide and rule’. They have reached the point where their corrupt interests are being enshrined in and protected by law. Their goal now is to make their ‘investment’ not simply legal, but also broadly supported by their constituencies of citizens. To achieve this goal, WB state capture networks are already also using the EU’s internal weaknesses and the democratic backsliding in various member states (Hungary, Poland),¹⁰ thus profoundly redefining the EU’s relationship with the WB region. It is for this reason that the fight against state capture networks needs to be profoundly redefined too. The EU will be unable to counter state capture networks in the WBs if it does not also target state capture and democratic backsliding among its own member states.

Western Balkan anti-corruption stakeholders need to become more far-sighted than they have been in the last few decades. The fight against corruption and state capture has been predominantly focused on the consequences, rather than on the evolving mechanisms of the phenomenon. We have been dealing mostly with what was happening recently rather than what was being projected for the next decade. Above all, we have observed and struggled to fight the phenomenon in isolation and without considering its enablers across different branches of power and those within the space between the state, economy and society. While it takes courage to ‘go’ at these levels, we cannot afford to lose more time. And we certainly cannot afford to lose our biggest allies – the citizens.

⁹ See “The UK and the future of the Western Balkans” House of Lords paper, January 2018, p. 31 <https://publications.parliament.uk/pa/ld201719/ldselect/ldintrel/53/53.pdf>.

¹⁰ FH’s Nations in Transit 2020 notes that Poland has already dropped out of the Consolidated Democracies category and became a Semi-Consolidated Democracy this year, while Hungary dropped to Hybrid Regime together with Serbia and Montenegro. See “Nations in Transit 2020 – Dropping the democratic façade”, p. 3. Source: <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

5. How to prevent tailor-made laws?

An efficient, transparent and high-integrity parliamentary procedure to scrutinise and adopt draft legislation by the parliaments of consolidated democracies usually takes three to four months, at least. During 2015-19 the Parliament of Albania adopted an average of 268 legal acts (laws, resolutions, decisions etc.) a year.¹¹ This means that the average time for reviewing, consulting, amending and finally adopting one draft law in the Parliament of Albania was about half a working day.

The substantial difference between a high-integrity law-making process and that of Albania (or any other Western Balkan country) does not lie in the technical capacities of the parliaments. Rather, it is the correct application of the democratic principles, transparent and participatory processes, and the very existence of checks and balances mechanisms that make the difference. Spending millions of euros on assistance missions to improve the technical capacities of a legislative body is completely irrational if Western Balkan countries continue to ignore the application of those ‘time-consuming’ principles that consolidated democracies apply strictly to the process of law making.

Ensuring an open and democratic milieu for processes, institutions, societal players and constructive interactions to review and adopt legislation is therefore necessary. Many tailor-made laws have been approved either through complete [lack of transparency](#) in the law-making process or by paying lip service to the consultation process, but without reflecting its essence – public feedback. The EU has often tolerated that or when it did not, Brussels was told that “[conducting consultations does not mean we have to agree](#)”. Indeed, we don’t have to, but only if we are observing legitimacy, integrity, public interests and the rule of law. The strict implementation of these foundations and other principles of democracy – participation, accountability, control of power abuse, transparency and others – will help us dismantle the mechanism that led to the emergence of tailor-made laws, the gravest form of state capture.

While the European Commission’s 2018 paper was a welcome step in the Western Balkan’s rule of law quest, many of its instruments such as advisory missions and the trial monitoring of serious corruption remained on paper.¹² Furthermore, its flagship initiatives failed to grasp the nature of state capture networks in the region and their evolving character, culminating with degraded law-making processes dominated by autocratic leaders.

Moreover, state capture was not even mentioned in the EC’s 2020 revised accession methodology, although some of its initiatives go in the right direction, such as better

¹¹ A total of 279 acts were approved by the Parliament in 2019, 274 in 2018, 246 in 2017, 259 in 2016 and 281 in 2015. Library of acts of the Assembly of Albania. Source: <https://www.parlament.al/LibrariaAkteve>.

¹² See EC Communication “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, 6 February 2018, p. 10 (https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf) and its Action Plan, page 1 (https://ec.europa.eu/commission/sites/beta-political/files/annex-communication-credible-enlargement-perspective-western-balkans_en.pdf).

streamlining of the economic governance criteria as part of the Fundamentals.¹³ The EU must, however, go far beyond the set of scattered measures that ignore the evolving mechanism of state capture in the Western Balkans, its enablers across the space between the state, economy and society, and the influence of EU member states backsliding into hybrid regimes. Even more importantly, it should stop turning a blind eye to the breach of democracy in Western Balkan countries and their fake progress towards EU membership.

¹³ See the EC 2020 Communication “Enhancing the accession process – A credible EU perspective for the Western Balkans”.



ABOUT CEPS

Founded in Brussels in 1983, CEPS is widely recognised as the most experienced and authoritative think tank operating in the European Union today. CEPS acts as a leading forum for debate on EU affairs, distinguished by its strong in-house research capacity and complemented by an extensive network of partner institutes throughout the world.

Goals

- Carry out state-of-the-art policy research leading to innovative solutions to the challenges facing Europe today
- Maintain the highest standards of academic excellence and unqualified independence
- Act as a forum for discussion among all stakeholders in the European policy process
- Provide a regular flow of authoritative publications offering policy analysis and recommendations

Assets

- Multidisciplinary, multinational & multicultural research team of knowledgeable analysts
- Participation in several research networks, comprising other highly reputable research institutes from throughout Europe, to complement and consolidate CEPS' research expertise and to extend its outreach
- An extensive membership base of some 132 Corporate Members and 118 Institutional Members, which provide expertise and practical experience and act as a sounding board for the feasibility of CEPS policy proposals

Programme Structure

In-house Research Programmes

Economic and Finance
Regulation
Rights
Europe in the World
Energy, Resources and Climate Change
Institutions

Independent Research Institutes managed by CEPS

European Capital Markets Institute (ECMI)
European Credit Research Institute (ECRI)
Energy Climate House (ECH)

Research Networks organised by CEPS

European Network of Economic Policy Research Institutes (ENEPRI)
European Policy Institutes Network (EPIN)