



# **ROADMAP OF CRTA'S RECOMMENDATIONS FOR IMPROVING THE WORK OF INDEPENDENT INSTITUTIONS**

**CRTA:**



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- Commissioner for Information of Public Importance and Personal Data Protection,
- Commissioner for Protection of Equality,
- Protector of Citizens
- Anti-Corruption Agency

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Recommendations for improving the situation in the areas in the competence of the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for Protection of Equality, the Protector of Citizens and the Anti-Corruption Agency are the result of the long term monitoring and analyzing of activities of independent institutions. The subject of the Analysis is mostly the quality of the reports of the mentioned independent institutions and their recommendations, as well as the actions of the National Assembly according to the received reports. Therefore, the presented recommendations cover several different aspects of the functioning of independent institutions, with the common goal of improving the situation in the field of human rights and the fight against corruption.

In order to improve the bigger picture, it is necessary to focus equal efforts on improving the practice of independent institutions, improving parliamentary procedures that should ensure the implementation of recommendations of independent bodies and acting on other recommendations. For this reason, the following recommendations by CRTA are aimed specifically at each of these actors: independent institutions, the National Assembly and other bodies of authority.

## Recommendations for improving the work of independent institutions

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When comparing the cases of human rights violations that were presented in the media and the claims from the reports of independent institutions, it is obvious that there is still space for a more efficient reaction by the independent institutions and a full use of their powers. Also, in addition to presenting the results of work through annual reports, it is possible to increase the visibility of these institutions in the media. Citizens, to a large extent, are not familiar with the activities of independent institutions, their powers, or the existing opportunities to protect their rights. These recommendations are fully aimed at improving the existing practice of independent institutions. Provided they accept them, it's an opportunity for these institutions to react more efficiently, timely and competently, as well as to make the most of the powers granted by law.

### **Recommendation #1 More frequent use of the authority to act ex officio and in full**

In addition to citizens' reports, which should certainly be the basis for the activities of independent institutions, it is necessary for the institutions themselves to react to a greater extent ex officio to cases they witness in the field or in the media. There is an impression of a weak reaction of independent institutions when it comes to certain controversial situations, such as police brutality at protests against the introduction of curfew during lockdown or insulting comments on social networks to certain prominent individuals. In order to eliminate doubts and possible arbitrary assessment of whether it is necessary to react or not, it is necessary to:

*1a Adopt a rulebook or another bylaw that regulates the internal procedures of the institution with emphasis on ex officio action, as well as exercising control powers, i.e. control visits*

By adopting such a bylaw, the institution is obligated to act on its own initiative in certain, pre-defined situations and in a certain way. The existence of procedures would facilitate coordination between different departments within the institution and improve proceedings efficiency. Adoption of such an act would be an additional mechanism that would prevent the institution from failing to act on topics of societal importance. An additional proactivity of the institution in order to prevent violations of rights in practice would be control visits, for the institutions that have this mechanism (Protector of Citizens and Commissioner for Free Access to Information of Public Importance and Personal Data Protection in the field of data protection about personality).

*1b Adopt regular, annual control plans*

If necessary, in addition to control visits, preventative control visits should be regulated by an annual plan, which would be drafted and adopted at the end of each calendar year. Based on the assessment of the institution's capacity, this plan would include a number of entities and, due to unpredictability, be marked as confidential. Similar was done with the annual audit program in the Law on State Audit Institution Article 35, while the control process would be published on the website ....

*The institution performs the audit based on the annual audit program, which it is obligated to adopt before the end of the year for the following calendar year.*

*Within the framework set by the law, the Institution independently decides on the subjects of audit, subject, scope and type of audit, start time and duration of audit, unless otherwise determined by this law.*

### **Recommendation #2 Establish direct control and field work as a priority and dominant way of working**

To the extent possible and with the capacities available to them, independent institutions should establish fieldwork and direct control as their priority and most frequent mode of operation. Focusing on more proactive actions would have a preventative effect, i.e. the effect of preventing irregularities, instead of resolving the consequences after the damage has already been done. The recent change of the name of the "Agency for Fight Against Corruption" to the "Anti-Corruption Agency" is in line with that claim.

*2a Adopt a rulebook or another bylaw regulating the internal procedures of the institution*

As independent institutions already legally have this mechanism at their disposal, it is necessary to regulate their actions in more detail by internal acts.

### **Recommendation #3 Increase public and media presence, especially on the presentation of specific completed or ongoing cases, as well as the results achieved**

The citizens of Serbia do not know enough about the work of independent institutions<sup>1</sup> and the purpose of their existence, nor are they familiar with the rights protection possibilities that these institutions offer them. Representatives of independent institutions are very rarely present in the media and communicate with the public the results of actions in specific cases that are of great social interest even more rarely. It is recommended that within the institutions more attention is to be paid to their promotion in the media, from which the citizens would ultimately benefit.

*3a Adopt a public relations strategy, with a special obligation to educate citizens about the role and competencies of independent institutions; train employees in strategic planning.*

It is necessary to develop a comprehensive public relations strategy with special emphasis on educating citizens. This strategy needs to define comprehensive cooperation with the media. If necessary, closer acquaintance of the media with the competencies of the institution and its powers should be done. If there are no capacities within the institution to create a quality document, it is possible to hire external associates for that purpose. The strategy should contain short-term and long-term goals that would define the direction of communication with citizens and the media. After the document is adopted and published on the website of the institution, it is necessary to ensure its adequate implementation.

*3b Establish a permanent channel of communication with the media and inform the media and the public about its existence.*

Independent institutions should establish a clear channel of communication with the media that will be unambiguously presented to the media and that will be functional. Depersonalized and non-functional e-mails of the office for cooperation with the media are not an efficient solution. Information or adequate interlocutors should be available to the media at all times upon request by telephone or e-mail.

*3c Strengthen the capacity of the media cooperation department within the institutions.*

The Media Cooperation Department and its staff should do more than mediate in the transfer of information between the media and independent institutions. In order to speed up the institution's response to media inquiries, the media department needs to be regularly informed about the subjects the institution conducts, educated about the processes and legal bases of the institution's work, and trained in media content development.

### **Recommendation #4 Examples of good and bad practice of public authorities should be published to a greater extent in reports and on the official websites of independent institutions, through the analysis of specific cases and with the names of bodies and functions, i.e. positions of public officials and civil servants, explicitly stated;**

As the existing websites of independent institutions and their annual reports are a permanent channel of communication with citizens, it is necessary to improve the presentation of information, especially in the direction of presenting actions in individual cases with clear indication of bodies and responsible persons. In addition to informing the public about the procedures, this way of presenting information could be an additional incentive for other bodies to fulfill their obligations.

*4a Amend or adopt a rulebook regulating the publication of content on the websites of independent institutions, which would also list existing legal obligations under other laws (e.g. Law on Public Procurement, Law on Free Access to Information of Public Importance, etc.)*

Regulating the obligatory content of the website of an independent institution by internal acts would prevent the publication of information on work or public procurement data that are not up to date, or that are of insufficient quality. This rulebook would define the data that must be published<sup>2</sup> and the period within it must be published, the way of presenting statistical data that would facilitate their comparison by years, sectors, and so on. In addition, the rulebook could stipulate that all data be published in an open data format<sup>3</sup> in order to provide material to citizens and the private sector to use the potential of this data and develop opportunities to use this data, thereby improving the institution.

### **Recommendation #5 Continuous participation of employees in the professional services of independent institutions in trainings, conferences, seminars, etc. organized by international and specialized organizations;**

In order to ensure continuous improvement of the work of independent institutions and monitoring up to international standards in relevant areas, it is necessary for employees to be regularly educated. This education should be done through various types of cooperation and events, in the field of their activities. Employees who are educated and specialized in a specific area of work should further develop their skills in that area in the department that deals

1 Analysis of the Reports of Independent Institutions and their Recommendations for the year 2019 <https://crta.rs/analiza-izvestaja-neza-visnih-institucija-i-njihovih-preporuka-za-2019-godinu/>

2 Law on Free Access to Information of Public Importance, Law on Public Procurements, etc.

3 Law on Electronic Administration Art. 4 point 25: open data are data that are available for reuse, together with metadata, in machine-readable and open form.

with that specific topic. Redistribution of employees to other services within the institution that require different specific knowledge leads to a waste of significant resources.

*5a Internal procedures are to regulate the obligation of the Department of International Relations or the Department of Human Resources to organize employee trainings according to international standards and their participation in international exchanges, conferences and trainings, as well as internal evaluation procedures to evaluate participation in internationally recognized trainings and acquisition of specific knowledge.*

In order to avoid that only some of the large number of employees can access the knowledge offered by international and specialized organizations, HR departments within institutions should provide conditions to share the acquired knowledge with other employees. In addition, cooperation and training should not be treated within the institution as a form of reward for individual employees, but as an opportunity for further improvement and specialization. If all employees are given equal opportunities to improve, an additional incentive would be made by evaluating active participation when evaluating the work of employees.

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In accordance with the Law on Civil Servants, independent institutions have the possibility, taking into account the specifics of the scope of work, i.e. competencies, to adopt special professional development programs each calendar year, which will be financed from the budget or donations. The planning and implementation of these programs should be dealt with exclusively by the organizational unit in which HR work is performed, bearing in mind that it has complete data on employees, or alternatively, an organizational unit that would deal exclusively with professional development, training and additional education of employees – if such a unit exists), through a clear definition of criteria and ways of determining the need for training and professional development. This organizational unit would, among other things, prepare annual development programs based on previously realized, evaluated programs and a needs-analysis of employees with appropriate training and professional development; it would monitor the personal development of each employee, collect materials from various courses and professional trainings attended by employees, as well as the reports on their participation; organize workshops where employees who have undergone certain training would acquaint their colleagues with information that they had the opportunity to hear at the training, etc. (Note: The Law on Civil Servants already defines these criteria and ways of determining the needs of employees for training and professional development, but it is desirable that the heads of independent institutions adopt internal acts and prescribe special procedures, taking into account the specifics of certain jobs). Bearing in mind the aforementioned, and in order to successfully implement this recommendation, we point out the existence of many documents adopted in the previous period by the National Academy of Public Administration in the field of professional development of civil servants, as well as bylaws by which the Government has more precisely regulated the performance evaluation criteria that can significantly facilitate the drafting of internal acts (procedures) of independent institutions.

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**Recommendation #6 Employment policy and remuneration of employees in independent institutions should guarantee the employment of the most professional and experienced individuals, whose financial independence will guarantee objectivity and impartiality in their work.**

Given the importance of independent institutions as a guarantor of respect for human rights and the specificity of the areas in which they work, employees should be selected through competitions based on their expertise. The procedure throughout this process must be transparent and include the possibility of appealing the choice, in order to avoid possible irregularities or corruption.

*6a Adopt a bylaw or prescribe internal procedures that will determine the criteria for rewarding employees (institutional allowance) and the so-called inspection allowance (allowance as a type of benefit for those exercising control powers).*

It is necessary to additionally reward employees who bear some kind of specific responsibility with a salary supplement, which would be defined in advance with clear criteria of who can, and how can they, receive these funds. The allocation itself must be transparent, i.e. clearly stated to whom, for what purpose and for what period and what is the amount of paid funds. The addition would further reduce pay inequalities between the private and public sectors, which are currently in favor of the private sector, which would also allow for longer retention of professionals in independent institutions.

*6b Amend the Laws regulating the work of independent institutions in the direction of regulating own funds, in order to ensure financial independence from other branches of government*

For the true independence of the mentioned institutions, it is necessary to legally regulate the possibility of independent institutions to dispose of their own funds. The current codependent relationship with the Government and the Assembly<sup>4</sup> in the financial sense is one of the problems of their independence. Since the institutions generate certain financial resources, they should manage their further allocation; the rest of the funds would be provided by the Government and the Assembly from the budget, taking into account the stated needs of independent institutions.

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<sup>4</sup> The Government proposes the budget, and the Assembly adopts it

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With the latest amendments to the Law on Civil Servants (2018) certain changes have been made in the direction of creating a depoliticized state administration, which is on the one hand certainly progress compared to the previous period, but on the other hand it does not prevent independent institutions (that apply the provisions of this laws) from going a step further and adopting their internal acts, i.e. prescribe procedures that will guarantee the employment of the most professional and experienced, with full respect for the specifics of work performed in certain jobs and more detailed regulation of the competition procedure.

*Regarding the adoption of an internal act, i.e. prescribing a procedure that would determine the criteria for rewarding employees (institutional allowance, the so-called inspection allowance, etc.), we once again point out that it is necessary to have a legal basis, i.e. a provision in law by which such a possibility would be provided. For now, such a provision is contained only in the Law on the State Audit Institution (Article 56a) and the Law on Prevention of Corruption (Article 32, paragraph 2). Based on the aforementioned articles of the law and the powers they have, heads of those institutions established criteria for rewarding the employees. In regard to other independent bodies, this possibility is not prescribed by law and there are no indications that it will be possible in the coming period for several reasons.*

*Regarding the recommendation related to the financial independence of independent institutions, we point out the following: Funds for the work of independent institutions (to which these recommendations apply) are provided in the budget of the Republic of Serbia, while the legal provisions governing this issue are uneven. Thus, Article 44 of the Law on the Protector of Citizens prescribes that: The Protector of Citizens prepares a draft financial plan in accordance with the law governing the budget system and submits it to the ministry responsible for the budget of the Republic of Serbia; that the proposal should contain a proposal for the allocation and use of funds for the exercise of its competence, that these funds should be sufficient to enable its effective and efficient performance of the function, as well as to be in line with the macroeconomic policy of Republic of Serbia; and that funds for work cannot be reduced, unless the reduction of funds for work is also applied to other users of budget funds. Also, the Law on Prevention of Corruption stipulates that funds for the work of the Agency are provided in the budget of the Republic of Serbia in a special budget section and from other sources, in accordance with the law; that the proposal of the annual financial plan of funds provided in the budget of the Republic of Serbia be adopted by the Director of the Agency and sent to the ministry in charge of finance; that the funds provided in the budget of the Republic of Serbia should be sufficient to enable its efficient and independent operation; that the Agency independently allocated the funds for work, as well as that the Government may not, without the consent of the Director of the Agency, suspend, postpone or limit the execution of budget funds intended for the work of the Agency. On the other hand, the Law on Free Access to Information of Public Importance in this regard contains only the provision that funds for the work of the Commissioner and its professional service are provided in the RS budget (Article 34, paragraph 6), and a similar provision is found in the Law on Prohibition of Discrimination that established the Commissioner for the Protection of Equality (Article 32, paragraph 9).*

Bearing in mind the aforementioned, it is necessary to harmonize the legal provisions governing the financing of independent institutions, in a way that will ensure their equal financial independence. Also, the current "codependent relationship with the Government and the Assembly" will continue to exist in the future, because the funds for the work of independent institutions will continue to be provided from the RS budget. On the other hand, independent institutions (as well as all other users of public funds) are free to use funds from their budgets without outside interference, in accordance with their needs expressed in annual financial plans, while respecting the provisions of the Law on Budget System that all users of budget funds are obligated to follow, no exceptions. Regarding other sources of funding and how these funds are used by independent institutions, we remind you that according to the law only the Anti-Corruption Agency has that possibility.

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## Recommendations for more efficient monitoring of the National Assembly

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The key step in ensuring that the recommendations of independent institutions are met is in the hands of the National Assembly. The procedure is such that the institutions submit their annual reports within a certain legal deadline to the Assembly. The Assembly then considers them and adopts conclusions based on them, requesting the fulfillment of recommendations. First, the competent parliamentary committees consider the claims from the report and adopt conclusions that should obligate other authorities, to which the recommendations refer, to act on them and subsequently report on the results. After that, the Assembly in the plenum considers the conclusions of the committee and adopts the final document. Although the Rules of Procedure of the Assembly<sup>5</sup> consistently regulate the procedure with appropriate deadlines, significant deviations are noted in practice. All recommended measures for the Assembly of RS can be removed by amending the existing Rules of Procedure and further application of these solutions.

**Recommendation #1 Competent committees and the Assembly should consider the reports of independent institutions in special sessions to be scheduled for each report separately (one report per session);**

<sup>5</sup> Art. 237-247, Rules of Procedure of the National Assembly, [http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-\(consolidated-text\)/entire-document--rules-of-procedure.1424.html](http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document--rules-of-procedure.1424.html)



In order to provide sufficient time for a substantial consideration of the claims from the report, it is necessary to prescribe that each of the reports be considered at a special session, of the competent committee and of the plenum of the parliament. Inserting the reports of independent bodies among other items on the agenda does not leave enough space for their in-depth consideration, focused on results. In addition to providing enough time for discussion, the importance of the work of independent institutions would be further emphasized.

*1a Amend the Rules of Procedure of the National Assembly, Article 119<sup>6</sup>, Article 239<sup>7</sup>*

The current Rules of Procedure provide for the possibility in Article 119 that a special session may be convened in connection with the report of the body. At this session, representatives of other bodies may participate, however such possibility is prescribed exceptionally and depends on the decision of the President of the Assembly. Unambiguously stipulating the obligation for the reports of certain independent institutions to be the subject of special sessions of committees and plenums would avoid the arbitrary decision of the Speaker of the Assembly and provide an opportunity to include consideration of reports of independent institutions in the Assembly's work plan.

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The possibility given by Article 119 paragraphs 5 and 6 of the Rules of Procedure refers primarily to the reports of state authorities, i.e. bodies dealing with certain topics that are of exceptional importance for the state, such as the Report on the work of the Office for KIM in the period from May 2019 to June 2021 and Report on the negotiation process with the Provisional Institutions of Self-Government in Pristina from May 2019 to June 15, 2021 (submitted by the Government), which was considered by the National Assembly at the Fifth Special Session of the National Assembly in the Twelfth Convocation, which was held on June 22, 2021. Also, if the provisions of Article 119 of the Rules of Procedure were used to review the reports of certain independent institutions, this would put other independent institutions in an unequal position, i.e. the National Assembly would thus attach greater importance to the annual work report of, for example, the Protector of Citizens, while the annual report on the work of the State Audit Institution would be considered at a "regular" session, in accordance with Article 238, paragraph 4 of the Rules of Procedure.

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**Recommendation #2 These sessions should be scheduled in such a way as to provide MPs with sufficient time to read, consider materials and prepare for the session;**

Taking into account the volume and complexity of the annual reports of independent institutions, as well as the specifics of the areas they cover, it is necessary to provide enough time for MPs to get acquainted with their content.

*2a Amend the Rules of Procedure of the National Assembly, Article 119, Article 239*

Prescribing the deadline that should elapse from scheduling a committee session/plenary session and submitting materials to holding sessions should leave at least 15 days so that MPs have enough time to prepare for consideration and decision-making based on the above data. In addition, there would be a possibility to organize public hearings on certain topics if it is necessary for the deputies to be additionally informed about certain specific issues and problems from the report.

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According to the Article 237, paragraph 2 of the Rules of Procedure, the competent committee shall consider the report of an independent state authority, organization or body within 30 days from the day of its submission to the National Assembly. Within the prescribed period, the members of the committee have enough time to get acquainted with the content of the report and its accompanying documents and to prepare for the committee session at which the report will be considered. In practice, it happens that one year the competent committees consider the reports within the prescribed period, while another year these reports are considered only after a few months, or not considered at all. As a reminder, the 2019 annual reports of the independent institutions to which these recommendations refer were considered by the competent committees in December 2020, and in the same month they were also considered by the National Assembly.

Based on the Article 83 of the Rules of Procedure, the competent committee has the possibility to organize a public hearing when reviewing the annual reports of independent institutions in order to gather information on certain specific issues and problems from those reports. Whether the competent board will use this opportunity depends exclusively on the chairman and members of the board, i.e. their interest and readiness to use the powers they have in order to solve specific issues and problems in the areas covered by independent institutions.

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6 Art. 119, paragraphs 5 and 6: At the invitation of the Speaker of the National Assembly, representatives of other state authorities, organizations and bodies may also address the National Assembly, depending on the issues in discussion. A special session may also be convened in connection with the report of the state authority, i.e. the body, which, in accordance with the law, shall be submitted to the National Assembly.

7 Art. 239: The National Assembly considers the reports referred to in Article 237 para. 1 and 4 of these Rules of Procedure and the proposal of the conclusion, i.e. the recommendations of the competent committee, at the next session. A representative of the state authority, organization, i.e. body whose report is being considered is invited to the session of the National Assembly. Following debate, the National Assembly shall adopt a conclusion, i.e. a recommendation, by a majority vote of the deputies at the session at which the majority of deputies is present.

**Recommendation #3 Presidents and members of the Committee, i.e. the Speaker of the Assembly and MPs should hold a real and substantial discussion on the facts they have established and the findings they have presented regarding the reports of independent institutions, without a time limit;**

In accordance with the Recommendation #1, it is necessary to stipulate that there is no limited time for consideration of the report of an independent body. This would enable all interested parties to present their arguments and possibilities for solving the identified problems that would result in the Assembly adopting a conclusion. This conclusion should clearly state the state authorities to which the recommendations apply, deadlines for fulfilling obligations from conclusions and an obligation of reporting results.

*3a Amend the Rules of Procedure of the National Assembly, Article 97<sup>8</sup>*

It could be prescribed by a special paragraph within the article of the Rules of Procedure which regulates the duration of the debate at the Assembly sessions of that exceptionally for special sessions where the reports of independent bodies are considered, the time of the debate is not limited.

**Recommendation #4 Competent committees and the Assembly should, in relation to the recommendations of independent institutions, further concretize and specify their recommendations, especially the bodies concerned, as well as the measures and activities to be taken, including reporting to the Assembly and independent institutions on what they did;**

In order to ensure better fulfillment of recommendations and proposals for improving the situation from the reports of independent institutions, the National Assembly and its committees should formulate their conclusions in a way that unequivocally indicates which state authority is obligated to implement appropriate measures, recommendations should be formulated in a less general way that would indicate specific steps that need to be taken instead of a call to improve the situation in a particular area. The conclusions should also clearly call on the state authorities to which these recommendations apply to report to the National Assembly and independent institutions.

*4a Amend the Rules of Procedure of the National Assembly by prescribing the obligatory elements of the conclusions adopted by the committees regarding the consideration of the reports of independent institutions*

Amendments to the Rules of Procedure or the adoption of another act in the form of guidelines that would prescribe mandatory elements of conclusions adopted by committees, would avoid the current practice of conclusions addressing only a certain number of recommendations from reports of independent institutions and being so general it's difficult to follow through with them. It's also often unclear what specifically should be implemented and by which bodies; there are also no clear deadlines for reporting on the implemented measures. This would also to some extent standardize the conclusions adopted by the various committees, putting an end to the practice of, for example, adopting two very general conclusions on some reports and others being better elaborated.

*4b Adopt guidelines or recommendations on the mandatory content of independent bodies' reports*

In accordance with the point 4a, it is necessary to standardize the contents of the reports of independent bodies in order to enable easier monitoring of information and drawing better conclusions. Guidelines or recommendations would prescribe the mandatory elements and chapters of these reports, as well as how to present information and formulate recommendations, which need to be transferred into conclusions later. Apart from this mandatory part of the content, independent institutions would still have the opportunity to present other information in accordance with the specifics of their scope of work.

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Article 39, paragraph 1 of the Law on the Protector of Citizens prescribes that the annual work report should contain: data on activities in the previous year, data on observed shortcomings in the work of administrative bodies, recommendations for improving practice and regulations of individual areas, proposals for improving the position of citizens in relation to administrative bodies, as well as data on the implementation of recommendations and proposals from previous reports. On the other hand, in other laws that establish independent institutions, there is only a provision on submitting an annual report within a certain deadline, without stating the content or the minimal required elements of that content.

*Bearing in mind these recommendations, it is necessary to consider the formation of a special committee which will, among other things: consider reports on the work of independent institutions; draft conclusions with appropriate recommendations issued by the National Assembly; monitor the implementation of these conclusions with recommendations by public authorities; inform independent institutions about it. This committee would also be obligated to adopt guidelines on the structure of reports of independent institutions, i.e. their mandatory elements, manner of consideration and decision-making, obligation to make recommendations, their content and deadlines, indicating those responsible for following through with recommendations. Currently, reports on the work of independent institutions are submitted to individual committees for consideration upon receipt in the office of the National Assembly (where there is an uneven practice about who these reports*

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8 Article 97: In the regular procedure, the total time of debate in principle for parliamentary groups is five hours. The time referred to in paragraph 1 of this Article shall be allocated to parliamentary groups in proportion to the number of deputies of the members of that parliamentary group. The President, i.e. the representative of the parliamentary group, before the opening of the debate, has the right to propose a longer time of the debate for the parliamentary groups than the time determined in paragraph 1 of this Article. The National Assembly shall decide on this proposal by a majority vote of the deputies, at a session attended by a majority of deputies, without debate.

are physically delivered to because independent institutions differently designate the recipient of the report). This obligation of consideration by the committees is determined by law but not by the Rules of Procedure. According to their scope of work, the committees consider the reports of independent institutions at a session (whereby one part of the annual report of the Protector of Citizens is considered by the Committee on Human and Minority Rights and Gender Equality, while other part is considered by the Committee on Justice, Public Administration and Local Self-Government; or the report on the work of the Anti-Corruption Agency that is considered by the Committee on Justice, Public Administration and Local Self-Government and the Committee on Finance, Republic Budget and Control of Public Expenditure, which was the practice until 2016), after which they submit their reports with proposed conclusions (adopting the report, usually without recommendations or with recommendations that are actually reformulated recommendations from the report, or are general recommendations that are not relevant) to the National Assembly for consideration and adoption. At the session, the National Assembly considers the reports of independent agencies with proposed conclusions of the committee and individually adopts each of the proposed conclusions.

Another possible solution to the problem of improving the work of committees and the National Assembly in terms of reviewing reports of independent institutions may be to prescribe that the report of each individual independent institution be the responsibility of one specific committee of the National Assembly. In addition to that, all committees under whose work scope the recommendations of independent institutions fall under should comment on said recommendations, and the competent committee would collect all those comments and prepare conclusions for the session of the National Assembly. In practice, this would mean that if the Committee on Human and Minority Rights is competent to consider the Annual Report of the Protector of Citizens, it would have the obligation to seek the views of all committees whose competencies include conclusions and recommendations. Thus, e.g. The Committee on Health and the Family would be obligated to comment on the recommendations in the field of health policy, while the Committee on Education, Science and Technological Development and the Information Society would have the obligation to comment on the recommendations within its scope, etc. Then, the Committee on Human and Minority Rights would be obligated to gather all those comment and prepare them for the session of the committee and the session of the National Assembly.

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#### **Recommendation #5 MPs should ask the question of implementation of the recommendations of independent institutions as often as possible<sup>9</sup>.**

This recommendation is a call to the deputies to use the already existing mechanisms from the Rules of Procedure of the NARS and to use the institute of parliamentary questions as an opportunity to call on government representatives to account for possible non-implementation of recommendations within their competence; to demand that the problems the Assembly pointed to are solved. Seeing that organizing parliamentary questions addressed to members of the Government once a month (last Thursday each month) is obligatory, and that there is a possibility for deputies to ask written questions between two sessions of the National Assembly and through the Speaker of the National Assembly who then refers them to the competent minister or the Government, there is plenty opportunity to control the work of the executive in relation to the demands of the Assembly.

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The National Strategy for the Fight against Corruption in the RS from 2013 to 2018, adopted by the National Assembly on July 1, 2013, prescribed the obligation of the National Assembly to amend the Law on the National Assembly in terms of obligating the Government to submit a report to the National Assembly. That report would be on the implementation of the conclusions adopted by the National Assembly when considering of the report independent institutions reports, as well as the obligation of the National Assembly to consider that report within six months from the adoption of the conclusions. Having this in mind, the National Assembly Service prepared a Draft Law on Amendments to the Law on the National Assembly, but due to the early parliamentary elections on March 16, 2014, this Draft Law was not adopted. In the meantime, the Strategy has ceased to be in force, so this obligation of the Government has been included in the Action Plan for Chapter 23 - Justice and Fundamental Rights, in the part related to the fight against corruption (2. Fight against corruption, 2.2. Prevention of corruption, 2.2.1.1 Activity - Monitoring the implementation of the new Law on Prevention of Corruption and the actions of all state authorities under the new Law on Prevention of

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<sup>9</sup> Article 204 of the Rules of Procedure of the NARS: A Member of Parliament has the right to ask a parliamentary question to an individual Minister or the Government, within their competence. The parliamentary question must be clearly formulated. The parliamentary question is addressed to the competent minister or the Government. The MP's question is asked in writing or orally, provided that the presentation of the MP who asks questions does not last longer than three minutes. A parliamentary question may also be asked between two sessions of the National Assembly, in writing, through the President of the National Assembly, who shall submit it to the competent Minister or the Government. The Speaker of the National Assembly shall warn the Member of Parliament if the question is not asked in accordance with the provisions of these Rules of Procedure, or if it is not referred to the competent authority.

Article 205: Parliamentary questions are addressed to the Government, in the presence of members of the Government, every last Thursday of the month, at a session that is in progress, from 16.00 to 19.00, when work on the agenda is interrupted. The Government shall notify the National Assembly in writing of which members of the Government cannot attend the session of the National Assembly at which the Government is asked parliamentary questions, no later than three days before the day specified in paragraph 1 of this Article. During the special session, parliamentary questions may be asked at the session of the National Assembly on the second day of the month, if the applicant for the special session so provides in his/her request.

Corruption, Result indicators: enumeration of the elements that the report of the Anti-Corruption Agency must retain, with stating that the Government and other state authorities act in accordance with the conclusions of the National Assembly), as well as in the part related to the Protector of Citizens, 3.2. Position of the Protector of Citizens, Ombudsman of the Autonomous Province and Local Self-Government Ombudsman, 3.2.1.8 Activity - Regular reporting of the Government regarding adopted conclusions of the National Assembly after considering the report of the Protector of Citizens, Result Indicator: The Government regularly reports to the National Assembly on the conclusions of the National Assembly adopted after considering the report of the Protector of Citizens.

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**Recommendation #6 Independent institutions should be explicitly authorized, i.e. granted powers to ask the Assembly and the Government a question regarding the implementation of the recommendations from their reports;**

As the Assembly ensures the implementation of recommendations from the reports of independent institutions and can instruct the executive authorities to act on its conclusions, it is necessary to provide an opportunity for independent bodies to ask the Assembly or the Government questions regarding the implementation of recommendations from their reports. This would prevent the current practice of the parliament not to ask for reports from state authorities on the implementations of measures from the conclusions.

*6a Amend the Rules of Procedure of the National Assembly*

The Rules of Procedure could prescribe the possibility and regulate the way in which the heads of independent institutions could ask the parliament about the implementation of the recommendations from their reports.

*6b Amend the Rules of Procedure of the Government*

The Rules of Procedure could prescribe the possibility and regulate the manner in which the heads of independent institutions could ask the Government about the implementation of the recommendations from their reports.

**Recommendation #7 Explicitly obligate the Assembly and the Government to periodically report to independent institutions on the implementation of their recommendations; Obligate the Assembly to provide information on the implementation of the recommendations of independent institutions to those institutions and, if necessary, organize a public hearing or session of the Assembly dedicated to that topic.**

In order to provide an effective mechanism for fulfilling the recommendations of independent institutions, it is necessary to complete the whole cycle by informing independent institutions about what has been done regarding their recommendations. In extension to Recommendation #6, it is proposed to obligate the Assembly to provide information on enforcement to independent institutions, which would significantly support and improve the formulation of recommendations for the coming year. In addition, the Assembly could organize a public hearing or session if the importance of the topic is such that it could be further discussed and new solutions could be proposed to improve the situation.

*7a Amend the Rules of Procedure of the National Assembly*

The Rules of Procedure could prescribe the obligation of the National Assembly to provide information on the implementation of the recommendations of independent institutions to those institutions. The option to organize a public hearing or a session of the Assembly dedicated to a special topic concerning the implementation of recommendations already exists in the current Rules of Procedure, Art. 83<sup>10</sup> and Art. 119<sup>11</sup> but so far it has never been used in the context in which it is mentioned in the recommendation.

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Based on the law and the powers given to them by law, the heads of independent institutions can at any time address the National Assembly and request information on everything that interests them.

In practice, there is no mechanism for the National Assembly to monitor the implementation of the conclusions it adopted regarding the consideration of the reports of independent institutions. In order for the National Assembly to be able to monitor the implementation of its conclusions and the actions of the executive authorities, as well as to inform independent institutions in a timely manner, the Law on the National Assembly and the Rules of Procedure should prescribe the obligation of the Government to submit biyearly (every 6 months) reports that would then be subject of consideration at the session of the competent committee, as well as at the session of the National Assembly, in the presence of representatives of independent institutions.

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10 Article 83: For obtaining information, i.e. expert opinions on the draft act that is in the parliamentary procedure, clarification of certain decisions from the proposed or act in force, clarification of issues important for the preparation of the draft act or other issue within the competence of the committee, as well as monitoring implementation and application of the law, i.e. exercising the control function of the National Assembly, committees may organize public hearings.

11 Article 119, indents 5 and 6: At the invitation of the Speaker of the National Assembly, representatives of other state authorities, organizations and bodies may also address the National Assembly, depending on the issues under discussion. A special session may also be convened in connection with the report of the state authority, i.e. the body, which, in accordance with the law, shall be submitted to the National Assembly.

## Recommendations for ensuring accountability of other authorities

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**Recommendation #1 Unjustified and/or unfounded non-execution or refusal to implement the recommendations of independent institutions, as well as non-reporting by the public authorities to which they are addressed should be prescribed as a basis for dismissal or disciplinary liability of the heads of the state administration bodies;**

It is necessary to prescribe the responsibility of the heads of state administration bodies through the Laws that regulate the work of state administration and civil servants. Responsibility must relate not only to the implementation of recommendations but also to the reporting of the competent institutions on the implemented activities with the accompanying explanation and the proposal of new deadlines for those that have not been implemented.

### *1a Amend the Law on Public Administration and other consequential legal regulations*

The refusal to implement the recommendations of independent institutions and failure to report on it could be added to reasons for dismissal of civil servants in office prescribed by Art. 78 Law on Civil Servants<sup>12</sup>, or added to Art. 109 of the same law, which prescribes cases in which disciplinary liability for serious breaches of duty is imposed.

**Recommendation #2 Increase the importance of the recommendations of independent institutions by prescribing, as one of the competencies in the Law on Ministries, the obligation to implement the recommendations of independent institutions.**

Since there is no legal norm that would guarantee the implementation of the recommendations of independent bodies, and taking into account that the Ministries are responsible for the work of other administrative bodies within them, it is necessary to legally regulate the obligation of ministries to comply with recommendations of independent institutions, as well as to provide explanations and new deadlines for those measures that may have remained unimplemented. Given the importance of implementing these recommendations to improve the overall system of human rights protection and the fight against corruption, the best solution would be to prescribe this obligation in the form of another competence of each ministry.

### *2a Amend the Law on Ministries*

Articles 3 to 23 of the Law on Ministries<sup>13</sup> state the competencies of each of the Ministries in the current Government. The proposal is to add in each of the existing members that the Ministry [...] performs state administration tasks related to [...] implementation of recommendations of independent institutions and reporting on that implementation.

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*In defining these recommendations, we draw attention to the fact that Article 23 of the new Law on the Protector of Citizens stipulates that the Protector of Citizens has the authority to recommend in writing the dismissal of officials, i.e. to initiate disciplinary proceedings against an employee of an administrative body who violated citizens' rights or made a mistake that caused material or other damage to a citizen, if he refused or failed to eliminate the violation or omission **contrary to the recommendation of the Protector of Citizens** or if he did not perform another legally prescribed obligation in the procedure conducted by the Protector of Citizens. The same article stipulates that the Protector of Citizens, if he finds that there are elements of a criminal or other criminal offense in the actions of an official or employee of an administrative body, has the authority to submit a request to the competent authority, i.e. initiate criminal, misdemeanor or other appropriate proceedings. Similar provisions are contained in the Law on Prevention of Corruption. Having in mind the above, it is necessary to consider that such a provision, i.e. such authorizations be prescribed by law for other independent state authorities to which they have not been assigned.*

*In regard to the proposed amendments to the Law on Civil Servants which would refer to the reasons for dismissal of a civil servant to a position (Article 78), as well as to the serious violations of duties (Article 109), we point out that the reasons for dismissal have already been prescribed, i.e. violations of duties from the employment relationship are quite sufficient and that the same can include non-execution of recommendations, as well as refusal to perform them by a civil servant.*

*Regarding the recommendation for the amendment of the Law on Public Administration, i.e. the Law on Ministries in terms of introducing the obligation of ministries to fulfill the recommendations of independent institutions and report on implemented measures, we point out that it is possible to prescribe it, but it would be more efficient to prescribe a legal obligation for the Government to report to the National Assembly on the implementation of the conclusions adopted by the National Assembly after the consideration of the reports of independent institutions, within six months from the adoption of the conclusions.*

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<sup>12</sup> Article 78, paragraph 1: A civil servant shall be dismissed if it's determined during the annual or special evaluation of his work performance that he needs improvement or if his employment is terminated due to: a sentence of imprisonment of at least six months or a suspended sentence of imprisonment for at least six months regardless of the period of probation for a criminal offense that makes him unfit to perform his duties, a final decision imposing a disciplinary penalty of termination of employment, the final decision which determined that he did not meet most expectations, as well as for other reasons provided by the general labor regulations which regulate the termination of employment, regardless of the will of the employee and the will of the employer. *paragraph 3:* A civil servant who is head of a state authority is dismissed when the state authority or body responsible for his appointment determines that during his term there was a serious disruption in the work of the state authority he heads due to responsibility for failure to achieve work plans and strategic goals.

<sup>13</sup> [https://www.paragraf.rs/propisi/zakon\\_o\\_ministarstvima.html](https://www.paragraf.rs/propisi/zakon_o_ministarstvima.html)