

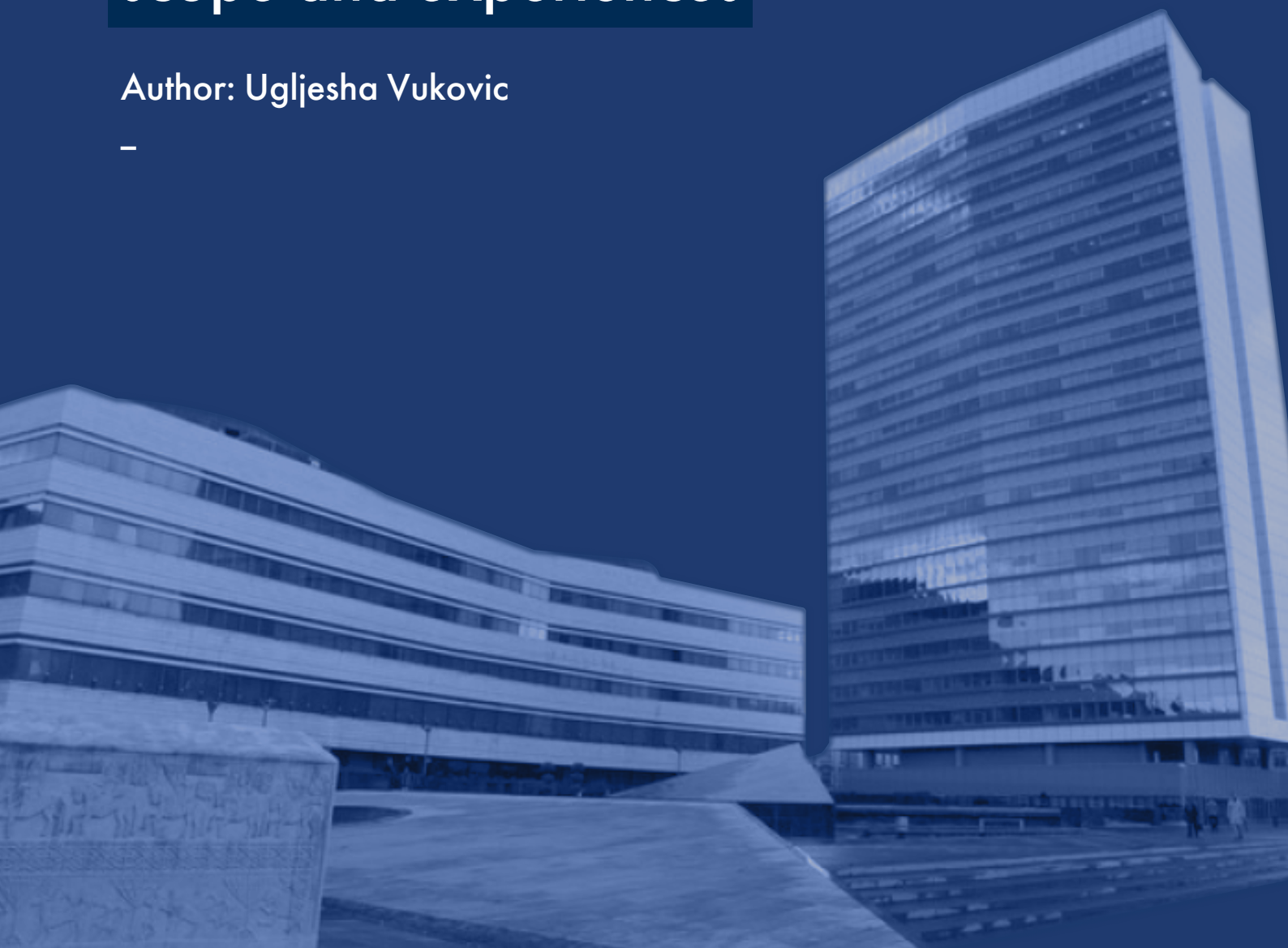
Policy brief No. 40/2020

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Parliamentary monitoring over the Agency for Anti-Corruption Fight in Bosnia and Herzegovina – scope and experiences

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Impressum

Title: Parliamentary monitoring over the
Agency for Anti-Corruption Fight in
Bosnia and Herzegovina – scope and
experiences

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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/parliamentary-monitoring-over-the-agency-for-anti-corruption-fight-in-bosnia-and-herzegovina-scope-and-experiences/>

Parliamentary monitoring over the Agency for Anti-Corruption Fight in Bosnia and Herzegovina – scope and experiences

Background – "soft" competencies of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption

Parliamentary monitoring over the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (hereinafter: the Agency) has been established in the form of a specific parliamentary body entitled – Committee for election and monitoring over the work of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (the Committee). The Committee is composed of the MPs, i.e. members coming from both legislative houses, and two representatives of the academic community and one member from the NGO sector. Before the discussion about the role and position of the Committee, and how the parliamentary monitoring is being conducted, it is important to mention that the specialized Agency for anti-corruption fight in BiH has somewhat limited competencies mainly referring to coordination activities related to prevention policies. The Agency has been given the authority to prepare the Strategy for Anti-Corruption Fight and the Action Plan, and this is its most crucial role in terms of creating public policies. At the same time, other competencies mainly concern the exchange of information with other bodies and coordination of activities between public institutions related to the prevention of corruption.¹

In addition to these so-called soft competencies, the Agency has been given the competence related to the protection of persons reporting corruption, but this refers exclusively to the persons who are employees of the institutions of Bosnia and Herzegovina. The Agency is authorized to provide the status of the protected whistleblower to these persons and to eliminate the harmful actions taken against such persons by giving instruction.² However, according to the available data, the Agency rarely applies its competencies to protect whistleblowers. The Law on the protection of persons who report corruption in institutions of BiH has been in force since 2014, and according to the data from late 2017³, only 16 requests for the status of whistleblower were registered until that moment. Only three persons were approved for the status of a protected whistleblower. Before concerning the parliamentary monitoring and its scope, it is necessary to have in mind that in practice the Agency is mainly reduced to its "soft" competencies, and most people believe that the Agency is not of some particular importance for the prevention of corruption and its punishment, and that the Agency even avoids the implementation of the allocated competencies.

¹ Article 10. LAW ON AGENCY FOR THE PREVENTION OF CORRUPTION AND COORDINATION OF THE FIGHT AGAINST CORRUPTION ("Official Gazette of BiH", no. 103/2009 and 58/2013)

² More: LAW ON PROTECTION OF PERSONS REPORTING CORUPTION IN INSTITUTIONS OF BOSNIA AND HERZEGOVINA ("Official Gazette of BiH", no. 100/2013)

³ "Bosnia and Herzegovina: whistleblowing and distrust of institutions", Ugljesa Vukovic <https://www.balkanicaucaso.org/eng/Areas/Bosnia-Herzegovina/Bosnia-and-Herzegovina-whistleblowing-and-distrust-of-institutions-184416>

What does the Committee monitor?

The Committee's competencies may be divided into two main components: 1) monitoring the work of the Agency and 2) participating in appointment and dismissal of the Agency's management (the Committee provides a proposal, and the Parliamentary Assembly brings the final decision).⁴ The data available on the official website of the Parliamentary Assembly⁵ show that the Committee has usually met 4 to 5 times a year, and that the last meeting was in the mid-2018. The Committee usually discussed the selection of candidates for the management of the Agency or the annual report on the work of the Agency. No practice confirms that the Agency held thematic sessions concerning specific issues related to the work of the Agency. On the other hand, it is true that the legal framework does not allow the Committee to interfere with the Agency's day-to-day work, or to have the insight into the specific cases, e.g. the cases of whistleblowers. Still, the Committee may be objected for not paying more profound attention to the way the Agency operates. In 2016, the Committee became the centre of the public interest for proposing Dragan Andjelic, i.e. person against whom criminal charges were filed for corruption and the abuse of the authority⁶, for the Deputy Director of the Agency. Briefly after Andjelic had resigned from the position of Deputy Director of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, he was appointed to the role of the Acting Executive Director of the public company "Rudnik i termoelektrana (RiTE) Gacko" (Gacko Mines and

Thermo Power Plant). The Law on Conflict of Interest clearly prescribes that the elected officials, holders of executive functions and counsellors, during the time of holding the public office and six months after the termination of that function, cannot be members of the managing boards, supervisory boards, assembly, management, nor can they work as an authorized person within a public company. It is interesting that while acting as the Deputy Director of the Agency, Andjelic was a member of the Commission for Deciding on Conflict of Interest, so he was surely aware that his transition to the position of a member of managing board of a public company represents the violation of the law he had applied until recently.

This case confirmed the trend of losing trust in institutions which should fight corruption. It has been used as an example or proof that, despite all legal guarantees and obstacles, the political appointments are still regularly taking place. Among other things, the public wanted to know what was the purpose of the Committee monitoring the work of the Agency, if the candidate whose moral and other qualities the Committee had confirmed, found himself in a conflict of interest immediately after he resigned. Although the civil and public in general had warned about his controversial biography.

The role of the Committee or its parliamentary monitoring has been most prominent in

⁴ Article 18. LAW ON AGENCY FOR THE PREVENTION OF CORRUPTION AND COORDINATION OF THE FIGHT AGAINST CORRUPTION ("Official Gazette of BiH", no. 103/2009 and 58/2013)

⁵ <https://www.parlament.ba/committee/read/19> (access date: 24/08/2020)

⁶ <https://www.frontslobode.ba/vijesti/politika/85455/dragan-andjelic-imenovan-za-zamjenika-direktora-agencije-za-prevenciju-korupcije> (access date: 23/08/2020))

part related to the selection of the Director or the Deputy Director of the Agency since the Committee is obliged to prepare, define and announce a public competition, and then to implement it. The Committee is in charge of reviewing and evaluating received applications, conducts interviews with the candidates and prepares the ranking list and proposal for the Parliamentary Assembly, which only makes the final appointment. The Committee has considered the amendments to the Law on the Agency, including the amendments to the Law on protection of whistleblowers⁷. Still, the public has never been introduced to the proposals made by the Committee.

What needs to be improved?

The composition of the Committee was praised for including the representatives of the academic community and civil public. According to the Rules of the Procedure of the Committee, the sessions can be scheduled at the proposal of the Committee Chairman and its Deputy, or at the proposal of at least one third of the Committee members. This means that the non-MPs, representatives of the academic community and civil society, could also schedule a session. The quorum for the work of the Committee consists of five members, and the decisions are made by a simple majority. However, one thing which is not prescribed currently,

but would be desirable is to introduce the requirement to have at least one vote by the external members within the majority to make a decision. In this way, no MPs could make the decisions on their own, nor could they overvote the external members, and the importance of external members in the work of the oversight body would be significantly strengthened.

Bosnia and Herzegovina has a very complex constitutional arrangement followed by the equally complex institutional framework. The established parliamentary monitoring over the Agency specialized for anti-corruption fight through a special body represents specific and direct implementation of the provision prescribed by the law that the Agency is an independent body responsible to the Parliament for its work.

The control of the Committee, has been mostly manifested through the participation in selecting and appointing the Agency's management (with some irregularities observed within this process), while the work of the Agency was not considered to be necessary. The sessions of the Committee should be held more often with more topics discussed to define it as genuine parliamentary monitoring, and it would be advisable to develop provisions referring to the selection of Committee members from the civil and academic community to secure the transparent election of independent members based on their competencies and merits.

⁷ <https://www.parlament.ba/session/SessionDetails?id=3312> (access date: 08/09/20)

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.

Link

Link to the publication:

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Ugljesha Vukovic is Researcher at Transparency International in BiH within the project Advocacy and Legal Advice Centre (ALAC) whose main objective is providing free legal aid and assistance to whistleblowers, victims and / or witnesses of corruption. Actively involved in designing and developing a wide range of advocacy campaigns related to access to information issues, public administration reforms, criminal law subjects and media and civic freedoms. His areas of interest include freedom of information, anti-corruption legislative framework, whistleblowers protection, freedom of assembly etc.

Relevant work:

- Co-author of publication "Regional Cooperation in the Western Balkans: Options for the Interplay of Neighboring Relations and EU Accession up to 2025" – TRAIN Strategic Foresight Project (2018) <https://dgap.org/en/think-tank/publications/dgapanalyse-compact/regional-cooperation-westernbalkans>

- Co-author of publication "Best Practices in Detecting and Sanctioning Corruption" (Transparency International Bosnia and Herzegovina, Transparency International Czech Republic, 2014) <http://ti-bih.org/wp-content/uploads/2014/12/BEST-PRACTICES-IN-DETECTING-AND-SANCTIONINGCORRUPTION-2014.pdf>

- Co-researcher within the project "Public Administration Reform Monitoring – PARM" run by Transparency International in BiH (responsible for producing monitoring reports related to the fields of transparency, integrity and accountability <https://ti-bih.org/projekti/monitoring-reforme-javne-uprave-parm/?lang=en>)

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