

Proficient cooperation between the independent bodies and the National Assembly in overseeing the work of executive is an essential dimension of the quality of democratic institutions and good governance. Therefore, their cooperation has to be strengthened in order to overcome the existing obstacles which undermine their influence and effectiveness.

The Independent Bodies and the National Assembly of the Republic of Serbia: Collaboration or Ignorance?

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Independent bodies are widely recognised as a key component of a stable and efficient democratic system, developed on the foundation of the rule of law and good governance. On the one side, they provide additional means for representation and protection of citizens and their rights, while on the other they offer a strong mechanism of *checks and balances* which facilitates efficient and effective control over the executive branch of power. That is why independent bodies are often mentioned as the *fourth branch of power* responsible not only for the protection of citizens' rights, but also for the oversight of the work of institutions in the executive.

Starting with the political and economic reforms in 2000s, the Republic of Serbia gradually created the basic preconditions

for the proper functioning of independent bodies. However, cooperation between these bodies and the National Assembly of the Republic of Serbia (hereinafter: *the Parliament*) continuously faces obstacles that lead to a lack of influence and effectiveness of the independent bodies.

This situation has wider implications on the overall operation of the democratic institutions in Serbia, as the Parliament is currently facing major challenges to its proper functioning. Due to the fact that power is presently concentrated almost exclusively in the hands of the executive, the role of the Parliament in overseeing the executive is politicised and largely reduced to pure formality, while its overall role in the state is degraded. Therefore, by downgrading the role of the independent bodies and reducing



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their role in monitoring the executive, the accountability and responsiveness of state actors is undermined even further.

The aim of this policy paper is to identify the roots of the existing problems and obstacles in the collaboration between the independent bodies and the Parliament, and to offer concrete suggestions and recommendations for overcoming these limitations and establishing an improved, efficient model for their cooperation. As the independent bodies operate in different fields and greatly differ in jurisdictions, this paper has limited its focus to the bodies dealing with the protection of human rights and anti-discrimination: the *Protector of the Citizens* (hereinafter: the *Ombudsman*), the *Commissioner for Information of Public Importance and Personal Data Protection* (hereinafter: the *Commissioner for Information and Data Protection*) and the *Commissioner for Protection of Equality* (hereinafter: the *Commissioner for Equality*). These particular institutions represent good examples for the analysis of difficulties encountered in the cooperation between the independent bodies and the Parliament, as - despite being the most developed, active and successful independent bodies in Serbia - their influence and effectiveness remains limited, and they still face difficulties in their relations with the Parliament.

This paper examines the current position of independent bodies, detects their limitations and proposes measures for strengthening both the independent bodies and the Parliament by improving their relations and cooperation. Proficient cooperation between the Parliament and independent bodies and the efficient exercise of their functions is an essential dimension of the quality of democratic institutions¹ and good governance. Progress in these areas is crucial for the key Chapters 23 and 24 in the accession negotiations. Further improving the cooperation between and efficiency of both the independent bodies and the Parliament thus contributes to boosting the reforms and advancing the process of EU integration of Serbia.

Legislative and institutional framework

Independent bodies are crucial partners to the Parliament in exercising its oversight function over the executive, as they control the work of the Ministries and other state institutions, bodies and organisations exercising public authority, thereby contributing to securing an effective system of checks and balances within the state governance. Specifically, these bodies submit regular annual reports to the Parliament, as well as additional reports whenever deemed necessary, in order to keep the members of the Parliament (MPs) informed on whether the executive and other state institutions are performing their jobs in a legal and regular manner, and to offer recommendations on how to improve their work.

Furthermore, the independent bodies specialised in particular topics are important partners to the Parliament in performing its legislative function. The *Ombudsman* has the right of legislative initiative, while all three discussed independent bodies regularly submit opinions and recommendations on draft laws and proposed regulations in order to enhance their quality, anticipate and prevent the possible legal loopholes, and provide the best possible legal solutions for the protection of citizens' rights.

The main characteristic of these bodies, as their name suggests, is their two-dimensional independence from other state institutions: their functional independence is ensured through financial autonomy, while their organisational independence consists of their right to independently decide on their internal organisation and employment. This twofold independence allows them to function autonomously from the executive branch of power, while depoliticisation rules out the possibility of representatives of independent bodies performing a function in a political party, thus securing their personal independence from political parties².

These independent bodies are appointed and dismissed by the Parliament. Although their objective is the protection of citizens' rights, they operate in different fields of human rights protection, they differ from each other in relation to their jurisdictions, and their work is regulated differently by the Serbian legislature.

One of the main distinctions is that the institution of Ombudsman is defined and regulated by the Constitution of the Republic of Serbia, while the other two institutions are regulated only by the law. The Ombudsman is responsible for the overall protection and promotion of human rights and liberties, but solely within the public sector, while the Commissioner for Equality is in charge of preventing all forms, types and cases of discrimination and of ensuring the protection of equality in both public and private sectors. On the other hand, the Commissioner for Information and Data Protection is responsible for crucial yet very specific fields of protection of the right to free access to information of public importance and the right to protection of personal data.

The current state of play:
cooperation or ignorance?

The existing normative framework that regulates the position of independent bodies clearly shows that these institutions represent significant partners to the Parliament in exercising its functions, particularly oversight of the executive, and in establishing a functioning system of checks and balances which represents a basic precondition for good governance, rule of law, and consequently for the EU integration of Serbia. And although the relations between the Parliament and these bodies have progressed since their establishment, serious obstacles are still hampering their cooperation, effectiveness and influence.

The analysis detected particular obstacles and deficiencies that directly downgrade the position and influence of independent bodies, which can be divided into the following groups:

- (1) Delays in reviewing and discussing the reports and recommendations of independent bodies by the Parliament, hampering both the oversight/control function of independent bodies and their role in the legislative process;
- (2) Extensive delays by the executive institutions in the adoption of suggested regulations, implementation of independent bodies' recommendations, as well as implementation of the Parliament's conclusions;
- (3) Lack of monitoring and evaluation of the implementation of the Parliament's conclusions by the Government;
- (4) Lack of awareness among the MPs regarding the position and role of independent bodies, coupled with an inappropriate attitude of some MPs and state officials toward the representatives of these bodies which directly degrades their personal integrity and legitimacy.

(1) Delays in reviewing and discussing reports and recommendations of independent bodies by the Parliament

For the purpose of controlling the compliance of executive institutions and other public authorities with the existing laws and standards, the Ombudsman, the Commissioner for Information and Data Protection and the Commissioner for Equality regularly submit their annual reports to the Parliament, along with opinions and recommendations on draft laws and regulations from the fields within their purview. However, discussions of these reports and other actions that should follow remain limited, and reports are often not reviewed and discussed by the relevant Parliamentary committees within the period foreseen by the Parliament's Rules of Procedure.

One of the reasons for these delays in the Parliament can be attributed to the Rules of Procedure, which are to some extent vague, leaving a grey area of discretionary right susceptible to political influence. For example, it is not clearly defined in the

Rules which of the Parliament's committees should review the annual reports of specific independent bodies, when the representatives of independent bodies are allowed to participate, or how much time is provided for them to address a session³. According to the procedure, a relevant Parliamentary committee should review and discuss a report of an independent body no later than 30 days from the day of the submission of such a report. The committee then submits a set of proposed conclusions upon the report, which are discussed and adopted at the first following plenary session of the Parliament. However, the case of the Commissioner for Information and Data Protection illustrates frequent and considerable delays in the adoption of the Parliament's conclusions upon the reports. The Commissioner's annual report for 2010 had remained in procedure for four months, while his report for 2011 had waited even longer, to be finally discussed in two relevant Parliament committees at the end of October 2012 and December 2012. The Commissioner's most recent report for 2014, submitted to the parliament in March 2015, has been discussed in the committees, but the Parliament's conclusions upon this report have yet to be adopted (as of October 2015). Moreover, some of their reports and recommendations are still being ignored, such as the special report on the relations between the public enterprises and other state-owned enterprises submitted by the Commissioner for Information and Data Protection regarding the *Law on Free Access to Information*, which was never discussed by the Parliament⁴.

Hence, another cause of this problem can be found in the overall deficiency of the political and electoral system. The existing system has resulted in both the representative role of MPs and their importance in the legislative process having been reduced to a bare minimum⁵. MPs are mostly degraded to being mere executors of party politics, while most of them lack a sense of accountability toward the citizens and public interests.

Instead, their accountability rests with the leadership of their political parties.

The problem of delays in reviewing and discussing the independent bodies' reports was recognised in the 2013 Progress Report for Serbia by the European Commission, which noted that a more systematic approach was necessary to increase the number of recommendations of the Ombudsman adopted by the Parliament as well as the Government. On the other hand, civil society also recognised the problem and launched innovative projects and advocacy campaigns⁶ aimed at strengthening the capacity of the Parliament, its committees and MPs. The question of changing the political and electoral system has also been raised through the recent formation of the *Action Group for Political System Reform* – the Parliament's working body charged with preparing proposals for the reform of the political system, consisting of representatives of the civil society, academia and international organisations. However, a more systematic approach is still needed in order to use this opportunity to reorganise the political system, strengthen Parliamentarianism and consolidate democracy in Serbia.

- (2) Delays and deficiency of the executive in adopting suggested regulations, implementing recommendations of independent bodies and acting upon the Parliament's conclusions

Another obstacle hampering the efficiency of independent bodies are the extensive delays of the executive in adopting regulations suggested by said bodies and in acting upon conclusions adopted by the Parliament based on their recommendations. The cause for such delays can be found in a wider systematic problem of concentration of power solely in the executive, which disturbs the balance between the legislative and executive branches of power and has resulted in a degradation of the role of the Parliament and its overall weakening. In such a political context, the existing mechanisms of

Parliamentary control are perceived by the members of the Parliament as neither strong nor efficient. A recent study confirmed that MPs view the role of the Parliament within the political system predominantly through the prism of their party membership, and revealed that they believe to have far less political influence than other state actors (including the independent bodies). At the same time, only 22% of them highlighted independent bodies as the most important partners that will improve the exercise of Parliamentary control⁷.

An example illustrating this problem is the extensive delay in the adoption of regulation on data protection, recommended by the Commissioner for Information and Data Protection, due to which the existing normative framework for the protection of personal data remains unable to ensure the unhindered enjoyment of the right to privacy. The particular problem in this case is the regulation on the manner of archiving particularly sensitive data and the application of protective measures, whose adoption has already been delayed for six years. Moreover, and with far-reaching consequences, the Government has still not adopted the Action Plan on the Implementation of the Strategy on the Protection of Personal Data, envisaged in the law of November 2010. Consequently, the Strategy itself has in the meantime become outdated, particularly with regard to international standards that should be taken into account within the framework of Serbia's negotiation process for EU integration. Such an attitude of the Government towards the recommendations of independent bodies, and especially to the Parliament's conclusions that obliged it to adopt these two documents in June 2014, is unimaginable for a properly functioning democratic state.

The passive attitude of the executive toward the independent bodies is illustrated furthermore by the relation of the Ministry of Public Administration and Local Self-Government toward to the Commissioner for Information and Data Protection. The Administrative Inspectorate of this Ministry,

in charge of implementing the *Law on Free Access to Information* and responsible for initiating the infringement proceedings against state authorities responsible for violating this law, has initiated only four infringement proceedings out of 350 cases submitted by the Commissioner to this institution in 2014, all of them on the grounds of failure to submit a report to the Commissioner and publish Information Booklets, which leads us to the conclusion that not a single proceeding has been initiated to date against the state authorities breaching the law. Such a passive attitude towards the Commissioner implies effective violation of the law and directly leads to undermining the capacity of the Commissioner's sanctions and downgrading his influence and effectiveness in protecting the right to free access to information of public importance.

(3) Lack of monitoring and evaluation of the implementation of the Parliament's conclusions by the Government

Another crucial shortage in the Parliament's practice is the lack of monitoring and evaluation of the implementation of its conclusions by the Government, which are adopted based upon the reports of independent bodies and submitted to the Government for implementation. Although there are some examples of good practice, such as the implementation of the reports submitted to the Parliament by the Ministry of Internal Affairs,⁸ this practice depends on the political will as the executive institutions are not strictly obliged to deliver trimestrial reports on the implementation of the Parliament's conclusions and the independent bodies' recommendations.

In addition, members of the Parliament do not take into account the strength of their own conclusions, as they frequently adopt generalised conclusions instead of rather specific ones reflecting the opinions and recommendations stated by the representatives of independent bodies in their reports. With more specific conclusions, the assessment

of their implementation by the executive would be easier and more practical. For example, in the case of the Commissioner for Information and Data Protection, a number of conclusions adopted by the Parliament that oblige the executive to eliminate the obstacles hampering the freedom of access to information are not being implemented, and are thus continuously repeatedly mentioned from one Commissioner's report to the next.

Therefore, there is a need for a strict and efficient mechanism for monitoring and evaluation of the ways in which the executive institutions implement the Parliament's conclusions adopted upon the recommendations of independent bodies, as well as for the strengthening of political culture and responsibility of democratic institutions. The civil society organisations recognised this problem and provided significant contribution to monitoring the implementation of the Ombudsman's recommendations by state institutions with several projects throughout Serbia.

- (4) Lack of awareness and respect among the MPs regarding the position and role of independent bodies, accompanied by an inappropriate attitude of some MPs and state officials toward their representatives

Although progress has been made in recent years, there is still plenty of room left for raising the awareness among the members of the Parliament about the nature of independent bodies, their position and role in facilitating the Parliament's exercise of functions, and about their legal obligation to review and discuss their reports and take into consideration their recommendations and opinions. One of the roots of this problem is the absence of favourable political culture among the political elite (in line with the standards existing in developed democracies), but there is also the fact that inappropriate attitude and insults directed at the representatives of independent bodies often remain unsanctioned.

This problem was recently illustrated during the discussion of the independent bodies' annual reports for 2013 by the Parliament in June 2014, when the Chair denied the Commissioner for Information and Data Protection the right to address the plenary session,⁹ while severe insults addressed to the Ombudsman and the Commissioner for Equality were neither interrupted nor sanctioned by the Speaker of the National Assembly.¹⁰ Ignorance and inappropriate attitude were also demonstrated throughout the spring of 2015, in a public campaign instigated against the Ombudsman and directly targeted to undermine his personal integrity and consequently the legitimacy of the institution itself. Civil society actors strongly condemned these attacks against the institution of the Ombudsman and actively engaged in defending its legitimacy; however, state officials never issued comparable criticism and/or sanctions.

Recommendations

In order to tackle the deficiencies noted in the cooperation between the independent bodies and the Parliament, overcome the limitations hampering their influence and effectiveness and develop an improved, efficient model of their cooperation, concrete actions have to be taken.

First, in light of the current political circumstances in Serbia, **the process of European integration has to be used to boost the necessary reforms in the state and strengthen the capacity of political institutions**, including the position and influence of independent bodies. Therefore, the European Commission should use its conditionality policy to apply additional pressure to the state institutions and consistently demand that independent bodies' reports, opinions and recommendations be taken into account on the one side, and that the balance between the legislative and executive branches of power be restored on the other.

Second, the **upcoming constitutional reforms should be used to change the political and electoral system**, strengthen the Parliament and restore the balance of power, as well as to formally regulate the position of independent bodies as the *fourth branch of power* within the Constitution. A wide public debate including civil society actors and experts, as well as a public consensus, are necessary prerequisites for a successful constitutional reform, which would consequently vastly improve the position of independent bodies and strengthen their legitimacy, authority and influence in regard to other state institutions.

In addition, **particular sets of actions are recommended for each of the categories of limitations and obstacles**, including the measures to be implemented immediately, actions whose implementation requires 3 to 5 years, and those that are to be implemented in 5 or more years:

1. To overcome delays in reviewing and discussing the reports, opinions and recommendations of independent bodies by the Parliament:

Short-term - Regulate the cooperation of independent bodies and the Parliament more precisely (determine more specifically the rules of procedure and which of the Parliament's committees are in charge of cooperation with particular independent bodies).

Mid-term - Strengthen the position of MPs, their independence from political parties, and their accountability to voters through the Constitutional revision of the political and electoral systems.

Long-term - Strengthen the position and authority of independent bodies and responsiveness as well as the accountability of the Parliament through the development of favourable political culture among the political elite and the society in general.

2. To overcome delays of executive institutions in adopting and implementing the Parliament's conclusions and the independent bodies' recommendations:

Short-term - Proactively use the Parliament's existing mechanisms of control (parliamentary questions, conclusions of the committees and the public hearings on important issues), and further improve them (by extending the time for parliamentary questions; organising additional public hearings; making the work of all inquiry committees public, and obliging the Ministers to attend the sessions of committees.)

- Reinforce sanctions available to the Commissioner for Information and Data Protection by introducing the right of the Commissioner to impose conclusions on carrying out enforced collection (performed by the National Bank), and by increasing fines for breaching the law (from RSD 20,000-180,000 to RSD 1-5 million) so that they considerably affect the budget of the institution at hand.

Mid-term - Strengthen the position of independent bodies by formally defining their status through constitutional revision.

- Reinforce the sanctions for failure to fulfil obligations envisaged by law and for obstructing the process of oversight and control.

- Support the CSOs to allow them to actively monitor the implementation of recommendations of independent bodies and the Parliament's conclusions, and pressure the executive institutions to fulfil their obligations.

Long-term - Strengthen the position and authority of the Parliament and the responsiveness and accountability of the executive institutions through development of favourable political culture among the political elite and the society in general.

3. To overcome the lack of monitoring and evaluation of implementation of the Parliament's conclusions submitted to the Government for implementation:

Short-term - Formally oblige the Government and other state institutions to submit trimestral reports to the Parliament on the implementation of the Parliament's conclusions and independent bodies' recommendations.

Mid-term - Develop a comprehensive and efficient mechanism for monitoring

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and evaluation of implementation of the Parliament's conclusions and independent bodies' recommendations directed to the executive (to include both continuous monitoring of implementation of the Parliament's conclusions by the executive and regular reports from within the Parliament.)

Long-term - Reinforce the balance of power between the executive and legislative branches through constitutional reform, and develop the practice of responsiveness and accountability of state institutions.

4. To raise the awareness and respect of MPs and state officials toward the independent bodies and eliminate the inappropriate attitude:

Short-term - Encourage the Parliament's support service and working bodies to put

more efforts into clarifying and explaining to the MPs the position and role of independent bodies, particularly the process of discussion of their reports in the Parliament.

- Strongly encourage active use of the discretionary right to sanction inappropriate behaviour of MPs and state officials toward the representatives of independent bodies.

Mid-term - Evaluate the effects of study visits and other educational programmes that have already been implemented, and create new educational programmes and twinning projects to raise the awareness among the MPs and educate particular groups influencing the wider public (such as journalists specialised in covering the work of institutions.)

Long-term - Foster an overall favourable political culture in the state and society.

- 1 Diamond, Larry, and Leonardo Morlino, "The Quality of Democracy, An Overview", *Journal of Democracy* 15, No. 4 (2004)
- 2 Radojević, Miodrag "Independent (Regulatory) Bodies and Institutions in Serbia", *Serbian Political Thought* 30, No. 4 (2010) 55
- 3 Rules of Procedure of the National Assembly, (Articles 237–241). Information confirmed in the interview with the Deputy Protector of Citizens, September 2015
- 4 Information confirmed in the interview with the Commissioner for Information of Public Importance and Personal Data Protection, September 2015.
- 5 Džamić, Vladimir. *The Necessity of Changes to the Constitution of the Republic of Serbia: the Status and Significance of the National Assembly*. Policy Brief, Belgrade: EMinS, 2014, pp. 3
- 6 Such as the project of cooperation between the Ombudsman, Committee on Human and Minority Rights and Gender Equality and YUCOM (YUCOM 2014 – Report on the Work, 2014); the Open Parliament project; or the EMinS' project Awaiting a New Constitution.
- 7 "How Does the Parliament Control the Executive Power?" Open Parliament, 2014, pp. 7, 12, 13
- 8 Interview with the Legislation Sector and Committee Secretaries of the National Assembly of the Republic of Serbia, September 2015
- 9 The Parliament issued an official excuse after the representatives of independent bodies left the session in protest, and the session continued on the following day.
- 10 MP Marijan Ristićević was neither interrupted nor sanctioned by the National Assembly Speaker, Maja Gojković, although the Rules of Procedure of the National Assembly (Articles 108–114) prescribe measures such as warning, denial of access to the floor, or expulsion from the sitting followed by a fine, which were at her disposal for ensuring the order at the sittings of the National Assembly.

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This policy brief has been prepared in the framework of the TRAIN Programme 2015 (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).

The work of the Research Forum of the European Movement in Serbia is partly supported by the Foundation Open Society Institute in cooperation with the Think Tank Fund program of the Open Society Foundations. Opinions and views expressed in this paper are those of author and do not necessarily reflect the official views of the European Movement in Serbia, the Foundation Open Society Institute or the Open Society Foundation.