

Policy brief No.35/2020

# Montenegrin Parliament and the Agency for Prevention of Corruption: To Save a Sinking Ship

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"Societas Civilis" – Skopje.*

# Impressum

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**Publisher:** Institute for Democracy  
„Societas Civilis“ – Skopje

**Design:** Matea Londza Shumkovska

**The publication can be downloaded for free at:**

<https://idscs.org.mk/en/portfolio/montenegrin-parliament-and-the-agency-for-prevention-of-corruption-to-save-a-sinking-ship/>

# Montenegrin Parliament and the Agency for Prevention of Corruption: To Save a Sinking Ship

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*Author: Ana Đurnić, public policy researcher at NGO Institute Alternative*

## Summary

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The MPs dedicate only as much as time and energy as needed to discuss and approve the Agency for Prevention of Corruption's (APC) annual performance reports and to dismiss/appoint members of the Agency's Council. In other words - they fulfil the minimum of obligations prescribed by the Law on Prevention of Corruption (LPC).

Parliament's control mechanisms rarely put the Agency in the spotlight. More often it "pops up" during political debates led in the Parliament. Only once in the current Parliament's mandate has the APC been subject to the MPs question.

By adoption of the LPC, the Anti-corruption Committee (ACC) has been for the first time entrusted with direct oversight jurisdiction of the anti-corruption institution. This, however, did not enhance its effectiveness at all.

The Parliament's control of the Agency reflects the overall picture of the neglected parliamentary control of the executive, checks and balances system which almost does not exist, public officials who rarely get held accountable and corruption which remains a prevalent problem. Montenegrin Parliament mostly comes as a "voting machine", instead of a strong institution capable of encouraging the Government for better work and greater accountability.

The 2020 elections were held on August 30. Regardless of the official results of the election, and no matter how strong/weak would the Parliament's support for the Government be, the next mandate's MPs should work on further strengthening their control mechanisms, to preserve the Parliament's democratic role. They should also closely monitor the Agency's work under its new director appointed in June 2022 and be proactive in doing so. Some new "personnel solutions" on both sides bring a chance for reforms in the anti-corruption area.

# Checks and balances in fight against corruption – a sinking ship

Great expectations of both domestic and international community in regard to the effectiveness of the APC<sup>1</sup> are yet to be fulfilled. In every single report, European commission states that challenges concerning transparency, integrity, impartiality, independence, an unselective approach, together with uniform and full application of relevant laws, remain<sup>2</sup>. Domestic civil society and media argued many times that the Agency, although namely independent<sup>3</sup>, is strongly tied to the Government and politicised<sup>4</sup>. Its strong capacities have been mostly used against oppositional public officers and civil society representatives<sup>5</sup>.

Despite this institution's evident failure to be impartial and independent and despite its apparent unwillingness to deal with corruption at all levels, the Parliament has always been satisfied with its

work. Even though the MPs have significant control mechanisms at their disposal to hold the executive and independent institutions accountable<sup>6</sup>, the oversight role of the Parliament is weak. At the same time, the opposition's on-and-off boycott since 2016<sup>7</sup> made it even weaker.

In Montenegro, there is no Law on the Parliament and the Law on the Government. Thus, procedural issues of control mechanisms envisaged by the Constitution remain inadequately elaborated and in practice – ineffective<sup>8</sup>. This leads to the Government practically ignoring the Parliament, its requests for information, as well as its conclusions and conclusions of its working bodies whenever it suits it<sup>9</sup>. Strong Parliamentary support for the Government makes the Parliament a “voting machine”, instead of a vital institution capable of encouraging the Government for better work and greater accountability.

Overall, the parliamentary oversight in Montenegro paints a picture of passive Parliament on one side, unrestrained Government and institutions on the other and checks and balances system which only exists on the paper in between.

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<sup>1</sup> Montenegrin APC was one of the key requirements of the Montenegrin EU accession reform process in the field of fight against corruption, along with the establishment of the Special State Prosecutor's Office. It has been given jurisdiction to protect whistleblowers, control political parties financing, determine and prevent conflict of interest of public officials, control their assets and income, as well as control lobbying and the adoption and implementation of integrity plans of Montenegrin authorities. The Agency was envisaged by the LPC adopted in 2014.

<sup>2</sup> European Commission's 2020 Non-Paper on Chapters 23 and 24, Montenegro, Jun 2020, available at:

<https://bit.ly/3kMABIO>

<sup>3</sup> The Agency was established by the Parliament, as an independent body with a legal person status.

<sup>4</sup> The daughter of the former Agency's Director Sreten Radonjić is married to the son of the Prime Minister and the Deputy President of DPS Duško Marković..

<sup>5</sup> Several members of the Council of the Public Broadcaster RTCG (Nikola Vukčević, Goran Đurović, Darko Ivanović), as well as Director General of RTCG Andrijana Kadija, have been dismissed from their positions, based on the Agency's decisions that they violated the LPC. Vanja Čalović, NGO activist and former member of the Agency's Council has been dismissed from that position as well based on the Agency's decision.

<sup>6</sup> Parliamentary inquiry, Premier's hour, MPs' questions, control and consultative hearings.

<sup>7</sup> At first, the boycott was supported by all the oppositional MPs, mostly as a protest against the “coup d'état” affair. Later on, some MPs would occasionally join the parliamentary sittings for some specific topics, some of them would return for several months (Democratic Front) and some remained consistent to the boycott through the entire mandate (Democrats of Montenegro and Civic Movement United Reform Action – URA). The “Envelope” Affair sparked another collective boycott in early 2019, while the Covid19 crisis brought some of the MPs back to the plenary hall in the spring 2020.

<sup>8</sup> These mechanisms are regulated by the Parliament's internal act – Rules of Procedures, which is not sufficiently binding for the Government.

<sup>9</sup> See: The Parliament's oversight of the executive in 2014, Marović, Jovana, Institute Alternative, April 2015, available at: <https://bit.ly/2DBa0Q7>; Parliamentary Questions in Montenegro, Marović, Jovana, Institute Alternative, April 2015, available at: <https://bit.ly/2Ce5DYG>; Parliamentary oversight in the area of security and defense – 2013 Monitoring Report and Impact Assessment, Bajramspahić, Dina, Sočić, Marko, August 2014, available at: <https://bit.ly/3gRnvHC>

# Only do what you really must do

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The MPs dedicate only as much as time and energy as needed to discuss and approve the Agency's annual performance reports and to dismiss/appoint members of the Agency's Council. In other words - they fulfil the minimum of obligations prescribed by the LPC<sup>10</sup>. The Agency often "pops up" in the parliamentary political debates, but its work and performance are rarely under the spotlight of the focused parliamentary discussions and hearings.

## **Parliamentary questions and Premier's hour**

Parliamentary questions and Premier's hour are barely ever focused on the Agency. Only once has the parliamentary question directly targeted the Agency.

Only one MP's question, out of 1,171 raised in the current Parliament's mandate<sup>11</sup>, referred directly to the work of the APC<sup>12</sup>. This question solely provided an opportunity for the minister from the same party to praise the Agency and highlight how well and impartially it is fulfilling its obligations.

*The only MP question on the Agency was raised by the MP Nikola Rakočević from the ruling Democratic Party of Socialists (DPS), and referred to the Minister of Justice, Zoran Pažin<sup>13</sup>. He wanted to know whether the APC is empowered with enough organizational and technical capacities and staff to fulfill its obligations arising from the LPC, Law on Financing of Political Parties and Electoral Campaigns and the Law on Lobbying.*

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<sup>10</sup> The Agency is directly accountable to the Parliament. The Parliament appoints and dismisses the Council's members, who then appoint the Agency's director – a person in charge of and accountable for the overall Agency's performance. The Agency's Council submits the Agency's annual performance reports to the Parliament. It can submit special reports on the specific issues from the scope of its work as well. Law on Prevention of Corruption (Official Gazette of Montenegro, No. 053/14, 19/12/2014).

<sup>11</sup> Since late 2016 until mid 2020, the Prime Minister received 139 questions in 13 individual sittings, and the ministers received 1,032 questions in 17 sittings. Parliament's Annual Performance Reports 2016, 2017, 2018, 2019 and minutes from the sessions held in 2020, all available at: [www.skupstina.me](http://www.skupstina.me)

<sup>12</sup> Parliamentary sitting held on 29 March, 2017

<sup>13</sup> During the period of establishing the Agency (2015), the Ministry of Justice was in charge of preparing the by-laws and documents in accordance with the LPC, to regulate the Agency's work.

## Deliberation of the Agency's Performance Reports

Three sessions of the current Parliament's mandate were focused on APC's performance reports for 2016, 2017 and 2018<sup>14</sup>.

For all three sessions, the ACC prepared a Report on the deliberation of the Agency's report with the same conclusion – to accept and adopt the Report. Only one of the three reports prepared by the ACC contained recommendations for the Agency<sup>15</sup>. However, neither has the Committee nor the Parliament ever controlled whether the Agency fulfilled those recommendations<sup>16</sup>.

Despite the seemingly exhausting sessions on the Agency's <sup>2017</sup> and <sup>2018</sup> Performance reports, judging by their length<sup>17</sup>, there was no real analysis of the Agency's work. Again, political debates took place instead. The parliamentary majority argued how well the Agency is doing their job and how much public pressure it bares with.

The oppositional MPs highlighted that the Agency is under direct Government's control, how poorly the European Commission has evaluated it in its reports and how its capacities are being misused against the oppositional officials and civil society representatives<sup>18</sup>. None of the MPs proposed constructive solutions on how to improve the Agency's performance. The real picture of the Parliament's lack of interest in the Agency was shown in 2017 when the MPs dedicated only 16 minutes to the Agency's results in its first year of existence<sup>19</sup>.

The Parliament lacks proactivity in controlling the Agency. The Agency regularly prepares and publishes quarterly reports on its work. However, never in the last four years has the Parliament or the ACC discussed these reports, nor has it ever requested a special report to be prepared and submitted by the Agency.

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<sup>14</sup> In the period of November 2016 until August 2020, the Parliament held 76 regular and 8 extraordinary sessions.

<sup>15</sup> The Anti-corruption Committee's Report on the deliberation of the 2017 Annual Performance Report of the APC, No. 00-72/18-16/2, 31/5/2028, available at: [www.skupstina.me](http://www.skupstina.me)

<sup>16</sup> Recommendations: To establish the working group for amending the LPC and to improve the Agency's communication strategy to enhance public appearance of the Agency in domestic media.

<sup>17</sup> Discussion on the 2018 Report lasted about five hours, while the discussion on the 2017 lasted about three hours.

<sup>18</sup> Phonografic records from the 9th Parliamentary Sitting of the First Regular Spring Session in 2018, started on 18 June 2018 (discussion on the Agency's 2017 Report held on 2 July 2018) and Phonografic records from the 6th Parliamentary Sitting of the First Regular Spring Session in 2019, started on 16 May 2018 (discussion on the Agency's 2017 Report held on 18 June 2019), all available at: [www.skupstina.me](http://www.skupstina.me) (accessed on 10 August 2020).

<sup>19</sup> In 16 minutes, representative of the Council presented the summary of the Annual 2016 report and the Committee's Chair presented the Committee's views on the Report. The opposition did not attend the session.



## *The Anti-corruption Committee – could be a “bride”, but does not want to “engage”*

It took the ACC some time to position itself (or be positioned) within the institutional framework for combating corruption and organised crime. Until 2015, it was “always a bridesmaid – never a bride”. In other words, it was dealing with all kinds of anti-corruption issues as a concerned committee, but it was never a lead in any<sup>20</sup>. However, the fact that for the first time has the Committee been

entrusted with direct oversight of one anti-corruption institution<sup>21</sup> did not enhance its effectiveness at all.

The ACC showed to be passive in terms of use of its control mechanisms. Since late 2016, it held a total of 31 sessions, out of which only four consultative and zero control hearings.

Table 1: An overview of the control and consultative hearings held by the ACC in the period 2016-2020

Year	Total number of sessions	Control hearings	Consultative hearings
November – December 2016	0	0	
2017	8	0	2
2018	5	0	0
2019	14	0	2
First half of 2020	4	0	0

All four of the held consultative hearings were in regard to the work of the APC, but without any effect. After two of the hearings, ACC solely concluded that “all is good” and the Agency is doing a good job. The Committee provided the Agency with zero recommendations on how to improve its work and what could be done better. It did not request any additional data or documents to be submitted to the Committee’s members.

For two of the held hearings, there are no minutes publicly available. During a consultative hearing on control and supervision of the 2017 local elections in Nikšić, after the director’s presentation, none of the MPs had any question for him. However, it was concluded that the Agency fully implemented its competencies and achieved great results<sup>22</sup>.

<sup>20</sup> The competences of the Anti-corruption Committee include the monitoring and analysis of the work of state authorities, institutions, organizations and bodies engaged in the fight against corruption and organized crime, as well as the consideration of issues and problems arising from the implementation of laws, strategies and action plans in the field and proposing the measures for their improvement. The Committee is in charge of considering petitions and its referral to the competent authorities. Read more: Milošević, Milena, Anti-corruption Committee – Cure of Placebo?, Institute Alternative, November 2012, available at: <https://bit.ly/2PUaZeF>

<sup>21</sup> In 2014, with adoption of the LPC, this Committee gained additional jurisdiction in regard to direct oversight of the APC and appointment of its Council’s member.

<sup>22</sup> This consultative hearing lasted only 15 minutes. Minutes from the Anti-corruption Committee’s session No. 2, held on 9/3/2017, minutes available at: [www.skupstina.me](http://www.skupstina.me)

## Conclusion and Recommendations

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So far, the Parliament has been extremely passive in terms of overseeing the Agency. In parliamentary plenary sessions, the Agency is mostly a subject of political debates. Rarely are the Parliament's spotlights pointed to the Agency's performance and results. The ACC is not using its jurisdiction to properly control this institution as in not proactive enough in requesting information. It opts for rather basic and inefficient consultative hearings, ending with technical conclusions. The MPs dedicate only as much as time and energy as needed to fulfil the minimum of obligations prescribed by the LPC . In order to be efficient in overseeing the APC, the Parliament's next mandate should more excessively use its existing powers and control mechanisms and work on further strengthening its control function.

1. The Parliament should adopt the Law on the Parliament and precise, among other, its control mechanisms and procedures towards the independent institutions (such as APC), in accordance with the Constitution and special laws (such as LPC);

2. When using the consultative mechanisms, the MPs should avoid political debates and focus on asking specific questions on the Agency's work instead;

3. Anti-corruption Committee and the Parliament should discuss all of the Agency's quarterly performance reports;

4. The Anti-corruption Committee should, after each discussion on the Agency's work, adopt conclusions and clear recommendations and monitor its implementation;

5. The MPs should more excessively use their control mechanisms towards the Agency instead of limiting solely to their obligations prescribed the Law on Prevention of Corruption

Annex 1: An overview of the consultative hearings held by the Anti-corruption Committee with topics and conclusions

Year	Session	Duration	Topic	Conclusions
9/3/2017	2nd session	15 min	Implementation of the Plan of control and supervision of the 2017 local elections in Municipality of Nikšić	The Agency fully implemented the controlled all the local budgetary units and political entities running for elections (Democratic Party of Socialists and Socialdemocrats of Montenegro). The Agency performed control by inspecting all the business books and other documents of political entities and other subjects of the control (Electric power distribution company, Utility company Nikšić and Water supply and sewerage company)
8/12/2017	7th session	1h15min	Progress in fight against corruption since the establishment of the Agency and overview of the monitoring of local elections in Mojkovac, Petnjica, Cetinje i Tuzi	The Agency fully implemented the control and ensured implementation of all legal obligation from the Law on Financing of Political Entities and Election Campaigns, the Law on Election of Councilors and
20/11/2019	26th session	No minutes available.	Amendments to the LPC and the Law on Financing Political Entities and Electoral Campaign	No minutes available.
25/12/2019	28th session		Prevention of corruption – whistleblowers' protection and lobbying	No minutes available

## For the project

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Anti-Corruption Talk in Parliament is a project aimed at strengthening the oversight role of lawmakers in the fight against corruption. The project is funded by the US National Endowment for Democracy.

## Information for IDSCS

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IDSCS is a think tank organization that investigates the development of good governance, the rule of law and the European integration of North Macedonia. IDSCS has a mission to support civic engagement in decision-making and to strengthen participatory political culture. By strengthening libertarian values, IDSCS contributes to coexistence between differences.

## Link

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### **Link to the publication:**

<https://idscs.org.mk/en/portfolio/montenegrin-parliament-and-the-agency-for-prevention-of-corruption-to-save-a-sinking-ship/>

### **Contact information for IDSCS**

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## Information about the author

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**Ana Đurđić** is a public policy researcher at Institute Alternative, think tank from Podgorica, Montenegro, since January 2015. She is primarily responsible for project coordination and research in the Public Finance Management – Public Procurement, accountability and preventive part of fight against corruption. She is closely monitoring the work of the Montenegrin Agency for Prevention of Corruption. Ana is an author of numerous IA publications, such as Centralised Procurement: The Beginning of the Long Road, [Low Value Procurement in Montenegro: Without Transparency or Competition, Instead of Reforms, Status Quo: Control of Assets Declarations and Conflict of Montenegro, Confidential Procurement in Montenegro: Far from Public's Control](#) etc. She is a co-author of the IA [Monitoring Report on the PFM Reform in 2017 and 2018: The other side of the coin](#). Ana is a [WeBER](#) research team member (Western Balkans Enabling Project for Civil Society Monitoring of Public Administration Reform 2015 - 2018).

She has participated in conducting research and preparing Regional Monitoring Report [The Western Balkan PAR Monitor 2017/2018](#). She is also a co-author of the [WeBER National PAR Monitor – Montenegro](#) and a WeBER policy brief [Montenegro – Frontrunner Lagging Behind](#). Ana is a member of the Government's Working Group for Negotiation Chapter 5 – Public Procurement since July 27, 2018. She participated in the TRAIN Programme 2017 (Think Tanks Providing Research and Advice through Interaction and Networking), which is supported by the German Federal Foreign Office (Stability Pact for South East Europe) and implemented by the German Council on Foreign Relations (DGAP). Ana is an author of the policy brief: [Between Party Patronage, Nepotism and Corruption: Local Sector Employment in Montenegro](#) prepared within this program. Ana finished the Government's Program of professional training of university graduates at Institute Alternative. She graduated International Relations at Faculty of Political Science in Podgorica, Montenegro.

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September 2020