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Kočner's Judges

Case Study of State Capture

ABSTRACT Marián Kočner, a controversial Slovak businessman, alleged to have ordered the killing of a young journalist, Ján Kuciak, in 2018, is now—on account of the investigation of the murder—known to have controlled many judges at different levels of the judiciary, frequently bribing them in exchange for information and favorable verdicts. In this case study, we analyze Kočner's influence on the Slovak judiciary system through the concept of state capture. State capture, manifested in a substantial overrepresentation of powerful economic interests over the state and its political system, has long been a topic of interest for researchers specialized in post-communist countries. Despite frequent use in academic literature, however, its operationalization remains inconsistent. We propose that four empirical criteria can define state capture: (1) identifying multiple corrupt public actors on the one hand, and a captor exerting some form of decisive influence over them on the other; (2) an illegitimate exchange takes place—that is, the mechanism of capture; (3) the exchange has a beneficial outcome for the captor; and (4) the captor's influence within the institution is systematic. We argue that in the case of "Kočner's judges," all these criteria are fulfilled.

KEYWORDS state capture, Slovak Republic, judiciary, Marián Kočner

INTRODUCTION

More than 30 years after the fall of the communist regime, Slovakia is still looking for its identity. After a difficult transition period, the country seemed to take the right track on its way to European integration. Slovakia was ruled by parliamentary parties that adopted the general principles of the European Union; the war in the Slovak underworld came to an end (Petrovič, 2019); the country oriented itself toward the West and the achievements of its civilization: freedom, market economy, and human rights. However, one of the first major obstacles came as soon as 2011 with the revelation of the Gorilla scandal, which suggested a disproportionately large influence of private interests over Slovak politics (Školkay, 2018a).

The murder of Ján Kuciak, a young investigative reporter who focused on uncovering cases of corruption, and his fiancée, Martina Kušnírová, in early 2018, then shook the nation, causing many to strongly distrust the state, as shown by the protests where thousands called for a fair investigation and resignation of the government (Demiger et al., 2018). General public dissatisfaction was further fueled by the acquittal of the

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businessman. He, based on the evidence leaked from the investigation, was considered by the general public and the media to have ordered the killing (e.g., *Za slušné Slovensko*, 2020). The verdict that Marián Kočner was innocent in the Ján Kuciak and Martina Kušnírová murder case—due to lack of evidence¹ (Tódová, 2020a)—was inconceivable to many, especially given Kočner’s past relationship with the Slovak judiciary. While likely not a result of his influence on the judges in question, the verdict further undermined the public trust in the justice system (Mazák, 2020). The businessman’s communication with several judges, gradually revealed to the public by investigative journalists in the year prior, showed his systematic undermining of the justice system by corrupting the courts of law in Bratislava, and, in March 2020, these efforts resulted in the biggest-ever raid on members of the Slovak judiciary (Prušová & Tódová, 2020). Školckay (2018a) argues this murder represents a turning point for Slovakia, as it showed that the work of the young journalist had threatened someone more than the responsible state institutions in question, indicating a systematic failure in the conduct of their supposed work.

This article investigates the problematic relationship between Marián Kočner and the Slovak judiciary using the concept of “state capture.” Indeed, the “stolen state” thesis, a common Slovak equivalent to “state capture”—the idea that Slovakia, as a state, has fallen victim to powerful individual influences—has appeared frequently in Slovak media in recent years (e.g., Zuzana Piussi’s film *Ukradnutý štát*, or *Stolen State*, 2019). Although state capture is an established academic concept, relatively few studies have operationalized it, and the operationalization remains inconsistent. Therefore, one of our aims is to systematize these various operationalizations and formulate revised criteria to identify cases of state capture.

Compared to investigating the Kočner affair through the broader concept of corruption, the notion of state capture allows for better reflection of both the systematic character of Kočner’s influence and the distribution of power within the networks serving primarily to promote his interests. The concept of state capture allows us to highlight the shift of control within these networks, with the power moving from the public officials to the private individuals pursuing their own interest, even at the expense of general society. This way, it points to a larger systemic failure of the state institutions to execute their functions correctly under the influence of powerful individuals, who in these situations stand above the state itself, and thus violate the core concepts of democratic equality and representation.

STATE CAPTURE

The Concept, Causes, and Consequences

The concept of state capture was first introduced by Hellman and Kaufmann (Hellman et al., 2000), who took inspiration from Stigler’s (1971) earlier concept of regulatory capture. They proposed this concept as part of their efforts to explain the specific political

1. According to the Special Criminal Court, there was insufficient evidence to sentence Kočner for the murder of the young couple. The case continues at the Supreme Court (Tódová, 2020a).

systems of post-communist countries in transition (Hellman et al., 2000)—including Slovakia. In their work, Hellman and Kaufmann pointed to the unique set of conditions in these countries following the fall of the Berlin Wall: a specific power vacuum caused by the removal of the old regime and the need to rebuild the entire apparatus of the state—including laws and norms—new and unencumbered by old customs; the enormous transfers of property from the state to the private sector that occurred during these conditions of anarchy; and, finally, a lack of any oversight bodies that could prevent the abuse of power in these countries at the time (Hellman et al., 2000; Anderson et al., 2000). All these factors were further amplified by an international environment advocating for neoliberalism and its associated objectives of a minimal state and reducing public expenditure (Naxera, 2012).

In this environment, Hellman and Kaufmann identified what they perceived to be a specific kind of political corruption that does not correspond to the traditional understanding of corruption as an abuse of public power for private purposes (e.g., Transparency International, 2018). A different problem instead appeared in these countries: the powerful economic interests of specific individuals—the so-called oligarchs—and firms that managed to systematically shift the decision-making of various state institutions to their benefit by bribing public actors. They called these cases state capture: the firms influencing the formulation of the fundamental rules of the game (i.e., laws, formal rules, and norms) by bribing public officials and politicians (Hellman et al., 2000).

Hellman and Kaufmann proposed that the institutions that may become subject to state capture are the legislature, the executive, the judiciary, and regulatory agencies. They can become captured by private firms, influential individuals, political leaders, or interest groups, or, in some cases, ethnic or organized crime groups or the military (Anderson et al., 2000). The original research described various methods of rent extraction from the state as the mechanisms of state capture: buying laws and executive orders, or decisions by civil and criminal courts; misusing the funds of central banks, and illegal payments to political parties (Anderson et al., 2000). The term thus describes a situation where private individuals or firms, by bribing politicians or public officials, created a kind of private market for public goods, such as laws, government regulations, public property or judicial decisions, thereby influencing the politics and the economy of the state to their own benefit (Anderson et al., 2000), often at the expense of the rest of the society.

Other researchers have argued that this understanding of state capture is too narrow: one can easily see that the detrimental influence of powerful private interests does not stop with the institutions that formulate the laws and rules governing society, and hence the state capture concept ought to encompass the influences exerted on the process by which these laws and regulations are implemented as well (Fiebelkorn, 2019), or, more generally, any situation where state institutions are subjected to private interests or criminal activity (Karklins, 2002). Understood like this, the concept can refer more generally to “forming collusive networks to limit political competition, undermining free elections through slush funds, hidden advertising, etc., and corruption of and in the media” (Karklins, 2002), as well as corruption in public procurement (Fazekas & Tóth, 2014; Fiebelkorn, 2019), if the corrupt acts and actors tend to form specific clusters

around certain state institutions. Particularly susceptible to capture, then, are those sectors where regulation is weak and substantial leeway is given to decision-makers (e.g., Faccio, 2006).

Although the term was first used to describe systemic corruption in European post-communist countries, the phenomenon is much more widespread. It affects not just countries currently undergoing democratic transition but also developing countries. Instead of corporate elites, it is usually ethnic groups, the military, or organized crime groups that may act as the captor (Martini, 2014). However, it is often difficult to distinguish state capture from kleptocracy or neopatrimonialism (e.g., Laurelle, 2012).

Yet state capture can also impinge on fully developed countries with long democratic traditions—though there it remains insufficiently studied—as well as supranational institutions such as the European Parliament (Martini, 2014), in such instances as vote-buying in legislature voting. It is a phenomenon affecting countries and institutions throughout the world.² Therefore, when investigating the subject, it is essential to assess the measure of state capture and its consequences for the country in question.

Generally, state capture tends to be a problem in countries with a strongly concentrated economy—for example, those rich in mineral raw materials—or a weakly diversified economy overall; in countries with insufficiently developed systems for interest mediation (Anderson et al., 2000), where the lack of these official systems might be supplemented by informal, parallel structures; and in countries with a weak rule of law (Faccio et al., 2005).

State capture remains best studied in the post-communist countries of Europe. Most studies focus on the countries of the former Soviet Union and Eastern Bloc (for example, Mironov and Zhuravskaya [2016] investigated the phenomenon in Russia; Fazekas and Tóth [2014] in Hungary), and South Europe and the Balkans (for instance, Cvijic [2018] analyzed state capture in the Serbian judiciary).

Within Central Europe, the work of Abby Innes (2014) represents an interesting contribution. She divides the countries of the region into those suffering from party and corporate state capture, respectively. Here, the situation in Slovakia is characterized as corporate state capture, in which public power is almost fully exercised for private benefit in the matter of economic competition.³ Naxera (2012) similarly understands state capture as the evolution of a nontransparent political system based on personal relations, where much of the public decision-making is realized for private enrichment.

Based on research to date, it can be concluded that state capture remains a particular problem for post-communist countries (e.g., Innes, 2014), even if they have moved forward from the early stages of transition and achieved much progress in terms of fighting corruption.⁴ Especially problematic in these countries are the judiciary and

2. Fiebelkorn (2019) provides a useful overview of studies on state capture.

3. Party capture as proposed by Innes, however, by the criteria introduced here leans more on the side of kleptocracy than on state capture.

4. The measure of state capture in most countries had already decreased by 2006 (Anderson & Gray, 2006). Interestingly, Slovakia was deemed to be one of the most successful countries in terms of fighting corruption and state capture.

public procurement (Anderson & Gray, 2006), the sectors that were afforded less public attention in the early days of democracy building, and hence attracted fewer anti-corruption reforms. As far as public procurement is concerned, the situation could have been made worse by the accession of some post-communist countries to the EU, which provided additional resources for exploitation (e.g., Beblavý & Beblavá, 2014).

It is important to emphasize that, according to the specific institutional setup of the state, the various corrupt acts are not necessarily illegal (Kaufmann & Vicente, 2011); and that in countries where state capture has become the norm, an instance of capture may not be rewarded by an immediate, explicit financial bribe (Philp, 2001) but, instead, be a component in a broader network of power relationships, based on various more-abstract exchanges of power and influence.

Nevertheless, bribery and other forms of corruption are closely connected with the concept of state capture—empirically, corruption and state capture do often go hand in hand. The relationship between the two concepts is, however, dependent on the definitions we choose to employ. The focus and scope of this article do not allow us to elaborate on the complicated issue of defining corruption (for an overview, see, for example, Gardiner [2001] or Philp [2018]). We base the following discussion on the widely cited definition by Transparency International (2018), understanding corruption as “the abuse of entrusted power for private gain.”

In this broad understanding, we can identify many distinct types and forms of corruption, such as bribery, graft, and abuse of power (Johnson & Sharma, 2004). For some researchers, state capture is one of many types of corruption, often a form of grand or systemic corruption (Pestic, 2007; February, 2019). However, in our understanding, state capture and corruption are two distinct phenomena, albeit empirically and theoretically connected. One crucial consequence of adopting Transparency International’s definition of corruption⁵ is that in scenarios with two active participants—the briber and the bribee—only one participant’s (the bribee’s) actions will constitute corruption. Suppose a private entrepreneur pays a bribe to a public official: they are involved in bribery but, except for particular circumstances, do not misuse entrusted power for private gain. This approach allows us to focus on the detrimental effects of the abuse of entrusted power for private gain, rather than the reasons leading to it. The private gain in this scenario can be provided by a third party (e.g., the briber paying a bribe), or it can be more direct (e.g., a public official showing preferential treatment to a family member or a private company they co-own).

In state capture scenarios, the center of power lies primarily outside of the public sphere, within the private actors illegitimately influencing formal decision-makers. It would not be realistic to expect a clear distinction between public and private elites in state capture situations (Sutch, 2016); instead, state capture implies that the state itself can be characterized as largely serving the interests of a narrow group of businesspeople and politicians, sometimes with criminal elements mixed in (Rose-Ackerman, 1994, p. 12).

5. And, indeed, many other influential definitions such as Joseph Nye’s (1967).

While all these actors are involved in corrupt networks enabling state capture, only some misuse the power entrusted to them, fulfilling the corruption criteria.

Compared to corruption, then, it is the emphasis on an external, private actor standing outside the state institutions that is at the core of the notion of state capture and its main contribution to social sciences. Treating state capture merely as one type of corrupt behavior shifts the focus away from these dominant actors back to the public officials who commit acts of political corruption, overlooking the shift of power within these relations to the external influence of the private actor. Characterizing these acts as state capture, then, allows one to study the uniqueness of these transactions. Therefore, it is more beneficial to treat corruption as a necessary but insufficient defining characteristic of state capture. Public officials must act corruptly (or at least deviate from their duties under pressure⁶) for state capture to occur. Still, even systemic or grand corruption of public officials does not necessarily lead to state capture.

Understandably, high levels of state capture bring harmful or even destructive consequences to the state. Most closely examined are its impacts on governance: state capture leads to lower investment in the country, limits the free market, and strengthens the growth of the unofficial economy (Anderson et al., 2000), thereby slowing economic growth, which ought to be the fundamental means of drawing people out of poverty. Furthermore, it decreases the efficiency of public spending and provision of public services (Anderson & Gray, 2006), which, again, disproportionately hits the weakest members of the population and thus further amplifies inequality and poverty in the country, posing an obstacle to its development.

From the viewpoint of the political system, favoring certain actors hinders the openness of political competition (Fiebelkorn, 2019), weakening the pluralism associated with it—a fundamental element of modern democracy (e.g., Staroňová & Malíková, 2007). The abuse of public institutions for the private benefit then leads to a general loss of public trust in government, as well as in the principle of democracy as such (Staroňová & Malíková, 2007). This may incite voters to shift their support toward populist or radical-right political parties, which seek to refute democracy and present their strong leaders as the only solution for the intractable situation of omnipresent corruption (Mesežnikov, 2019). From a security viewpoint, state capture by criminal elements deserves a special mention.

We may then also speak of the norm-setting effect of these acts and, in a way, the emergence of an informal political system, where every corrupt act serves as a precedent for society and normalizes corruption, creating a climate of corruption in the society (Frič, 2001). Such a “culture of corruption” makes state capture much easier to achieve since public officials are more likely to be influenced by the potential captors.

6. When the captor uses threats, blackmail, or other forms of coercion instead of bribery. In such cases, classifying the public official's actions as corrupt is problematic, though not necessarily impossible under the broad understanding of corruption.

Establishing the Criteria for State Capture

In this article, we proceed from the study by Andreas Fiebelkorn (2019). He argues that three factors are required for the empirical proof of state capture: proving the political connection; describing the capture mechanism; and, finally, showing the effect of the capture, that is, the benefit that the capturing firm has derived from the act.

For better specification, we also draw on methodology from a study of public procurement in Hungary by Fazekas and Tóth (2014), who emphasized the systematic nature of corrupt acts in state capture. They propose that state capture has occurred during corrupt public procurement only if an actor has won a public tender in a non-transparent fashion at least twice. Fazekas and Tóth similarly promote the notion that state capture does not have to be nationwide or necessarily encompass all institutions, which is also central to our conceptualization of state capture. However, their focus on public procurement somewhat limits the applicability of their approach.

Further, we propose it is an essential element of state capture that the captor is in a position of power relative to the public official or politician who is being corrupted; this position of power may help the captor to exercise greater pressure on this politician or official, thus ensuring their compliance and the beneficial outcome of the transaction for themselves (Labuschagne, 2017)—further distinguishing these acts from simple bribery where the outcome lies in the hands of the public official making the decision. We argue that this position of power may rely on the exceptional wealth of the person or firm (as is often the case with the “original” oligarchs), strong political connections or other forms of social capital.

Having thoroughly and critically evaluated the literature on state capture, we postulate that state capture can be operationalized by

1. identifying multiple corrupt public actors, representing a particular public institution on the one side, and a captor exerting some form of decisive influence over the other;
2. determining a capture mechanism—that is, the exchange of benefits that took place between the actors or a different form of exerted influence such as threat or blackmail;
3. identifying a situation where the captor successfully derived some benefit from the exchange⁷; and
4. documenting a repetition of exchanges between the influential captor and the representatives of a public institution—that is, at least two instances, signifying systematic influence of the captor on the institution.⁸

7. In most cases the public officials will benefit from the transaction too, as the mechanism of state capture often takes the form of bribery. We do not consider mutual benefit as one of the defining characteristics of state capture, however, since other forms of influence such as blackmail or threats are possible too, which makes the extent of the “benefit” of the public official questionable.

8. Since what matters is the capture of the state institution and not the individual, this does not need to involve the same individual. In the judiciary, on which this work is focused, and which is based on vertical control and removability from office, we propose that the criterion of repeatability also includes the systematic nature of the encroachment; that is, the captor must influence at least two levels of the judiciary.

We argue that while capture should have a systematic effect on the functioning of the state, this does not necessarily imply it must affect all parts of its apparatus concurrently and can therefore be referred to even in terms of isolated state institutions (as is the mainstream conceptualization of state capture today; see also Fazekas and Tóth [2016] for a discussion on the possibility of localized state capture). However, within these institutions, the captor's influence has to be systematic—the captor can recurrently influence the institution's decision-making regarding their interests. The exchanges happen repeatedly and are not dependent on personal relationships with specific people. While the captor will naturally continue to use the same points of access as long as possible (deal with the same public official as long as it is beneficial for the captor), the systemic nature of state capture means that the captor is able to change or replace their access points within the institution (as also reflected in the first criterion).

Furthermore, as the independence of the judiciary is such a crucial and fundamental prerequisite of a modern democratic state, we argue that any systematic encroachment of it can be considered a critical problem. For other types of institutions, the requirement of at least two instances of repeated interactions between the captor and a public official could—and perhaps should—be tightened.

Researching and identifying state capture requires a relatively thorough analysis of relationships between the suspected captor and public officials. We suggest that the prevalent conceptualization of state capture hinders empirical research due to the challenges of systematically analyzing such interactions within the political system as a whole and propose instead that conceptualizing state capture as a situation that does not necessarily have to involve all state institutions could thus promote further empirical research of the phenomenon.

With these criteria, we aim to build upon the various existing operationalizations of state capture, systematize them, and offer a standardized approach to indicate which cases could be considered an instance of this phenomenon, aspiring to allow for their closer study, especially by means of smaller-scale qualitative research (as opposed to Fiebelkorn's guide to the quantitative research of state capture). As these criteria can be applied to the developments within any separate state institution that can fall under the undue influence of a private actor, rather than looking at the singular act of public procurement or seeking to prove capture across all state mechanisms, we argue that their use could help further our understanding of how state capture happens in practice.

In the following section, we focus on the infamous Slovak businessman Marián Kočner, aiming to answer whether his influence over the Slovak judicial system can be considered an instance of state capture. Although the notion of state capture, or stolen state, in Slovakia has been much discussed, academic attention lags behind the general, society-wide debate. A notable exception is the work by Školkay, who analyzed the notorious Gorilla affair as an example of partial state capture by one oligarchic group (Školkay, 2018a) and the related capture of media and academia (Školkay, 2018b). By analyzing available literature and data, relying heavily on media sources, we explore several cases in which he had avoided justice by exercising influence over the sitting judges. Applying the proposed criteria to this case, we highlight the systemic and

systematic undermining of the justice system exceeded the boundaries of common bribery and should be considered a symptom of a fundamental weakness of the political system that had allowed an individual to capture an entire branch of the state apparatus.

DOCUMENTING JUDICIAL CAPTURE IN SLOVAKIA

Marián Kočner

Marián Kočner is a controversial Slovak businessman whose name has long been linked with questionable activities. In the 1990s, for instance, there was the intensely politicized Gamatex dispute (Filo, 2017) over the private TV station Markíza, in which Kočner clashed with Pavol Rusko.⁹ Notably, he also figured as a suspect in the so-called Technopol scheme, Slovakia's most prominent criminal case, which subsequently resulted in the kidnapping of the son of the then-president (Holcová & Soltesz, 2020). Still, he first really came into the public eye in 2005 after the publication of documents known as the “mafia lists,” in which he featured as one of those suspected of participating in organized crime groups (Dömeová, 2005). Kočner was initially thought to be a member of the Sýkorovci gang; gradually, and aided by his intimate contacts with multiple influential public officials (including the prosecutor-general), he is thought to have worked his way up to senior positions and ultimately become independent of the group (Spišiak, 2020).

Thanks to his widespread network of influence, for years, Kočner enjoyed a high social status: a fixture of Slovak social life and presented as a celebrity, he regularly appeared among famous personalities in both business and politics. Helped by his contacts in the police, the public prosecution office as well as high politics, he evaded prosecution, let alone conviction, for many acts that we would describe as illegal today (Spišiak, 2020).

As we was seemingly immune from the law, his main problem became the investigative efforts of independent reporters, who uncovered his affairs even as the public authorities remained inactive. Kočner issued threats against some of these reporters (Tódová, 2017), sought to discredit them by supporting “alternative” media peddling conspiracies (Madleňák, 2020) and using information obtained by surveillance, for which he hired the former reporter and SIS intelligence agency operative Peter Tóth, and which ought to be published on his website *Na pranieri* [In the Pillory] (Habo, 2020).

The turning point came in February 2018, when, using his acquaintance, an entrepreneur named Alena Zsuzsová, as a stool pigeon, he allegedly ordered the murders of one of the reporters—Ján Kuciak, who had long investigated the affairs in which Kočner was implicated—and his fiancée, Martina Kušnírová (Habo, 2020). In part due to the enormous pressure exerted by the public, manifested in repeated *Za slušné Slovensko* [For a Decent Slovakia] protests, the investigation, after some initial diversions, focused on Kočner.

9. A well-known Slovak entrepreneur, who would become an important figure in many of Kočner's future affairs, but also a former politician, deputy prime minister, and minister of the economy in 2003–5 for his party ANO (Kapitán, 2020).

In June 2018, Kočner and businessman Pavol Rusko were arrested in connection with the long-standing case of Markíza TV promissory notes (Habo, 2020). In January 2021, they were convicted in this case and remain in custody (Kellöová & Rudolfová, 2021).

Finally, in March 2019, Kočner was charged with ordering the murders of Kuciak and Kušnírová (Habo, 2020). A breakthrough in the case came with the confession of Tóth, to whom Kočner had been sending secret instructions from custody (Habo, 2020) and who provided crucial evidence to the police in September 2018. In the meantime, based on new evidence, other suspects were arrested and charged by the special prosecutor for the murder (Tódová, 2020d).¹⁰

As part of this investigation, the police decrypted Kočner's messages on the Threema instant messaging app, revealing much new evidence, including his contacts with leading politicians, chiefly from the Smer-SD party (e.g., Robert Kaliňák, former minister of the interior; Tódová, 2019b), but other parties as well—such as Béla Bugár from Most-Híd, the leading Slovak-Hungarian party, which was a member of the 2016–20 government coalition (Tódová, 2019a); or the far-right LSNS party that Kočner believed would help sustain the government after the mass protests proceeding the murder (Mikušovič, 2019). Kočner often boasted in Threema with these high-ranking contacts, showing he believed they would step up to his defense and support him after the murder investigation turned toward him (Vagovič, 2020).

Also revealed was an extensive network of corruption that Kočner had created within the Slovak judiciary, uncovering for many the extent of misconduct in the justice system. The decoding of messages the oligarch had sent on the app, combined with the testimony of one of the main actors in the affair, Vladimír Sklenka, led in March 2020 to the biggest-ever raid on members of the Slovak judiciary and the legal system generally (Prušová & Tódová, 2020); Akcia Búrka [Action Storm] was launched against a group of corrupt judges and lawyers suspected of being under Kočner's influence. Among the judges detained were the former state secretary at the Ministry of Justice on behalf of the Smer-SD party, Monika Jankovská, whose prolific communication with the businessman had been revealed to the public months prior through media, and who is thought to have facilitated the network of Kočner's corrupt judges from her position as the state secretary; along with her sister Andrea Haitová from the Bratislava Regional court and ten other judges from the district courts and the Bratislava Regional Court (Prušová & Tódová, 2020). Sklenka, one of Kočner's closest accomplices in the judiciary who often served as the go-between to connect him with other judges (Prušová, 2019a), admitted to accepting more than €170,000 in bribes, as well as a mobile phone with the Threema app installed (Prušová, 2020b), and to holding regular meetings with the businessman.

10. The murder broker, Zoltán Andruskó, confessed and was sentenced to 15 years in prison; the primary hitman, Miroslav Marček—who, in addition to having murdered the young couple, confessed to murdering a third person in 2016—received a 23-year sentence; and Tomáš Szabó, the other hitman, got 25 years. Slovakia's Special Criminal Court proclaimed Zsuzsová and Kočner not guilty of the murder in September 2020 (Tódová, 2020a).

Prominent Cases

In the following section, we present the best-known cases in which illegal influence was exerted on the courts, and which collectively meet the criteria of state capture as identified above and thus illustrate the specific mechanisms that this phenomenon has taken in the Slovak judiciary in the case of Kočner.

Technopol. The Technopol affair can be divided into two parts, with the second being of interest in this article: it started in 2015 and was closely investigated by Kuciak, among others. Initially, the second part of the Technopol case started out as a marital dispute, in consequence of which Denisa Pávková, the chair of the board of Technopol Servis, allegedly gained access to the company's assets and had a controlling share transferred to her. However, as Kuciak revealed, these assets were eventually transferred to people linked with Kočner at a general meeting of the company, a meeting that its management did not even know about (Kuciak, 2017a).

In this case, a group of judges can be identified as working on behalf of the businessman. Overseeing the transaction in the Business Register and ensuring the compliance of the commercial section of the court in exchange for bribes were Sklenka and Denisa Cviková (among the judges detained in March 2020; Kellöová et al., 2020). Most notably, then, Kočner kept in regular contact with the judge presiding over the case, Miriam Repáková, with whom he directly exchanged information via the Threema messaging app, sending her instructions as to how to proceed with the trial (Prušová, 2019b). For her part, Repáková allegedly gave counsel to Kočner and his lawyer team so that the lawsuit would proceed as smoothly as possible (Aktuality.sk, 2019). Sklenka too was seen here to act as an intermediary, further influencing Repáková and forwarding relevant documentation to Kočner.

When the lawsuit was decided in one case by another judge, deemed by Sklenka as intractable (Tódová, 2020c), the judge in question issued a verdict unfavorable to Kočner. Allegedly, Andrea Haitová was sent to deal with this setback: sitting at the regional court, she rejected the decision, thus sending the case back to a district court where Repáková would continue her work (Tódová, 2020c).

Acting under the influence of Kočner, Repáková issued a default judgment, even though she had no right to do so, as indeed she herself admitted in Threema messages. Kočner tried to convince her that this was permissible, as did Sklenka (Prušová, 2019b). Furthermore, instead of sending all the information about the court action to the legal representatives of the legitimate owners of the firm, whose power of attorney she did not recognize, Repáková sent the papers to an address in the United States so that the company management only learned about her arbitrary conduct of the trial after a delay of half a year (Prušová, 2019b).

Repáková was among the first of Kočner's judges to ask to be suspended from office in October 2019 (Prušová, 2019b). Once detained by the police, she was charged with abusing public office and confessed to this in full; she then promised to testify and was released from detention (Prušová, 2020a). However, so far, it is unclear whether she rendered her services to Kočner in exchange for cash; their messages suggest that, at the

very least, she was rewarded with a holiday at the luxury Residence Hotel in Donovaly in early 2018, which Kočner took control of in another controversial case (Prušová, 2019b). It, therefore, seems very likely that Kočner obtained the services from Repáková in return for bribes. Similarly, Cviková and Haitová, among the judges detained in March 2020 (Kellöová et al., 2020), are assumed to have accepted bribes for their involvement. On his part, Sklenka admitted to receiving €100,000 from Kočner for his assistance within the Technopol case (Kellöová et al., 2020).

General judicial compliance was manifested by the illicit correspondence between the judges and Kočner, which served not only to provide the businessman with additional information but also to influence the decisions of the presiding judge. In addition, another mechanism of capture identified here is the direct issuance of a favorable decision in exchange for bribes by Repáková.

As revealed by Kuciak (2017a), a group of businessmen long connected to Kočner were alleged to have obtained assets worth approximately €20 million through the unlawful takeover of Technopol; Kočner himself acquired a building in the city of Bernolákovo and over €500,000 were transferred to his account from the company (Sabo et al., 2019). It was his Threema communication with Repáková, uncovered following the journalist's murder, that revealed the real influence of Kočner over the court case and the takeover itself, an influence that he had previously vehemently denied (Sabo et al., 2017a). Kočner, together with other suspects, was finally charged with the illegal takeover of Technopol in March 2020 (Dömeová, 2020).

Even within the single isolated case, a small network of corrupt judges can be identified, with at least four judges—from not only the District Court, but also the Regional Court (represented by Haitová)—acting on behalf of the businessman. Kočner intervened in the case proceedings repeatedly and systematically, first ensuring Sklenka and Cviková would be the ones placed in charge of the Business Register agenda (Dömeová, 2020); directly influencing the decisions of Repáková, the presiding judge, throughout the case (Dömeová, 2020); as well as safeguarding the compliance of the higher court if needed through his contacts to Haitová (Tódová, 2020c).

Particularly interesting as to its testimony to the systematic character of capture within the Slovak judicial system is the statement provided by Sklenka to the police, in which he described how Urbancová of the Supreme Court and Sádovský of the Regional Court, too, sought to influence him, but to the benefit of the other party, Pavel Pávek, husband of Denisa Pávková (Tódová, 2020c), with Urbancová allegedly offering Sklenka a bribe of €30,000 for his help (Kellöová et al., 2020).¹¹

Markíza TV Promissory Notes. The second prominent case chosen here to illustrate Kočner's influence on the judiciary concerns his return to the dispute over the Markíza

11. This detail is not important in terms of the state capture pursued by Kočner, but it illustrates the extent of corruption in the Slovak judiciary and as such is important in providing a broader framework for the Kočner case. Such competition among the parties would suggest that state capture does not require an extraordinary effort on the part of the private captor, and could therefore be a widespread phenomenon, if the logic of the firm competition inspired by Hellman and Kaufmann is applied (Hellman et al., 2000).

TV station, nearly two decades after his original attempt to take it over in 1998 (the Gamatex case mentioned above) and had also featured in the investigative work of Kuciak (Kuciak, 2017b). In 2016, Kočner proclaimed that the dispute with the then-owner of Markíza, Rusko, had ended in 2000 and that he had received promissory notes from Rusko for nearly €70 million (Holcová & Soltész, 2020). However, no promissory notes had been mentioned as part of the financial settlement in 2000 (Tódová, 2020d).

Kočner, together with Rusko (who, in the meantime, had given up his shares in Markíza), falsified the promissory notes in an attempt to defraud the TV station, which they intended to sue for the money (Tódová, 2020d). The reason for their crime was allegedly a settlement between the new and the other former owners of the TV station, in which a larger sum was paid to them than that originally paid to either Kočner or Rusko. Kočner submitted the promissory notes at the Bratislava V District Court in 2016, which launched proceedings in the matter.

The decrypting of Threema messages showed that in this case, too, Kočner was able to influence the judiciary and bend justice to his advantage. The president of the Bratislava V District Court, Dušan Srogončík (one of those detained in March 2020), allegedly took a bribe to arrange that some of the promissory notes came under the agenda of a judge who could be influenced. Linking Kočner to that judge was Jankovská, who allegedly gave instructions throughout the lawsuit to the judge, Zuzana Maruniaková, to ensure the victory of the businessman (Kellöová et al., 2020).

Maruniaková duly ruled in Kočner's favor in 2018, upholding one of the claims from the TV station without having verified that the signature of Rusko on one of the notes was genuine. Another of the judges charged, Cviková—a friend of Jankovská for many years, supposedly wrote the judgment for Maruniaková (Prušová, 2020a) in exchange for bribes, distributed by Jankovská herself.

On the other hand, Maruniaková, who testified after being detained, described the pressure exerted on her by the state secretary at the time (Tódová & Prušová, 2020), when she (Jankovská) tried to convince her that the notes were genuine. Although Maruniaková has not admitted accepting bribes for her decision in the lawsuit over the promissory notes, she said she had been threatened (under Jankovská's pressure, she allegedly feared for her life and the safety of her family; Tódová and Prušová [2020]), which we argue suggests an instance of state capture as well. Also speaking in favor of the version proposed by Maruniaková is a chilling communication between Kočner and Jankovská (Tódová, 2019c): on 26 February 2018, the day Slovakia learned about the murder of the journalist Ján Kuciak, Kočner wrote: "Let her do what she should; otherwise she'll end up 'like Kuciak.'" Jankovská, on another occasion, wrote, "I've made her what she is, and it is time to pay back the debt."

Once more, the mechanisms of capture included the judicial compliance illustrated by the provision of information and the direct influence of the captor over the unlawful decision by the court, which was furthermore alleged to have been written by a second judge. Through Srogončík, then, Kočner also manipulated the administrative allocation of cases to secure a judge he could control.

As a result of Maruniaková's judgment on one of the notes, Kočner could claim €8 million from Markíza; overall, the two businessmen wanted to claim over €69 million from the private TV station (Tódová, 2019c). As such, the Markíza TV promissory notes represent the largest and most significant economic case in the history of the Slovak justice system (Kellöová & Rudolfová, 2021).

Again, the case points to the systematic character of the capture of the judicial system by Kočner. The network of judges here was facilitated by Jankovská, acting from the position of state secretary at the Ministry of Justice, distributing the bribes and orders on his behalf. Her communication with Kočner reveals she repeatedly and persistently exerted undue influence over Maruniaková and allegedly also arranged to have the decision written for her by Cviková.

In January 2021, Kočner and Rusko were found guilty of falsifying the promissory notes, largely thanks to the statement of Tóth and the decrypted Threema communications, which have confirmed their crime. Both were sentenced to 19 years in prison, and Kočner was also fined €10,000 (Kellöová & Rudolfová, 2021). The verdict noted Kočner's arrogant use of the judges in an attempt to influence the outcome of the trial as an aggravating circumstance (Tódová, 2020d).

Manifestations of State Capture in Kočner's Case

We can identify both key actors: the influential entrepreneur Kočner on the one side and a network of corrupt judges on the other. This article has convincingly documented six acting judges who allowed themselves to be influenced by the entrepreneur in their decisions during trials; as stated, many other judges have been accused of criminal proceedings in Kočner's favor. Documenting all of these instances is beyond the scope of a single article; however, it is clear that Kočner was able to influence multiple judges, moving from one to another depending on who suited his current needs.

The mechanism of state capture was issuing judgments favorable to Kočner and the general complicity of the judiciary with his actions (including, for example, providing information about other ongoing trials or exerting influence over other judges). Available information indicates that the judges received cash or other bribes as payment for their services. Notably, the complicity of Maruniaková might have been secured by intimidation rather than a bribe since she claims to have been threatened. The (possible) use of coercion and other means of undue influence further supports the classification of Kočner's influence as state capture rather than corruption.

In what we argue most differentiates state capture from corruption, Kočner was able to repeatedly advance his economic interests through "his" judges, proving his influence exceeded that of a regular briber and systematically succeeding in extracting rent through the work of the state institution itself—the Slovak judicial system. It is beyond the scope of this article to provide a comprehensive account of Kočner's power over the whole political system; however, we did present an insight into his economic status, as well as his relations to several high-ranking politicians and public officials to provide some background on his social capital, which we believe continually allowed him to exert the influence necessary to reach his goals through the judicial system. The network of

Kočner's corrupt judges was partially facilitated by Sklenka and Jankovská, both insiders to the judicial system; however, we try to showcase that the network as such overall served to benefit Kočner as a powerful private individual.

Lastly, the selected cases also indicate that Kočner's network pervaded multiple levels of the ordinary court system. Beyond Bratislava I, III, and V District Courts, his undue influence reached the Bratislava Regional Court—the court of appeal for those cases first heard at the district courts—and Monika Jankovská at the Ministry of Justice. We argue this indisputably systematic approach to undermining the justice system, as one of the key pillars of the modern democratic state, on multiple levels further proves his actions should be considered a form of state capture rather than simple acts of corruption.

CONCLUSION

This article has outlined how Kočner was, through illegitimate means, able to exert long-term influence over the Slovak judiciary in a manner that granted him impunity and protected his own financial interests. Beyond its obvious political, social, and human costs, we argue that this impunity is also of academic interest since the state capture concept can be successfully applied to it.

The case of Kočner's judges (not least because of the double murder case in which the entrepreneur was a defendant) is the best-described case of state capture in the Slovak judiciary. Understandably, the public was shaken by the revelations. When they learned of the affairs of the once-popular businessman, the social climate in the country fundamentally changed and led, among other things, to the replacement of the government after elections in which corruption was the most prominent topic (Mortkowitz, 2020). People and parties linked with Kočner—including the former party of government, Smer-SD, many members of which were associated with him (Tódová, 2019b), as well as the SNS (Slovak National Party), whose chair, Andrej Danko, was compromised by his contacts with Zsuzsová (Sliz & Sabo, 2020), were voted out and a new coalition came to power that set fighting corruption as its highest priority.

Understandably, the coalition is still young, there are urgent problems (mainly the COVID-19 crisis) that it must face, and hence it is too early to say whether it will be able to fulfil the popular desire to clean up public life. Still, anti-corruption measures and efforts to regain the public's trust in the rule of law are at the core of the new government policy statement (SME.sk, 2020), and substantial evidence shows that various influential people who had contributed to corruption or state capture in Slovakia are being prosecuted despite the contemporary limitations. An example and perhaps the best illustration of the extent of capture of the Slovak state is the network currently undergoing criminal investigation under the name *Očistec* (Purgatory). A notorious businessman, Norbert Bödör, along with some of the highest-ranking police officials—including two former presidents of the Slovak Police Force, Tibor Gašpar and Milan Lučanský; the former director of the National Crime Agency (NAKA), Peter Hraško; and the director of its anti-corruption unit, Róbert Krajmer—are alleged to have created a criminal

enterprise operating within the structure of the police, collecting payoffs for hampering the investigation of crimes of high-net-worth individuals (Sivý & Kováčiková, 2020).

Beyond the provided case study of state capture within the Slovak judiciary, we aim to advance the methodological approach to determining instances of state capture as such. The proposed criteria, based on multiple guidelines suggested by previous authors combined and revised, in our view provide a streamlined manner for determining which profiteering acts should be viewed through the lens of state capture rather than corruption itself. As these are applicable to any single state institution that may become subject to the undue influence of a powerful individual actor, they can hopefully further our understanding of how state capture, in fact, happens in practice, whether in the post-communist countries where it was first quoted or otherwise. This, in turn, would allow for a better understanding of the nuances of state capture, which we believe ought to be treated differently than regular corruption precisely for the fact that it shows the development of a parallel power hierarchy, allowing wealthy (or otherwise influential) private actors to stand above the state apparatus itself.

This, however, does not mean that the concept and its operationalization presented here are without problematic aspects. Perhaps the biggest issue lies in operationalizing the systematic nature of interactions between the captor and the representatives of the captured institution. In other words, how many instances of exerted illegitimate influence involving the same set of actors warrant the description of the situation as state capture? The very term suggests that such systematic influence of one actor must have fundamental consequences for the entire state and its functioning, and not only for a specific component. In such an understanding, we would have to prove systematic external influence on the legislative, executive, and judicial powers concurrently—a nearly impossible research challenge. However, despite its name, the concept of state capture does not necessarily require such an all-encompassing approach. The ability of a non-state actor to systematically influence any component of state power, or even one of its bodies (say, a particular ministry) to the actor's benefit is sufficiently severe to warrant the application of the state capture concept. We argue the issue is then particularly serious if the judiciary is involved since its independence is crucial for the functioning of a democratic state. ■

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