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The Relationship of the National Assembly of the Republic of Serbia to the Agency for Prevention of Corruption

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Introduction

Contrary to those countries that have established multi-purpose anti-corruption agencies (ACAs), with an all-encompassing mandate, covering prevention, education, law enforcement and prosecution, Serbia opted to create a dispersed institutional scheme for curbing corruption. The main responsibilities for fighting and preventing corruption are shared by the Agency for Prevention of Corruption (APC), the Anti-corruption Council, the Prosecutor's Office for Organized Crime (with the Police).

The Agency for Prevention of Corruption (APC) was founded by the new Law on Prevention of Corruption adopted in May 2019. APC is a legal successor of the Anti-corruption Agency (ACA), created in 2008, which became operational in 2010. APC is the primary prevention anti-corruption body established as an autonomous and independent body. It coordinates national anti-corruption strategy and has a range of other preventive functions, including integrity plans

in public administration, as well as control of the financing of political parties. The Law on Prevention of Corruption, as well as the previous Law on Anti-corruption Agency, defines the APC's functions in terms of prevention, education, policy, normative issues and awareness-raising, making it a preventive and policy model of ACA.² Prosecutor's Office for Organized Crime is the main investigative and prosecutorial body dealing with corruption cases, while the Anti-corruption Council acts as an advisory body to the government.

Out of those anti-corruption bodies, the National Assembly of the Republic of Serbia has the most direct and comprehensive relations with the APC. To demonstrate how this engagement plays out in practice, I concentrate on key dimensions of their interaction, namely: selection and appointment process of the APC's leadership, allocation of the APC's budget, and consideration and follow-up to the APC's (annual) reports.

¹ This paper draws on and condenses the results of a larger study: Franklin de Vrieze and Luka Glušac, Parliament's relationship to anti-corruption agencies: Evidence from Lithuania, Ukraine and Serbia, Westminster Foundation for Democracy, 2020, <https://www.wfd.org/2020/07/10/report-parliaments-relationship-to-anti-corruption-agencies-evidence-from-lithuania-ukraine-and-serbia/>

² More on different models of ACAs see in: Organization for Economic Co-operation and Development, Specialized Anti-Corruption Institutions: Review of Models, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2008.

How does this engagement look in practice?

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Selection and appointment

The APC's governing bodies are the Council (previously known as the Board) and the Director. At the very outset, it should be noted that the new Law on APC shifted the balance of relations between the Council and Director in the Director's favor. The Director now has a stronger position than before. At the same time, the remit of the Council is limited to deciding on appeals against decisions of the Director pronouncing measures in accordance with this Law, performing supervision over the work of the Director and taking general views in relation to the implementation of this Law.

On the other side, it is commendable that the legislature opted to introduce public competition for both the Council and the Director with the new law. However, the role of the National Assembly is seriously demoted, as it only appoints the ACA's officials, while other bodies perform selection procedure. The fact that public competition can be announced (opened) exclusively by the executive body - the Ministry of Justice, is problematic, as it may potentially influence the work of the Agency by, for instance, postponing the competition or obstructing it in some other way. Although it is certainly better that the selection procedure is conducted by the Judicial Academy and not the Ministry itself, it remains unclear why that task was not delegated to the competent parliamentary committee, given that the ACA is accountable to the National Assembly.

The new law stipulates that members of the new APC Council have to be elected until 1 September 2020, that is, when the new law enters into force completely. This procedure has not so far been initiated, arguably because parliamentary elections took place in June 2020. Given that the first appointment of the ACA's Council and Director under the new law is yet to take place, hereinafter I focus on the appointment of the ACA's leadership under previous law.

In past, the ACA Board had nine members, appointed by the National Assembly following their nomination by: (1) Administrative Committee of the National Assembly; (2) President of the Republic; (3) Government; (4) Supreme Court of Cassation; (5) State Audit Institution; (6) The Protector of Citizens (Ombudsman) and Commissioner for Information of Public Importance (Commissioner for Information), through joint agreement; (7) Social and Economic Council; (8) Bar Association of Serbia; and (9) Associations of Journalists of the Republic of Serbia, in mutual agreement. While the legislation provided well-designed procedures for the selection and appointment, in practice they had either not been used or been used with a severe delay, which had hampered the work of the Agency, leaving it without the full leadership. Put another way, the parliament had been the main obstacle instead of being the provider of the independence and institutional stability of the ACA.

For instance, because they were not favorites of the ruling parliamentary majority, the candidates for the members of the ACA Board proposed by the Ombudsman and Commissioner for Information of Public Importance, and Associations of Journalists of the Republic of Serbia, had not been appointed for more than four years. This caused the Board to work with seven instead of nine members. It is important to stress that when the candidate proposed by the Ombudsman was ultimately elected after four years, the law was breached. According to the Law on the Anti-Corruption Agency, the Ombudsman and the Commissioner for Information propose the candidate for Board member through joint agreement. In this case, there was no mutual agreement of these institutions, as they were unable to agree on the candidate. The parliamentary majority appointed the candidate proposed only by the Ombudsman.

Even more worrisome, between April and August 2017, the National Assembly left the ACA Board with only two members, because it hesitated to elect new members. That caused severe problems in the functioning of the ACA, especially because at the same time it was left without the Director. Ms. Tatjana Babić, who served as the Director from January 2013, left the office when she was appointed as a judge of the Constitutional Court

in December 2016. The competition for the new Director was declared unsuccessful because the Board members could not agree on the right candidate after two rounds of voting. In the meantime, the mandate of the majority of the Board members expired in April 2017, as mentioned above. It was only in September 2017 that the new Director was appointed, Ms. Majda Kršikapa, who resigned after only two months under mysterious circumstances (without any justification). The new competition was announced, and the current Director Mr. Dragan Sikimić was appointed in January 2018. Some oppositional parties strongly protested against Sikimić's election, arguing that he was in a clear conflict of interest, because of his prior relations with the ruling party, the Serbian Progressive Party. In 2016, he was a candidate of the ruling party in local elections, as well as the member of the working body in charge of implementing elections in 2017, appointed from the list made by the ruling party (Serbian Progressive Party).³ Also, he has donated money to the Serbian Progressive Party.⁴ In fact, according to some sources, he was an active member of the party and actually resigned (from the party) on the day of his appointment, not on the day he applied for the position.⁵ If the latter is true than he was an ineligible candidate. Despite this information and protests from the opposition, Sikimić remained in the office to date.

³ The list for 2016 local elections in Belgrade, 'Official Gazette of the City of Belgrade', No. 26/2016. See also: Jelena Veljković, 'Dragan Sikimić, SNS-ov član izborne komisije', Javno, January 17, 2018, <https://javno.rs/vest/dragan-sikimic-sns-ov-clan-izborne-komisije>

⁴ See more in: 'Rakić Vodinelić: Poništiti nezakonit izbor Sikimića za direktora Agencije', Dijalog.net, January 22, 2018, <https://www.dijalog.net/rakic-vodinelic-ponistiti-nezakonit-izbor-sikimica-za-direktora-agencije/>

⁵ See more in: 'Sikimić bio član SNS u vreme izbora na čelo Agencije?', Danas, February 9, 2018 <https://www.danas.rs/drustvo/sikimic-bio-clan-sns-u-vreme-izbora-na-celo-agencije/>

Budget allocation

The funds for the operation of the APC are provided in the budget of the Republic of Serbia at the proposal of the Agency, and from other sources, in accordance with the Law. The Agency autonomously executes those funds. It is commendable that the new law additionally guarantees the APC's financial stability, by stipulating the annual funds for the Agency have to be sufficient for its efficient and independent work. Furthermore, the law foresees that without the consent of the APC Director, the Government cannot suspend, postpone, or limit the execution of budgetary funds intended for APC work.

The APC budget has steadily increased since 2014. Similarly, there has been an increase in the number of employees. The Parliamentary Committee for Judiciary and State Administration approved the new staffing table of the APC twice in the last three years, in November 2018 and March 2019. According to the current staffing table, the APC should have 163 employees, comparing to 139 under the previous staffing table.⁶ The hiring procedure for the new staff has been initiated.

In general, the National Assembly performed well when it comes to allocating sufficient funds and increasing the number of employees of the APC. This trend must continue to enable further development of the APC's capacities.

Reporting

The APC is obliged by the law to submit an annual report on its operations to the National Assembly. Parliamentary Rules of Procedure regulate in detail the procedure for the consideration of annual reports of all independent oversight bodies, including the APC.

The National Assembly has developed a unified approach to independent oversight bodies. On the one hand, that is praiseworthy as a demonstration of recognition of their unique position in the state's institutional architecture. On the other, it is important also to recognize important differences among these bodies and devote sufficient time to discuss those reports separately and with due attention.

Existing evidence suggests that despite a well-regulated procedure, the National Assembly failed to build a consistent, predictable, efficient and sustainable approach to considering annual reports of the APC and other independent oversight bodies. It usually does consider them only in committees (most often by the Committee on Finance, State Budget and Control of Public Spending in case of the APC), but the report then does not reach the plenary. In fact, Agency's annual reports for four consecutive years (2014-2017) had not been discussed in the plenary, making the work of parliamentary committees completely obsolete, as no formal outcome document had been ultimately produced.

⁶ Anti-Corruption Agency, 2019 Annual Report, p. 11.

With that said, it is a positive development that the National Assembly discussed the Agency's 2018 annual report (with accompanying reports on the implementation of the Strategy and Action Plans) in plenary in July 2019, together with the reports the Ombudsman and Commissioner for Information. Before it reached the plenary, ACA's report was discussed by the Committee on Finance, State Budget and Control of Public Spending.⁷ It remains unclear what motivated the ruling majority to finally put annual reports of independent bodies on its plenary agenda. While pressures from independent bodies themselves, the European Commission and civil society have certainly contributed to such a decision, they cannot solely explain it, because

they have existed for years. Arguably, it was the change in the top management of the Agency, but also the election of the new Ombudsman in 2017 and, particularly, the Commissioner for Information in 2019 that triggered this change of behavior on parliament's side. In fact, the debate about reports of independent bodies was largely concentrated on cheap political attacks on former holders of independent offices.

Finally, the APC's 2019 annual report was submitted amidst the Covid-19 pandemic and pre-election campaign, due to which MPs have yet considered neither the APC's nor the reports of other independent bodies.

⁷ See the discussion at: http://www.parlament.rs/78_sednica_Odbora_za_finansije_republike%20Ki_bud%20i_kontrolu_tro%20A1enja_javnih_sredstava.36684.941.html

Conclusion

In its latest progress report for Serbia, the European Commission observes that only limited progress has been achieved in fighting corruption and that there is no measurable impact of corruption prevention reforms.⁸ Serbia's ranking in annual Transparency International's Corruption Perceptions Index indicates the same.⁹ Furthermore, the Commission notes that the parliament's oversight of the executive remains weak. As in previous years, the Commission underlines that the parliament failed to support the role of independent institutions.¹⁰ Indeed, out of three main dimensions of the interaction between the National Assembly and the Agency, the parliament scores well only when it comes to allocating sufficient funds and increasing the number of employees of the APC. In the other two dimensions, that is, the appointment process and the reporting follow-up, the National Assembly has mostly performed poorly.

Even though the legal framework provides for a rather regulated procedure of consideration of APC's annual reports, in practice, the National Assembly has usually disregarded those reports. A failure to consider those reports for four consecutive reports, caused the European Commission to argue that such behavior exemplifies the parliament's lack of willingness to ensure effective oversight over the government.¹¹

As the National Assembly did debate the 2018 annual report of the APC, it is to be seen if this change in parliament's practice will be permanent, or if it was just a 'lucky' exemption. The former would testify to an actual realization that substantive discussion about reports of independent bodies is an essential element of public accountability of both those bodies and public administration. The latter would indicate that there is no sincere change of practice, but only occasional opportune political behavior.

The National Assembly has hampered APC work by long delays in choosing the members of its Board, which has caused severe problems for APC's decision-making process. Now that the new Law on Prevention of Corruption has been adopted, the National Assembly is in a perfect position to change its bad practice and appoint the APC's Council members within the deadline and following the procedure prescribed in the law.

Parliament's declarative support to the APC has to come to life in practical terms, as it should be a protector of the APC's independence. The Agency's independence is not a privilege established for anyone's comfort, but a requirement and a necessity needed to ensure that anti-corruption policies do not depend on daily politics.

⁸ European Commission, Serbia 2019 Report, SWD(2019) 219 final, May 2019, p. 3.

⁹ See for instance: Transparency International, Corruption Perceptions Index, , <https://www.transparency.org/cpi2019>

¹⁰ European Commission, Serbia 2019 Report, SWD(2019) 219 final, May 2019, p. 7.

¹¹ Ibid.

For the project

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

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.

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