Towards greater openness of the legislative process
in the Western Balkans countries

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Introductory Remarks

The publication before us is the result of collaboration of seven civil society organizations (CSOs) from seven countries: Serbia, Bosnia and Herzegovina, Montenegro, Macedonia, Hungary, Poland and Slovakia: Centre for Development of Civil Society / CDCS (Serbia), the Helsinki Committee for Human Rights in the Republic of Srpska (Bosnia and Herzegovina), the Center for Democratic Transition / CDT (Montenegro), the Institute for Community Development (Macedonia), the Institute of Geostrategic Studies of Transnational Development (Hungary), the Helsinki Foundation for Human Rights (Poland) and the Slovak Nonprofit Service Center (Slovakia). Gathered around the common theme *Increasing Legislative Transparency in the Western Balkans,* the aforementioned organization, during the period May 2013 – May 2014 worked on strengthening and networking of civil society sector of the Western Balkans (WB) to increase legislative transparency in WB countries through sharing experiences with colleagues and partner organizations in the Visegrad countries.

The topic (non)transparency, or the lack of transparency in the adoption of laws in four WB countries and comparison with the situation in the region with Hungary, Poland and Slovakia[1] is not the subject of this publication only, but also a whole range of other activities: a three-day conference *For Responsible Government in the Western Balkans* (September 2013), *the website* transparencybalkans.info (bilingual: English and Serbian), and the subsequent promotion of this publication

[1] Unfortunately, our colleague from the Slovak partner organization has not filed his report about the situation in Slovakia.

with the recommendations of the MPs of five local councils in each of the four countries of the Western Balkans and in the media.

The study before us is actually a collection of papers on the legislative transparency in Serbia (three articles), Macedonia, Montenegro, Bosnia and Herzegovina, Poland and Hungary. Authors of these papers are university professors, colleagues from partner organizations and the Ombudsman of the Autonomous Province of Vojvodina. At the end of the collection, the recommendations to increase legislative transparency in the Western Balkans are given, designed by the working group to develop recommendations (Snežana Ilić, Fahrudin Kladničanin (CDCS), Nedim Sejdinović (a media expert) and Đorđije Brkuljan (CDT)).

Broader political context

At the time of this publication[2] four WB countries are at various stages of euro-integration processes. Montenegro has already started negotiations with the European Union in June 2012, Macedonia has had the candidate status for EU membership since December 2005, Serbia has acquired the status in March 2012, while Bosnia and Herzegovina are at the bottom of the list, with the signed agreement of the Stabilization and Association Agreement in June 2008. All of these countries, however, on its way to the European Union must meet certain criteria, which with regards to our theme, actually means meeting the political criteria, and point Democracy and the rule of law, in the regular annual reports of the European Commission, the main executive body of the EU, which has a mandate to conduct negotiations for membership of new states. The greatest progress in the transparency of the legislative process is recorded in Montenegro; less progress has been recorded in Serbia and Macedonia, while in Bosnia and Herzegovina, as an aggravating circumstance in the whole legislative process, consensus on the ethnicization of the entire state system is noted. The situation in Macedonia is similar: in the Sobranje/ Macedonian Parliament there is a Committee for relation among communities, consisting of representatives of the Macedonian and Albanian ethnic community without whose consent, a number of specific laws cannot be adopted.

[2] November 2013

Comparative framework: the Western Balkans vs. countries of the Visegrad Group

Poland and Hungary, two of the four countries of the Visegrad Group, are relatively good examples of increasing legislative transparency. In less than ten years, since they became full members of the EU (1 May 2004), both countries have launched strong initiatives to bring legislative transparency to the next level. Sharing with countries of the Western Balkans their (post) communist experience, Poland and Hungary were faced with very similar challenges in the areas of good governance, the rule of law and democracy, citizen participation and the quality of legislation.

In recent years, much progress has been made in transparency in the fight against corruption. In these efforts, a number of laws and provisions on transparency of lobbying to bring corruption to a minimum were passed, and confidence of citizens increased. In the case of Poland and Hungary, a steady increase in the availability of legal procedure and drafts was recorded. Informing citizens and their participation in public affairs, especially at the local level, according to the results of recent research, has shown satisfactory progress from year to year. It can be concluded that Poland and Hungary are good examples of processes that increase the level of transparency and where there is a will and initiative to solve the problems.

A few illustrations of the topic

- The Law Governing the Pregnancy was passed without any form of public debate (Macedonia, 2013)
- The amendments to the Law on Consumer Protection, due to the large number of complaints that were submitted during the public hearing were withdrawn from the procedure (Serbia, 2013)
- The lack of constructive social dialogue between the Line Ministry and representative trade unions during the public debates regarding the amendments to the Law on Labour (Serbia, 2014)
- Amendments to the Law on Energy were passed without public hearings and discussions with investors (Serbia, 2012)

- The entities in Bosnia and Herzegovina (Federation of Bosnia and Herzegovina and the Republic of Srpska) adopted new legislation in the field of insurance without law binding compliance of the Insurance Agency of BiH, the highest government institutions in the insurance sector (2013)
- House of Peoples of the Parliamentary Assembly of BiH adopted, on an expedited basis and without debate, amendments to the Law on Personal Identification Number (PIN) (2013)
- House of Peoples of the Parliamentary Assembly of BiH, without debate and on an expedited basis, adopted the Bill on Amending the Law on Public Procurement of BiH (2013)
- In the period from 1 January to 31 July 2013, Line Ministries conducted consultations for 6 out of 12 passed laws (Montenegro)
- The Law on Associations was passed by a previous extensive and high-quality public debate (Serbia, 2009)

Papers before us certainly provide a comprehensive and in-depth picture of the openness of the legislative process in the Western Balkans countries, and recommendations indicate the focal points of this issue and their preferred resolution for the benefit of all citizens in the region.

Snežana Ilić

Public in the passing of laws in the Republic of Serbia

Olivera Ristić Kostić,
Centre for Development of Civil Society

How much is the decision making process in the Republic of Serbia public, that is, how much the legislative framework gives citizens the right to participate in the legislative process, since the bill is proposed till its adoption in the National Assembly of the Republic of Serbia, is a question that this article will attempt to answer.

The Constitution of the Republic of Serbia, as the highest legal act, states that "sovereignty is vested in the citizens, who exercise it through referendums, people's initiatives, and through their freely elected representatives" (Article 2 of the Constitution of the Republic of Serbia)[3]. It further, in the section on human and minority rights and freedoms, grants everyone the right to be truly, completely and timely informed about matters of public concern and determines a responsibility on the media to respect this right[4]. In addition to the right to information, the Constitution gives citizens some other rights that are essential to the legislative transparency, and that is the "right to participate in public affairs management»[5] as well as the right to "on their own or together with others, initiate petitions and other proposals to state bodies, organizations exercising public powers, bodies of autonomous province and local self-government and to get answers from them when they ask for it"[6]. On the other hand, the question is how many people are interested to take part in public affairs, including the participation in the legislative processes of adopting laws. According to the survey,

[3] The Constitution of the Republic of Serbia, "RS Official Gazette", No.98/2006, Article 2
[4] Constitution of the Republic of Serbia, "RS Official Gazette", No.98/2006, Article 51
[5] Constitution of the Republic of Serbia, "RS Official Gazette", No.98/2006, Article 53
[6] The Constitution of the Republic of Serbia, "RS Official Gazette", No.98/2006, Article 56

conducted by CESID within the project "Strengthening the supervising role and transparency in the work of the Assembly" about 27% if citizens do not have confidence in the institutions. However, according to the same survey, trust in the Parliament of Serbia is growing compared to the previous year and amounted to 34%[7]. Therefore, it is surprising that only one third of people knew the answer to the question "What's the name of the current Speaker of the National Assembly?[8]».

The legislative framework

In Republic of Serbia, the legislative process is regulated by the following legislation: the Constitution, the Law on National Assembly, the Rules of Procedure of the National Assembly and the Rules of Procedure of the Government of the Republic of Serbia. The Constitution as the supreme legal act only governs general matters such as who is responsible for adoption of laws, who has the right to propose laws (legislative initiative), and the like, while the Law on the National Assembly and the Rules of Procedure of the National Assembly and the government further regulate the process and procedure for legislation, specifically the process from proposal of the law to its adoption and publication.

According to the Constitution of the Republic of Serbia, "The National Assembly is the highest representative body and the holder of constitutional and legislative power in the Republic of Serbia" (Article 98). Also, in accordance with the previous determination, the Constitution stipulates that the National Assembly, among other responsibilities, "adopts laws and other general acts of the Republic of Serbia" (Article 99), while exercising their representative functions, the National Assembly i.e. Members of Parliament:

1. consider complaints and suggestions of the citizens,
2. hold meetings with citizens in the National Assembly and the offices of the National Assembly out of the headquarters of the National Assembly "[9]

[7] The survey was conducted on a sample of 1108 people from 15 to May 23 this year http://www.dnevnik.rs/politika/gradjani-skupstini-sve-vise-veruju

[8] A survey conducted by the Center for Research, Transparency and accountability CRTA and Ipsos http://www.danas.rs/danasrs/politika/svaki_drugi_zna_kako_je_glasao.56.html?news_id=261031

[9] The National Assembly Act, "RS Official Gazette", No.9/2010 of 26.2.2010. years, art.15

In the legal system of the Republic of Serbia the right to propose laws, other regulations and general acts has:

1. Every MP,
2. The Government
3. The Assembly of the Autonomous Province and
4. at least 30 000 voters.

The Constitution gives this right to the Ombudsman and the National Bank of Serbia, but only in areas within their jurisdiction.

Bills and other documents are submitted to the National Assembly in a written or electronic form[10]. The bill, according to the Rules of Procedure of the National Assembly, is submitted in the form in which the law is adopted and authorized proponent must submit a statement of reasons that include: "Constitutional, i.e. legal grounds for the adoption of regulations; reasons for adoption of regulations, and within those the more specifically analyze the current situation, problems that regulation should be addressed to, the objectives to be achieved by the regulation, considered options for resolving the problem without the adoption of regulations and the answer to the question of why the adoption regulation is the best way to solve the problem; explanation of the legal institutions and individual solutions; estimate of the funds needed to implement the regulations, including the sources providing the funds and the general interest for the proposed retroactive effect, if the Bill contains provisions with retroactive effect; reasons for passing a law within expedited procedure, if the legislation proposed expedited procedures; reasons for proposing that the regulation to come into force before the eighth day after its publication in the "Official Gazette of the Republic of Serbia"; review of the provisions of regulations that are being changed i.e. amended[11]».

The Rules of Procedure further requires the rationale analyses of the effects of the regulation, which will clarify who and how will be affected by the decision of the regulation, which costs the citizens and businesses shall have due to the application, whether the positive effects of the application of regulations justify the costs it will create, whether the new regulation supports the creation of economy subjects

[10] Rules of Procedure of the National Assembly Article 141
[11] The Rules of Procedure of the National Assembly, Article 151

on the market and market competition, that all interested parties have an opportunity to vote on the regulation and what measures will be taken in order to achieve what is intended. Authorized proponent must still submit the bill and any other required documents, if they want to get the bill on the agenda of the session of the Assembly, namely: the statement that the bill complies with the regulations of the European Union and the table of compliance of the bill with the regulations of the European Union. This declaration must also be accompanied by the rationale in the case that there is no obligation to comply, or even when the law cannot be harmonized with the EU regulations.

If as a certified proponent appears Serbian Government, it proposes laws in draft form, which become the bill when included in parliamentary procedure. The process of drafting the law, when it comes to the Government of the RS, that is the line ministry, is governed by the Rules of Procedure of the Government. The draft law, which is prepared in the government, in addition to the listed mandatory contributions along with rationale, contains the statement with which Government strategic documents (strategies, action plans, etc.) the proposed act is compliant to, and a statement whether the Draft Law is on the agenda of the plan of the Government, and if not, explain the reasons why it is necessary to consider the draft.

The proponent, then, as an attachment submits a statement of the established cooperation and obtaining the opinion of the authorities, organizations and bodies under special regulations gives opinions on draft laws and proposals and more detail with which institutions, organizations and agencies they cooperated with, and from which obtained the opinion, noting that the remarks are accepted and which are not, and the reasons why they were not accepted. If the opinion is not delivered, and was requested by the proponent, it is no longer required to obtain an opinion, but shall state that fact. The proponent in the same statement must state the fact that cooperation and opinion is not achieved, only in case when it is not anticipated by the positive regulations[12].

[12] Government Rules of Procedure, Article 39, Article 39a

The proponent, furthermore, attaches the analysis of the effects of laws[13], but the analysis is not necessarily a component of the draft. The proponent has a duty to explain why they have not attached analysis of the effects in case they determine that it does not have to be enclosed.

It is because of this demanding draft legislation and all the items that go along the draft; it is not surprising that most of the bills come from the RS government. The government holds executive power in the Republic of Serbia, and it, among other things, the "executes laws and other general acts of the National Assembly and proposes laws to the National Assembly and other general acts and gives its opinion on those submitted by another proponent" (the Constitution, Article 123) .

The same Rules, namely the Rules of Procedure of the Government, govern the question of when and how to allow public participation in the preparation of legislation, and that is what this paper investigates. The Rules of Procedure of the Government specify exactly when there is a requirement that the proponent in preparing the law shall conduct a public debate. This obligation exists only when the establishment of a certain issue is significantly altered or when it regulates an issue of a particular public interest (Article 41). Despite this broad definition, at the same time the possibility of a wide interpretation, when conducting public debates, it is considered that in the following cases the conditions for public discussion are met:

- "while preparing a new system law;
- during preparation of a new law, unless the competent committee decides otherwise concerning the explained proposal of the proponent;
- When developing the Law on Amendments to the Law if it significantly changes the solutions of the existing law, on which the competent committee, to the explained proposal, decides in each and every case;

[13] "As a contribution to the draft law, the proponent shall analyze the effects of the law, which contains the following rationale: to whom and how it will impact solutions in the law, what costs the application of the law shall create citizens and businesses (especially SMEs), whether positive effects of the adoption of such a law justifies the costs it will create, if the law supports the creation of new companies in the market and competition, that all interested parties have an opportunity to vote on the law and what measures will be taken during the application of the law to take to realization what adoption of this law intended. "Government Rules of Procedure, Article 40

- When developing the Law on Ratification of the Treaty - if the competent committee decides to conduct a public debate, on a explained proposal of the Ministry of Foreign Affairs or state authorities from the scope of which the issues are regulated by international agreement."[14]

In all other cases not covered by the Rules, the Government, i.e. Line Ministry is not obligated to hold a public debate. The only determination is when the call for public debate is released, it cannot take less than 20 days, that is cannot last shorter than 20 days.

Since the bill is submitted to the National Assembly, immediately upon receipt of the bill, the National Assembly distributes the bill to MPs, the competent committees and the Government, if it is not the proponent. Prior to consideration on the session of the National Assembly, the bill is considered by competent committees and the Government, if it is not the proponent. The received bill in accordance with the provisions of the Rules of Procedure of the National Assembly may be included in the agenda no earlier than 15 days from the date of its submission.

The National Assembly shall establish permanent working bodies – committees and may establish ad hoc working groups such as the inquiry committees and commissions. In the current session of the National Assembly and according to the Law on the National Assembly there are 19 committees and the most important among them are the Committee on Constitutional and Legislative Issues and the European Integration Committee, since each bill before being included into the agenda of the assembly session must go through procedure of the two committees, and then sent to the competent committee and the Government if the Government is not the proponent to deliver their opinion and report on the proposal to the Assembly within a period not less than five days before the session of the National Assembly at which the proposal is to be considered.

Committees may hold public hearings to obtain information and expert opinion on the proposed legislation, which is in parliamentary procedure, clarification of certain provisions of the existing or proposed act or other matter within the jurisdiction of the committee, as well as to monitor the implementation and enforcement of laws, i.e. establishing

[14] Rules of Procedure of Government Article 41

control functions of the National Assembly. Each committee member is entitled to submit a proposal for organizing the public hearing which shall include the topic of public hearing and a list of people to be invited. Chairperson of the committee, who decides to organize a public hearing, shall notify the Speaker of the National Assembly and call committee members, deputies and other people whose presence is of importance for the topic of hearing. It should, at least according to the Rules of Procedure of the National Assembly, after organizing the public hearing, the Chairperson of the Committee shall provide information on the public hearing to the Speaker of the National Assembly, the Committee members and participants, and the information should include the names of participants in the public hearing, a brief summary of presentations, opinions and suggestions submitted at the public hearing.

The legislative process in the National Assembly

Rules of Procedure of the National Assembly in Article 94 determine that the National Assembly passes laws and other acts in:

- regular procedure and
- urgent procedure.

The same article, moreover, states that both procedures, regular and urgent, may be standard and abbreviated, given the length of the session during the debate. At the same time, there is the possibility that the debate on the proposed legislation is reduced and the right to propose that has every deputy in the following cases: when it comes to ratifying international treaties, small changes or amendments to existing laws that do not significantly alter the material solution, in the case of termination of the law, harmonization of laws with the legal system of the Republic of Serbia and European Union regulations, amend the law that has to do with the decision of Constitutional Court, the authentic interpretation of the law and the appointment and dismissal of the person in accordance with the Constitution and the law by the National Assembly unless the rules otherwise determined[15].

Revision of the Law on the National Assembly take place in two ways: in principle and in detail. Bill is first considered by MPs, in principle, the proposal cannot be found at the session in less than 15 days from the date the authorized proponent submitted the bill, if it is a stan-

[15] Rules of Procedure of the National Assembly, Article 95

dard procedure, whereas there is the time limit of only 24 hours, if the bill is adopted in abbreviated procedure.

When the session is open in principle on the bill in regular process, there is a precise order and time limits for discussion on the bill, defined by the Rules of Procedure of the National Assembly. This sequence is as follows: the right to be given the floor upon their request and not be subject to limitations in respect of the duration of the address is granted to bill proponent, followed by rapporteur of the competent committee, who has the right to speak once, for up to five minutes; followed by the head, or a representative of the parliamentary group who has the right to speak up to 20 minutes, and may divide this time into two parts, then MPs, alternately, according to whether they support or oppose the proposal, as stated in their application for the floor, the Prime Minister and the Government members shall be granted the floor upon request, hall not be subject to limitations in respect of the duration of their address. The Head of the Republic Secretariat for Legislation shall be granted the same rights as Government members, but only when the National Assembly is discussing a bill prepared for the Government by the Republic Secretariat for Legislation, on which the Government shall appropriately notify the National Assembly then MPs who are not members of parliamentary groups shall, by mutual agreement, shall select at most three participants in the debate, each entitled to address the National Assembly once for up to five minutes. If no mutual agreement is reached, the right to be allowed to address the National Assembly, each of them once for up to five minutes, is granted to three MPs who first submitted the applications for the floor. Total time envisaged for the debate in principle for parliamentary groups shall amount to five hours and the time shall be allocated to parliamentary groups in proportion to the number of members of that parliamentary group.

In abbreviated procedure the total time for the discussion is 50% of the time set for the debate in principle.

Upon the conclusion of debate in principal, the National Assembly shall move on to discuss in detail. The exception is the budget bill of the Republic of Serbia as the debate in detail shall begin immediately upon the conclusion of the debate in principle. Yet there is another limitation, and that is that from the completion of the debate in principle to the opening of the debate in detail at least 24 hours must pass. In the

period between two debates the competent committee can submit an amendment to the bill.

The debate in detail means discussion on articles of the Law which are amended and about amendments proposing the introduction of new provisions. Time specified for the debate in detail shall be equal as the time allocated for debate in principle divided into parliamentary groups in proportion to the number of MPs who are members of the parliamentary group. In this case, each amendment proposer shall be entitled to substantiate his/her amendment within up to two minutes, and the total duration of the debate in detail on this basis may not exceed ten hours. Whereas the proponent shall be entitled to speak on each amendment for up to two minutes, and the total duration of the debate on this basis may not exceed three hours.

A law may be adopted by urgent procedure and only a law regulating issues and relations which arose under unforeseeable circumstances, where the non-adoption of such a law by urgent procedure could cause detrimental consequences for human lives and health, the country's security and the work of institutions and organisations, as well as for the purpose of fulfillment of international obligations and harmonisation of legislation with the European Union[16]. At the same time, there is a requirement of the bill proponent shall specify the rationale for adoption of the law by urgent procedure and it can be included in the agenda of the National Assembly if it submitted 24 hours prior to the start of the session. However, the bill which regulates defense and security issues, for the adoption of which an urgent procedure is proposed, may be placed on the agenda of a session of the National Assembly even if submitted on the date of the session, two hours before the scheduled beginning of the session, and when the proponent is the Government, a bill may be placed on the agenda even if submitted during the session of the National Assembly, provided the session is being attended by a majority of the total number f MPs.

Finally, in order for the adopted law to come into force it must be promulgated in the competence of the President of the Republic of Serbia who "shall issue a decree to promulgate laws" (Art. 112), as "President of the Republic shall, within 15 days from the date of adoption of the law, or at least within 7 days if the law was adopted urgently, issue a decree on the promulgation of the law, or the law, with a written

[16] Rules of Procedure of the National Assembly, Article 167

rationale shall be returned to the National Assembly for reconsideration "(čl.113). But the president of the Republic of Serbia, by the current Constitution has a right to veto, if a decree on the promulgation of the law is not issued for the second time, the law shall be promulgated by the Speaker of the National Assembly. Finally, the law is published in the "Official Gazette of the Republic of Serbia".

Publicity of work of the National Assembly

Rules of Procedure of the National Assembly state that the session of the National Assembly and its working bodies shall be public. However, it leaves the possibility for the sessions of the National Assembly to be closed to the public in cases specified by the law, if so proposed by the Government, a committee or at least 20 MPs.

The Law on National Assembly specifies exactly how the publicity of the National Assembly is realized, stating that the public in the work is provided: "by creating conditions for televised broadcast and webcast sessions of the National Assembly, the press conferences, issuing official statements, enabling the monitoring of the work of National Assembly by the representative media, national observers and international associations and organizations, and interested citizens, by examining documents and records of the National Assembly, a review of the stenographic notes and minutes of sessions of the National Assembly, on the website of the National Assembly, and other ways in accordance with law and the Rules of Procedure"[17] Further, the statutory provisions state that in the National Assembly special places are reserved for observers of national and international associations and organizations, interested citizens and representatives of the media. The law gives the right to accredited journalists to follow the sessions of the National Assembly and its working bodies and to have access to bills and other acts about which the National Assembly conducts the discussion, the stenographic notes of sessions, access to documents and records of the National Assembly[18].

[17] The Law on National Assembly, Article 11

[18] Rules of Procedure of the National Assembly, Article 257 "Representatives of the media have free access to the sessions of the National Assembly and its working bodies to inform the public about their work in accordance with the rules of internal order in the National Assembly."

The competent office of the National Assembly prepares the official press release which is approved by the Speaker of the National Assembly or a person authorized by him. In addition to the approval of the Speaker of the National Assembly deputies could hold a press conference at the National Assembly.

On the website of the National Assembly, also according to the Rules of Procedure are published by the rule: the draft agenda and adopted agenda of the National Assembly and its working bodies, approved minutes of the meeting of the National Assembly and its working bodies, bills, laws, submitted amendments excerpt of vote at the National Assembly, time and agenda of the meeting of the Collegium, information booklet, daily information about the work of the National Assembly, a report on the Committee, and other information and other documents. The National Assembly has really put a lot of effort to modernize the site, so you can now monitor the online session of the National Assembly, its committees, public hearings, one can visit the National Assembly through a "virtual tour", you can browse through the information newsletter Quorum, which is published monthly and the like. In the part for the citizens, there is a possibility that people pose a question directly, through the same website, to the Speaker of the National Assembly, members of parliament or to submit initiatives, petitions, complaints and suggestions.

And how does it work in reality?

Although the National Assembly is the supreme representative body and the holder of constitutional and legislative power in the Republic of Serbia, its participation, as unbelievable as it may sound, in the legislative activity is mostly formal. MPs do not have a crucial impact on the content of the law so that the legislative activity is only a formal mechanism by which the laws are put up in the executive power and just adopted by the National Assembly. Some of the reasons for such poor role of the Parliament in the legislative activity could be due to overwhelming number of legislative acts, lack of competence and lack of professional support[19].

[19] For more details see www.otvoreniparlament.rs

Crucial role in the preparation of bills have the line ministries, and it is rare that the bill come from someone else[20]. The very process of preparing the bill is often opaque and non-partitive, since laws are being drafted with little or no professional involvement, stakeholders and the general public. The impact of representatives in preparation of the bills does not affect the text of the bill, except indirectly through informal channels. In the next phase, when the draft of the law comes to the parliamentary procedure when MPs are expected to thoroughly discuss a bill that, in principle, and in detail, giving it a final look so, the absence of real legislative activity is notable. The reasons for such behavior of members can be found in:

- time limit for the review of bills,
- Lack of expertise of MPs
- absence of professional and technical support[21].

Between 11 June 2008 until 13 March 2012, the National Assembly of the Republic of Serbia has a total of 453 days in 77 regular and special sessions and discussed 984 items on the agenda, which means that at each session the average was almost 13 agenda items and for each item on the agenda more than two days were set. During that time, 807 laws and 217 other acts were enacted, and a total of 22251 amendments have been filed and reviewed. According to this data, "on each session, there were about 10 laws, and every law of the National Assembly has had in less than half a day for discussion and voting. If we add other acts the National Assembly dealt with, the time available for discussion and vote fall to less than half a day.[22]"

The big problem is the way of adoption of the law, more precisely adoption of laws in urgent procedure[23], which is an obstacle for a more detailed analysis and public debate about the law. Regardless of the reviews, and the critique of the European Commission, which in its

[20] In 2012, out of 239 bills filed in 207 cases as a proponent appears the Government of RS, 28 proposals were submitted by deputies while 4 others were other proponents of the bill. www.otvoreniparlament.rs , http://www.parlament.gov.rs

[21] Details on http://otvoreniparlament.rs

[22] http://otvoreniparlament.rs/aktuelnosti/izvestaj-o-obrascima-i-praksama-usvajanja-zakona-u-narodnoj-skupstini-republike-srbije/

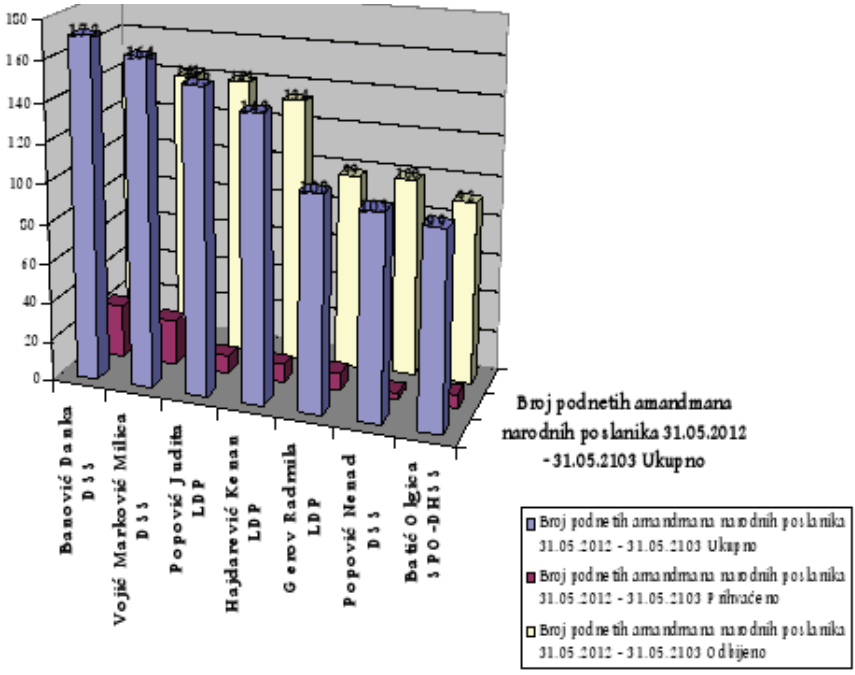
[23] "In the period since June 2008 until December 2010, the National Assembly adopted a total of 520 laws, of which 193 or 37% were passed urgently." http://otvoreniparlament.rs/aktuelnosti/izvestaj-o-obrascima-i-praksama-usvajanja-zakona-u-narodnoj-skupstini-republike-srbije/

report on Serbia's progress in recent years criticized exactly this kind of law-making this convocation of the National Assembly also continued the practice. The result of this practice is that a set of laws in the field of education were urgently enacted without any public discussion and consultation with the professional and the general public, without any alignment with our needs. This led to the situation where some parts e.g. of the Law on Primary School are inapplicable since they are not in compliance with the curriculum for primary schools. (Or, for example. the Code of Criminal Procedure, for which amendments were passed in April this year, which is already known to, when it begins to be applied as a whole as of 1 October, cause serious problems in practice.)

One of the reasons why the laws are adopted in an urgent procedure is the process of joining the European Union. In order to meet the conditions for joining the EU as soon as possible, in this case align it with Aqua communitaries; a lot of laws are adopted urgently, that is, without debate and without any influence in legislation. Another problem that arises from the above is copying legislation of some member of the EU and its artificial incorporation into our legal system. The result is the inapplicability of the present Law.

According to research, "Open Parliament"[24] which was dedicated to the public work of the National Assembly of the Republic of Serbia and the establishment of communication between citizens and their representatives, the National Assembly in the first year of the session has adopted nearly two laws daily. For 106 working days 186 laws were voted on, 1513 amendments were considered , MPs addressed the parliament 16 000 times, while 19 MPs never took the floor. According to the same survey, Bojan Đurić (LDP) was the most active member, who addressed the lawmakers and citizens spoke 273 times, Veroljub Arsić (head of the parliamentary group SNS) 258 times, while Srđan Miković addressed 246 times. Unlike them, even one third of deputies in a year have not filed any amendment. The most active in submitting a proposal to amend the law was Donka Banović (DSS), who proposed 172 amendments, out of which 27 were accepted, while Milica Vojić Marković (DSS) proposed 164, of which 23 were accepted Based on the number of accepted amendments proposed by deputies from the ruling coalition, the most successful was Vladimir Ilić (URS) with adopted seven amendments.

[24] http://otvoreniparlament.rs/statistika-i-zanimljivosti



Activity of MPs in the period 31.05.2012 - 31.05.2013

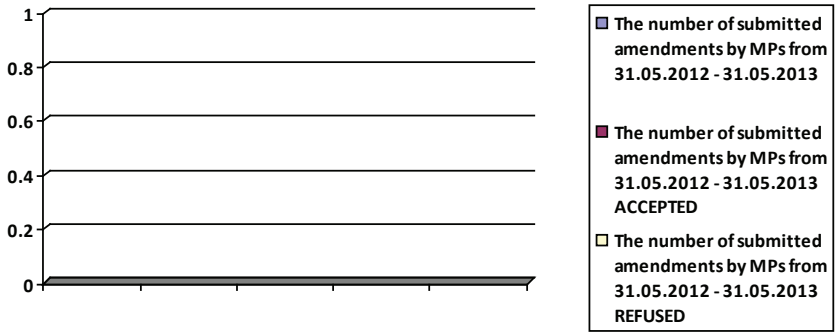


Figure 1 The number of submitted amendments by MPs from 31.05.2012 - 31.05.2013

During the observed period, the most active member by the number of taking the floor (not a replica) was Nebojša Stefanović, who addressed the parliament even 3019 times. We should not forget that he is the Speaker of the National Assembly.

In July 2013, a total of 217 amendments were submitted, out of which only 25 were adopted[25], while in August only 28 amendments have been submitted and all were rejected. The last two months (July and August) the most active was Popović Judita (LDP), who addressed the parliament 38 times (31 +7)[26] , while in August the most active was her party colleague Bojan Đurić who took the floor even 46 times (2 times speech and 4 times replica)[27].

Some interesting examples

Current Law on Consumer Protection ("Official Gazette of RS", No. 73/2010) is one of the few laws that the authorized proponent, after public debate, decided to withdraw the draft law on amendments and to the start elaboration of new law. The law is in effect from January 01, 2011 (This law was replaced by the Law on Consumer Protection, "RS Official Gazette", No. 79/05) The remarks were so big and important that the Ministry of Trade - in the Department of Consumer Protection canceled the amendment and decided to start drafting a new law to protect consumers since the public debate showed that it is necessary to change a larger number of articles of the law than is acceptable for the process of amendment. The Ministry has given up the adoption of amendments to existing laws, as during the public debate a large number of complaints was filed, according to the rules, if you are changing more than half of the articles, it is necessary to start drafting a new law. It is planned that the new public consultation be completed by mid-October and the new draft law be prepared by the end of the year. Comments mainly related to the improvement of law enforcement and consumer disputes, more precisely, those parts of the law governing the protection of the rights of consumers in the sales contract, the issue of complaints, the powers of the market inspection, out of court settlement of consumer disputes, the institutional framework and the like."I

[25] http://otvoreniparlament.rs/aktivnosti-narodnih-poslanika-jul-2013-amandmani/
[26] http://otvoreniparlament.rs/aktivnosti-narodnih-poslanika-jul-2013-govori-i-replike/
[27] http://otvoreniparlament.rs/aktivnosti-narodnih-poslanika-avgust-2013-govori-i-replike/

am always worried when someone says that they want to protect us, citizens," was one comment left below the article[28].

While some laws are changed several times in a short period of time, some of the initiatives taken and which have been ongoing for several years cannot possibly be completed by adopting a law. An example is the initiative of parents whose babies are missing from the maternity ward. Having founded the association "Parents of missing baby Serbia", they launched an initiative to adopt a Law on stolen babies and invited the public to sign the initiative in a greater number, to finally sanction responsible for previous theft of babies and prevent such actions in the future as the Board of Inquiry of National Assembly of RS, which was founded in 2006, did not do anything about it. According to data available, they said that in Serbia about 20 babies each month are stolen, and it is suspected that in the last 40 years about 40,000 babies were stolen[29].

[28] http://www.prva.rs/sr/vesti/ekonomija/story/24180/Ministarstvo%3A+Uskoro+novi+zakon+o+za%C5%A1titi+potro%C5%A1a%C4%8Da.html

[29] http://www.prva.rs/sr/vesti/drustvo/story/24358/Slu%C4%8Daj+ukradenih+beba%3A+Sumnja+da+je+u+poslednjih+40+godina+nestalo+10.000+beba.html (11 September 2013)

Is publicity in the law making process the same as transparency

Aniko Muškinja Hajnrih,
Provincial Ombudsman of AP Vojvodina

Exercise of the legislative function under the jurisdiction of the National Assembly and the legislative process is equipped with a number of regulations. Normative activities in the Autonomous Province of Vojvodina and local governments are governed in an analogue way to the republic one.

What is the law and who can propose the law

The law is the general legal act which is in a predetermined legislative process adopted by the National Assembly. The procedure for the adoption of laws is regulated by the Constitution of the Republic of Serbia, the Law on the National Assembly, the Rules of Procedure of the National Assembly and the Government.

The law may be proposed by any member of the parliament, the government, the parliament of the autonomous province, at least 30,000 voters, as well as the Ombudsman and the National Bank of Serbia in the areas under their jurisdiction. In Serbia, the adopted laws in most of the cases were proposed by the Government.

The right of MP's to propose a law in the National Assembly is characteristic of parliamentary systems of government, but in practice it is rarely seen. It is common that no proposal "will be passed" if there is no political will, which means they are unlikely to adopt a law if it is proposed by MPs from the opposition parties.

The case in which the law is adopted at the request of at least 30,000 voters is the least common .This supplementary institute of direct execution of legislative function by people's initiative is also limited by the will of the ruling majority.

The possibility of the Assembly of Vojvodina to propose laws and amendments to bills adopted by the National Assembly of the Republic Serbia is regulated by the Rules of Procedure of APV. The proposal that the Parliament should propose the national law, with the text of the bill, other regulations and general acts may be submitted by the Provincial Government, an MP, the competent committee and the parliamentary group. The text of the bill is submitted in the form of the law, with an explanation, whose content is determined by the Rules of Procedure of the National Assembly. The text of the bill shall state the rationale for proposing to the Assembly to establish the bill and submit it to the National Assembly. The Speaker, upon receiving the proposal that the Parliament shall be the proponent of the republican law, with the text of the bill, submits it to MPs and Provincial Government, if they are not the proponents. When the Assembly agrees to be the proponent of the law the debate opens on the text of the bill. The text of the bill is voted on the whole. When the Assembly establishes the bill, other regulations and general acts, it appoints a representative of the National Assembly and authorizes them to accept amendments that do not change the essence of the Proposal.

System and "non-system" law

Thus, in Serbia, in most cases, the proponent is the Government. In accordance with the regulations, the minister responsible for the area that is regulated by law appoints a working group composed of lawyers and other employees of the ministry, academics and experts in the field to which the law applies. The task of the working group is to write a draft or working form of law, which will regulate a certain issue.

Government Rules of Procedure provide that a public debate on the draft law is required with regards to the preparation of laws that significantly modify certain issues or modify issues of particular public interest, and it is considered that the criteria relating to the obligation of a public debate have been met when it comes to preparing a new system law. Once it is estimated that it is not about adopting the system law because it does not substantially change certain issues, nor are these issues of a particular public interest, a public debate is not required.

Public Debate

Since no regulation regulates the conditions that must be met to make the law a system, not a "common" one, this estimate varies from law to law. If one takes the viewpoint that the conditions for mandatory public debate are met and in accordance with the Rules of Procedure of the Government, a public call for participation in the public debates is issued. A public call contains information on education and the composition of the working group that drafted the proposal of act that is the subject of public debate. Public debate program usually includes: a draft proposal or act proposal that is the subject of the public debate with a rationale and enclosures established by the Rules of Procedure, the deadline for public debate, important information about the activities that are planned in the public debate (organizing round tables, panel discussions, the address and time of their occurrence, etc.)., manner of delivery of proposals, suggestions, initiatives and comments as well as other data relevant to its implementation.

Deadline for submission of initiatives, proposals, suggestions and comments in writing or in electronic form is at least 15 days after the public call is issued.

Public debate lasts for at least 20 days.

The proponent shall report on the public debate on its web site and e-administration portal within 15 days after the completion of the public debate.

Opinions on the draft

When the text of the draft by the working group members is agreed, the competent ministry shall submit them to the competent government authorities (ministries) whose scope is related to the question to which law applies and ask for their opinions. According to the Rules of Procedure of the Government, a draft law proponent always obtains the opinion of the Republic Secretariat for Legislation and the Ministry of Finance.

If there's a draft law that is used to harmonize regulations of Serbia with the European ones, the obligation of the Rules of Procedure the acquisition and opinions of the European Integration.

Cover letter by which the draft is submitted for an opinion, in accordance with the Rules of Procedure may be signed by the Minister or Secretary General. All those who have been submitted a draft by the proponent for an opinion in accordance with the Rules of procedure, shall be required to submit a written opinion to the proponent within 10 working days. And for signing opinions only the Minister or the Secretary General are authorized. If a system law is in question, the deadline is 20 working days. The Rules of Procedure stipulate that if the opinion is not delivered on time, it is considered that there were no objections. In practice, this option is not used. The government insists that the opinion be obtained from any body that was asked.

Once gathered opinions from the competent ministries as well as administrative authorities related to the matter and to which the law applies, the text with a cover letter is submitted to the Government through the General Secretariat. In accordance with the Rules of Procedure, the General Secretariat shall be submitted the material that is consistent with the remarks of the opinions obtained which are estimated as acceptable. The ministry which has prepared a draft is obliged to, as required by the Rules of Procedure, to issue a written statement of all the objections which have not been accepted. If any public debate occurred, the report on the public debate shall be enclosed.

The draft law in government

After receiving the material, the Secretary General assesses whether it has been prepared in accordance with the Rules of Procedure and submits it to the competent committees. The Rules of Procedure provide that the material submitted by the General Secretariat to the competent committees, shall be included in the agenda on the first Committee meeting and at the meeting the views of proponents shall reconcile with the observations obtained from the reviews and the comments and suggestions of committee members. The committee prepares a report for the Government which, among other things, contains the conclusion that proposes to the Government to establish or not establish the draft of the act, the separate opinions of committee members and conflicting issues.

When the Government accepts the draft, it gets the property of a bill and is sent to the National Assembly.

Publicity in the work of the Government

Government work is public. Publicity of Government is provided at the press conferences, presentations of the Government and public administration on the Internet, press releases and other information- telecommunications facilities. The publicity of Government and public administration is ensured by the Office of Media Relations.

Journalists and other members of the public, as a rule, do not attend government meetings. Exposition of government members and other participants in the session of the Government shall be considered strictly confidential official secret, if in the given case the Prime Minister decides otherwise.

Bill reaches the National Assembly

The Rules of Procedure of the National Assembly stipulate that the bill consists of two parts - the text of the proposal and the rationale. The law is proposed in the form in which it is adopted, in accordance with the Rules of Procedure of the National Assembly and the unique methodological rules for drafting.

The Speaker of the National Assembly delivers a bill, in accordance with the Rules of Procedure, immediately upon receipt, to MPs and the competent committees. The Committee on Constitutional Affairs and Legislation considers any bill from the standpoint of their conformity with the Constitution of the Republic of Serbia and the legal system. The European Integration Committee is considering a bill from the standpoint of its compliance with the European Union and the Council of Europe. Other committees participate in the debate on a bill in accordance with their scope of which is defined by the Rules of Procedure. The draft law is submitted to the Ombudsman, i.e. the National Bank of Serbia, if it regulates matters within their jurisdiction.

Regular and urgent procedure

The law can be adopted in a regular or urgent procedure. Rules of Procedure provide that in the case when the law is passed under regular procedure it may be included in the agenda of the National Assembly within a period not shorter than 15 days from the date of its submission.

A bill on an urgent procedure may be included in the agenda of the National Assembly if it submitted 24 hours before the start of the session.

Rules of Procedure of the National Assembly states that exceptionally, the law may be adopted urgently if we define issues and concerns which arise due to circumstances that could not have been predicted, and the failure to adopt legislation in an urgent procedure could cause adverse effects to human life and health, safety of the country and the work of the agencies and organizations, as well as for the fulfillment of international obligations and legal harmonization with the European Union.

The public in the work of the Assembly

Publicity of the National Assembly provides: creating the conditions for television broadcast and webcast sessions of the National Assembly, the press conferences for journalists, issuing official statements, enabling the monitoring of the National Assembly of the representatives of the media, observers from national and international associations and organizations, and interested citizens, examining the documents and records of the National Assembly, a review of the stenographic notes and minutes of meetings of the National Assembly, on the website of the National Assembly, and otherwise in accordance with law and the Rules of Procedure.

Sessions of the National Assembly and its working bodies are public. The session may be closed to the public in cases specified by law, if proposed by the Government, the committee or at least 20 deputies. The proposal must be explained. The proposal by the National Assembly shall be decided without a debate. Session of the working body could be closed to the public, at the explained proposal of at least a third of the members of the working body. The proposal is decided by working body without a debate. Issuing statements containing information from the sessions of the National Assembly or the working body closed to the public shall be decided by the National Assembly, or working body. If the National Assembly and the working body decide to keep the information from the session closed to the public, the speaker of the National Assembly, i.e. the president of the working body, shall issue an announcement to the public.

Representatives of the media have free access to the sessions of the National Assembly and its working bodies in order to inform the

public about their work in accordance with the rules of internal order within the National Assembly. Media representatives are provided the conditions necessary for the monitoring of the sessions of the National Assembly and its committees, in accordance with the act of the competent committee. Journalists accredited to monitor the work of the National Assembly can use the shorthand notes of the National Assembly, and when citing them, they must indicate whether the statements were authorized.

Journalists accredited to cover the work of the National Assembly shall have the bills and other general acts placed at their disposal, as well as information and documentation materials on issues relating to the work of the National Assembly and its working bodies.

Observers of national and international associations and organizations, and interested citizens are provided with special places to monitor the sessions of the National Assembly and its working bodies.

Official press release prepared by the competent service of the National Assembly and approved by the Speaker of the National Assembly or a person authorized by him.

Press conference at the National Assembly may hold a deputy, and other persons only if approved by the Speaker.

Public hearing - pro transparency

The public hearing is an institute whose purpose is to make it possible for the committee members and other deputies to receive the necessary information, expert opinions and comments of interested parties on the bill which is in the parliamentary procedure, the implementation of the adopted laws, as well as issues within the scope of the committee. The chairperson of the committee calls the committee members, deputies and other people whose presence is of special importance for the public hearing. The public hearing will be held regardless of the number of committee members present.

Instead of a Conclusion

It is not easy to assess the extent to which the Serbian legislative procedures are transparent and whether we can speak of a real, true transparency, that is, whether the term "the public" can mean transparency in the true sense of the word. In theory, the notion of public work could possibly be closer to the concept of transparency, however, due to

the large number of opportunities provided by prescribed rules, public work in the interest of the policy, is usually reduced to a minimum, and often entirely overlooked.

Media reform – the role of civil society organizations

Nedim Sejdinović,
Independent Journalists' Association of Vojvodina

Media freedom is a very important political issue in Serbia today, especially in the context of European integration. Implementation of Media Strategy, which was adopted by the Government of Serbia in September 2011 in expected accession negotiations with the EU, will be found in chapters 23 and 24, i.e. chapters related to the rule of law, which will be open throughout the negotiation process. Thus, the EU sent a signal to Serbia that the rule of law is the weakest link of already fragile state system of Serbia, as well as the media system in the legislative chaos that threatens freedom of expression and is against the interests of citizens and European values.

During the process of media reform (the term includes the period from the first public commitment to the strategic definition of media field up to present) four ministers of culture (and media) were changed, and recently the Deputy Minister of Culture and Information Dragan Kolarević was dismissed because of the delay of media reform. Although the first articulated demands for reform of the media scene have emerged in 2008, through the requirements for the adoption of a strategic document for media field, from which new media legislation will emerge, none of new media laws came into the parliamentary procedure to date, i.e. until September 2013.

Media Reform in Serbia is late not only in the context of the needs of "resetting" chaotic media scene, but in the context of the implementation of the Media Strategy i.e. the Action Plan as an integral part of the document. In this paper I will try to point out the complexity of the problem of the media in Serbia and delineate the role of CSOs in the sector of media reform.

Also, I will try to come to some conclusions and advice that may help CSOs in the advocacy for specific legislation.

The Nineties as a period of complete deregulation

In domestic legislation there is no difference between the guild associations and civil society organizations. All are subsumed under the same category: associations of citizens, albeit with different activity codes. That is, the law treats in the same way the angling organizations and associations concerned with the protection of human rights. By 2009 the CSOs in Serbia were operating under the law of 1989.

Some journalists or media organisations - such as the Independent Association of Journalists of Serbia (NUNS), the Independent Journalists' Association of Vojvodina (NDNV) and the Association of Independent Electronic Media (ANEM) - in the nineties, and more or less - during the 2000s, acted as organizations in favor of press freedom, but also as organizations that its activities directed towards the protection of the entire corpus of human rights. Human Rights in Serbia have long been seriously compromised, especially in the nineties. Media freedom was then subjected to repression to such point that through the media who ran terrible campaigns, warmongering or campaigns against political opponents, being under the direct control of the government, human rights were infringed upon. One should always keep in mind that during this period some journalists were killed, and there is ample evidence that behind the murders stood the state, that is, its secret services (Dada Vujasinović, Slavko Ćuruvija).

There was a number of independent media in the nineties, particularly the print and radio, which have survived with the help of Western funds. They were discriminated against, their content distribution was disabled, and the marketing had very little income... Companies opted not to advertise in these media because, otherwise, they had problems with the state, internal revenue service and other inspections, which eventually occurred (unfortunately, it is still going on in a sense, especially at the local level). In addition, the economy was in collapse, so more or less only the state or pseudo state companies (i.e. those that are under the control of authorities) invested in marketing activities. The highlight of the system of repression was in so called. Šešelj's law on Information from 1998, which legally and "efficiently" pursued

independent media, drastically punishing them financially.(Libel and defamation were brought down to the offense, and the courts, in up to two days, convicted and drastically fined journalists and media.) Then acting Minister of Information, at the time of the worst repression of the media was today's, "First Deputy Prime Minister" Aleksandar Vučić, who has now changed, at least apparently, his politics and became a recognized "pro-European politician."

Independent media, as well as the aforementioned guilds and organizations that advocated for human rights in the broadest sense, have been given the epithet "foreign mercenaries" or "anti-state elements," during the nineties and these "clamps" are not released until today. The epithet, and the campaign against independent media and non-governmental organization virtually has not ceased to exist from the late eighties to today (with more or less intensity), and greatly weakened the position of civil society, because a lot of citizens do not consider them their partners, nor recognize their important role in the society. In the nineties, the cooperation with the government was not possible because the government considered independent journalist associations, independent media and civil society organizations as "primeval enemies". Something similar goes on in Russia today, and due to wars - it is probably even worse...

When we talk about the media, it is worth mentioning one state concept which also intended to undermine the independent media - "the accumulation of the media." The fact that he was in the plan, and not just a consequence of the deregulation of the media market, is shown in certain documents, such as transcripts of intercepted conversations of Slobodan Milošević from Karađorđevo. The consequences of media inflation we have not dealt with even today.

The two-thousands

Partially even some civil society organisations are to blame for poor rating among the citizens, but only partially. Among other reasons it is for failing to properly present their work to the citizens. It is true, however, that they had weak partners in the media, and even among those who used to belong to the corpus of the "independent". A lot of these media, at the beginning of the two-thousands, "caught link" with the government or political parties, and therefore cooperation with those con-

trollers and critics of the government - was not desirable. Also, a number of figures from the NGO sector aligned with the authorities with the rationale that only the cooperation with them could help them achieve their goals. It, however, in many cases, proved inaccurate, and certainly inefficient, because major changes had not been implemented, and some NGO activists became national, party officials, who then gave up on their goals. A number of media wholeheartedly embraced the government (or tycoons associated with the government) because the Western funds, which directly donated media, dried up. The fact is that in Serbia no serious media or a high-quality media content can survive in the market - because for serious media content (as, for instance, for cultural content either) there is insufficient number of "customers." The situation is similar in other countries that emerged from former Yugoslavia, but Serbia is a striking example. This was shown in a report by the Anti-Corruption Council of late Verica Barać, from September 2010, which indicates that almost all the media are in the chain of corruption. It is the final and logical consequence of what happened in the nineties, and what is (not) happening in the two-thousands. It is also a result of the chaos in the legislation that treats the media sector. In the two-thousands, therefore, the situation is not dramatically different than in the nineties, but the control of the media is performed in something more sophisticated way - by corruption and financial blackmail, which allows legislative chaos.

I mention all this to clarify to what extent the field of protection of media freedom is complex and difficult in Serbia and how it was necessary to articulate actions of non-governmental organizations in this field. Unfortunately, we do not have profiled organizations dealing with media freedoms from citizens'/ consumers' point of view (for example, the associations of media consumers, and other organizations to share their local expertise dedicated to media rights and freedoms). So the field is covered by the actions and associations of journalists and media associations, who often in their actions have to simultaneously protect the interests of the media, journalists and citizens.

It is interesting that in Serbia it is common that the media is in the hands of the powerful, they are unprofessional; they are bad, that they do not play a corrective role in the society, but almost none of the traditional civil society organisation deals with it more seriously and thoroughly. Generally speaking, it is sometimes difficult to fight

for the interests of the media and journalists and citizens at the same time because they are not always congruent. Therefore, the Independent Association of Vojvodina Journalists often have trouble explaining to their members acting on the social level, because not everyone is willing to accept the argument that the right to professional liability is in the same plane with other rights of journalists. And through professional liability, i.e. respect of professional and ethical standards, the rights of citizens are protected.

Two-thousands, from another angle

Surely even the most pessimistic would not, immediately after the political changes in Serbia in 2000, anticipate that the media scene in Serbia would be chaotic thirteen years later. It is true that Serbia is in many ways specific, also by the media experience, it is true that no country in Europe and its media have experienced such an economic, moral and professional devastation as Serbia during the nineties; it is also true that in these conditions it is very difficult to raise devastated journalism and establish regular media market ... But at the same time, it is also true that the Serbian government has shown reluctance, bad will and failure to repair the situation in the media sphere, or to create conditions for fair play between media players, and to finally, step out of the role of the founder or owner of the media. It is also true that the Serbian political class does not want to give up the influence on the media, turning them into a tool/ weapon in their hands. Therein lays the reason why Serbia has not yet adopted new laws, which are a prerequisite for the introduction of order and rules in the media sphere. New media laws are also one of the commitments of Serbia in the European integration process. But this does not seem to excite the authorities in Serbia, regardless of their official pro-European character.

Media chaos, however, is not the result of bad legislation from the beginning of two-thousands (still existing Law on Public Information and the Law on Broadcasting), but above all, their non-implementation. Media laws in this country are only sporadically respected. In fact, the media sphere is largely regulated by a completely other adjustment of legislation. The privatization of the media has been repeatedly delayed, in so called, summer changes to the law to be finally stopped by "off-media" laws, i.e. laws that regulate the functioning of local governments,

national minority councils and the capital city. Privatization, due to desperate implementation, has made additional chaos in the media market, and numerous privatizations were canceled. However, our media laws expired in the meantime; some solutions have not withstood the test of time.

The lack of media strategy that will result in the new legislation, a few years ago was perhaps a term that encompassed a number of problems that the media scene was faced against. However, today, at the insistence of journalists and media associations and international organizations, we have a Media strategy, but with its implementation is shamefully delayed. Politicians, no matter who is in power, act in two ways. In general, they support the Media strategy, but in practice they do everything to prevent its implementation. And it is no coincidence: it seems that there is a strategy how not to implement the Media strategy. It is a wild- goose chase, the politicians know best.

The main problems that bother the media scene in Serbia today, and they were the reason for the demand for media reform are:

1. Unfavorable legal environment or incompliance of laws defining the media field or disregard of legal solutions;
2. Lack of regular media market, as a result of unfair competition in the state-owned media and the lack of transparency of media financed from the government, public enterprises and enterprises in the partial or total state ownership;
3. The accumulation of the media during the nineties, as a designed national strategy, with the aim to downsize the influence "independent media."This is something that singles out Serbia from other countries that are (were) in transition. It is clear that a significant number of media in Serbia would not survive, but the key question is who will decide which media is to survive...
4. The economic crisis that hit the media even more than the rest of the economy;
5. New technologies threaten traditional media platforms, especially those media that are not ready for the so-called new media age;
6. Particularly vulnerable are the local and regional media, which against themselves have, in addition to state-run media, the media center as unfair competition in the centralist state. In addition, the unfair competition should be increased with ille-

gal broadcasters, which, unlike the legal ones have a number of state and pseudo state taxes;

7. Legal interregnums in which we operate in the media that have been privatized, and then privatization was reversed.

It seems that for the current situation the state is just largely responsible, which by its not doing or wrong doing, led the media to the brink of survival, poor media prone to all sorts of compromises, the media that is easy to blackmail, journalists who were held hostage not only of the powerful, but also the owners and editors of the media. It is a strategy of organized chaos, just as irregular market allows utilization of the media and their control.

At this point, the situation looks pretty hopeless, because according to research of NDNV among journalists of Vojvodina, most of them had lost the illusion that professional journalist work is possible in these circumstances. A lot of them would prefer to leave the job as a journalist, because it has almost no satisfaction, neither professional nor ethical or financial, nor do journalists have a reputation in the society.

The research of the Anti-Corruption Council shows that a large number of media in Serbia is in the chain of corruption, but one should keep in mind that there are too many reporters in the chain of corruption at the lower level.

These alarming indicators have demanded unification of journalists and media organizations in an attempt to, through joint action and continuous pressure on the government, impose order on the media scene in Serbia.

This proved to be an extremely difficult and time-consuming process that has not yet yielded results, but some progress has still been made.

Media Coalition

Media Coalition started working at the end of 2009, to make the first serious and systematic activities held during the 2010, when, to meet the development of Media strategy, they agreed on common grounds and publicly through panels and reports presented them to the public. The Serbian government has pledged to adopt a Media strategy, a document that will outline future media policy, which will be the basis of media reform, and the enactment of new laws.

Media coalition is made up of five journalists and media organizations that have united around common goals, despite the significant differences between them. The Association of Journalists of Serbia was officially under the control of the Association of Journalists of the Milošević regime, and out of this legacy this association has never recovered. However, due to changing political circumstances, UNS are slightly changing their attitude towards media freedom, under the influence of international organizations, their activities are closer to NUNS and NDNV. ANEM and the Association of Local press media and the interests of the founders of the media do not match, at least not yet, with the interests of journalists. However, all these differences that still exist were not insurmountable obstacles to the association to come out with joint recommendations for the reform of the media scene.

It turned out that the government in the past benefited greatly because the associations were in conflict or inconsistent and only uniting around common goals enabled some improvements. The government has recognized the strength of the joint action. Thus, a synergistic effect was obtained, which contributed to the Coalition to become an important factor in the process of media reform. The Coalition, from the beginning of the process of media reform, for example, still had representatives in government professional bodies dealing with the development of strategic and legal documents. In some cases, when the positions overlap, the Media Coalition was joined by Media Association (ASMEDI), an association of major media. Then these organizations appeared under the name - Media community.

The main goal of the coalition was to, by active participation, contribute to the quality of Media strategy, the strategic document that is the basis of the reform of the media sector by 2016. Although dissatisfied with aspects of the strategy document, after its adoption (September 2011, after a long delay) Media Coalition actively involved in supporting the implementation of the Strategy and the reform of the media system, which was supposed to result from this document.

Media coalition during the 2010 had a campaign for the Media strategy, in which they presented common views and conclusions of association members on all elements of media reform. The common position has not been achieved easy, and everyone had to give up on some of their demands and interests in numerous meetings and mail-correspondence. We printed the brochure "Contributions to the

public debate on Serbia's Media Strategy", which contained the mutual views of association. We shared the brochure in the campaign, where we toured the length and breadth of Serbia, explaining our attitudes to journalists and other media representatives, and representatives of CSOs, all supported by arguments.

However, representatives of CSOs in Serbia were not much interested in the campaign, with the exception of several associations, as a result of, among other things, the lack of organizations representing media consumers and citizens.

From the formation to the present, the Media Coalition has a regular dialogue with the authorities, and acts through press releases, forums, public meetings, according to the shared attitudes. Sometimes there are problems in the articulation of these opinions and the taking sides towards the actual events, but the survival of the Coalition has not yet been brought into question.

Simply put, a common position of the Media Coalition can be summarized as follows:

- Withdrawal of the state from media ownership and creating regular media market;
- Funding not the media but the media content, transparently through independent committees, in accordance with the defined public interest;
- Independent public service and a different way of functioning of subscriptions;
- Independent regulatory bodies;
- Public ownership and the prohibition of monopolies;
- Establishing a system of incentives for the media to evaluate the work of professional journalists;
- Defining not only the right but also the obligations of the founder of the media in minority languages.

A lot of these positions are found in the Media strategy, but the Media Coalition is unsatisfied with two solutions of Media Strategy, which relate to the media in public ownership.

The first is the decision on the establishment of regional public service. We expect them to give up the idea of regional public service, because we believe that this "virus" in the system, which will not create even basic conditions in the market for existing and potential emergence

of new media. On the contrary, the government should focus on improving the legal framework in which existing public services operate and to enable them to become truly services of the citizens. It remains entirely unclear how a new regional public services will be funded, given the fact that the collection of subscription fee is very low and that existing public services are because of this in a deep crisis, especially Radio Television of Vojvodina, which is multiply discriminated against on RTS.

In addition to regional public services, Media coalition is not satisfied with the decision of the strategy related to media in minority languages. The strategy has enabled the national councils to establish and take the founder's rights in the media in the languages of national minorities without limitation, which is contrary to the announced or promised withdrawal of the state from the media market. Past experience suggests that the national councils as founders have saved from extinction media whose founders they were, but that they simultaneously threatened their media freedom. Let us just recall the case of a change of editor in chief of the daily newspaper in Hungarian "Magyar soa" Csaba Pressburger a year ago. He was dismissed with a cynical explanation that his paper did not keep pace with the press conference of Association of Vojvodina Hungarians (SVM).

We demanded that the strategy clearly defines not only the rights of the national councils as the founders, but also their responsibility, and the establishment of mechanisms for the protection of an independent editorial policy of the media that the national councils were the founders of. Unfortunately, it was not accepted, and therefore further request from the Government of Serbia to initiate amendments to the Law on National Councils and include this provision, and also prevent further monopolising minority media scene by the national councils, and especially to prevent their influence on the editorial policy of the Public Service of Vojvodina.

During the process of advocacy and promotion of harmonized attitudes, Media coalition support is provided by Media Department of the OSCE, which has proved to be a reliable partner, and the Delegation of the European Union, which has a very important, almost crucial role in this process. However, one word may be common for the response of the Government to our efforts (whichever Government) - the delay, and a drastic one. The government does not want to make media reform without great pressure, for two main reasons: "lack of will" to free the

media from government influence, on the one hand, and the desire to protect the vacancies, jobs for party staff. The state-owned media serve as a venue for recruitment of party staff, so for instance, we have the absurd redundancy within state media and the lack of journalists.

After Media Strategy

In June 2012, almost a year after the adoption of the Media Strategy, the Media Coalition has sent the new demands to the government of Serbia. Then it was not yet known which parties will form a new parliamentary majority, or at least we were not sure, so requests were sent in principle. In short, the requirements related to compliance with the Media Strategy, which, after two years of hard work, was adopted by the government teleconference in September 2011. We noted then that there were no visible efforts to implement the Strategy and we requested that the action plan in this document should be respected.

All policy options, in so far activities, more or less evident, indicated that they do not care about the establishment of the media market with clear regulations. Thus, they showed that they did not care about the freedom of the media, let alone the rights of journalists and that they perceive all media as "consumables" for propaganda activities. The media, unfortunately, have not yet learned that any closer approach to the political power is in long-term disastrous for themselves and for journalism in general.

Current overview of the state is not encouraging. Although it has already been through the process of public consultation in March this year, the Law on Public Information and the Media has not yet been included in the agenda of sessions of the Government of Serbia and transformed into the form of a bill, which should be put to the parliamentary procedure. When this will happen remains unclear. The draft law on electronic media is published on the website of the Ministry of culture and information, but it is not known when it will move to a public debate. The draft law on public services was published, but was withdrawn at the request of media organizations. Meanwhile, in unclear circumstances, in June this year Expert Working Group was disbanded, so it is unclear who the author is of the latter Draft.

How encouraging is the fact that the first two drafts of legislation align with the opinion of the Media Coalition, so discouraging is the

fact that there are many resistances that they eventually become part of the legal system of Serbia, because it all depends on political decisions and settlements within the ruling coalition, and the whims of individual politicians who concentrated enormous power in their hands.

But the question is whether they would come into the present situation if there were no joint action organizations gathered in the Media Coalition. If for example we compare the situation in the field of culture and take into account that the Cultural strategy is a couple of years late and it is not in sight when they will start to work on it, one can still be satisfied by the fact that the Media strategy is still adopted, and that the government has taken some kind of obligation in the media sphere. Of course, without the pressure of the EU it would have been far worse.

At the time of writing this paper, Saša Mirković, Chairman of the Board of ANEM, who is a member of the Media Coalition, formally is a candidate for deputy minister of culture and information that will be responsible for media reforms.

In addition to advocating for new legislation, Media Coalition has responded to other deviations in media, related to non-compliance with the principles of Media strategy. One successful operation was conducted in December last year, when in the parliamentary procedure the Draft Law on Public Enterprises was found. Specifically, this law made it possible to establish public companies in the information sector, which was in complete contradiction with the withdrawal of the state from the media sphere. Media coalition reacted strongly, publicly stating that this not only cancels Media strategy but also violates freedom of speech and increases state influence in the media. The Serbian government has accepted our arguments and from the Article 2 of this Law removed the information sector, which was the requirement of the Media Coalition.

This can be seen as a significant achievement, as by this first act of the state, through legislative solution, they confirmed one of the basic principles of media strategy.

Media coalition reacted regarding events in media that are contrary to the Media Strategy, and through the implementation of various studies ("Media freedom in Serbia," "Financing local media in Serbia") we have offered new arguments in favor of our primary requirements.

Lessons and conclusions

- Despite the great effort, nearly five years of working together (previously individual or ad hoc coalitions), despite the support of international organizations, despite EU pressure, media legislation has not yet been adopted;
- The government, as it turned out, avoids, as much as possible, legislative solutions to reduce its impact on the media, and the relationship of the government on this issue is almost identical;
- Media Coalition has still achieved partial success, because it put pressure on the government to include in the Media Strategy and draft laws most paragraphs of the Media Coalition;
- Technical arguments are not sufficient, but also a constant pressure through a process of advocacy is necessary;
- It is the collective action of civil society and finding the lowest common denominator, which strengthens the possibilities of successful advocacy (lobbying);
- The media is not a reliable partner of the Media Coalition, because they are connected to the political elite by the umbilical cord;
- Cooperation between CSOs and the media in Serbia is weak, which prevents a partnership in improving government transparency. Fault of the media and civil society organisations;
- The role of NGOs in the legislative process is required during the entire process of making strategic documents, from drafting processes, to pressure after the entry of the Bill in the parliamentary procedure. CSOs need to request a public debate on legal solutions wherever possible, and to explain the importance of the media and the meaning of certain legal arrangements;
- It is important to monitor the implementation of laws and bylaws and previously insist on systemic solutions, strategic documents;
- Avoid the ability of the government to try to divide the responsibility for the poor legislative solutions with CSOs involved in the decision of new primary and secondary solution.

Justification of demands for legislative transparency in Montenegro

Bojan Spaić

Legislative transparency in the Montenegrin civil society is commonly taken as a ready-made inventory that belongs primarily to NGOs. Public rhetoric will often go in this direction that the law found before the Assembly shall be declared non- transparent if in its adoption certain actors of civil society were not exactly involved. The request for legislative transparency, formulated in this way, from the legal-theory and political- theory point of view is problematic. I will try to show that the claim in question is not self-evident and that this requirement in Montenegro, if aspiring towards elementary justification is not a sufficient normative justification, which is based on legal rights of non-governmental organizations to participate in the legislative process, but it is a necessary and consequential justification, i.e. justification based on the result of that meeting the requirements of legislative transparency is the quality of the law in question.

Classical notion of separation of powers

Widespread understanding of the legislative process in the Montenegrin society is based on a prejudice that dates back at least to early modern conceptions of democracy. These conceptions in question are mainly based on the idea that the legislature of the state is responsible for the implementation of the entire legislative process. The classical concept of power-sharing role of the legislature is to adopt laws that are implemented through by-laws by administration. Generally this setting is still current. The Constitution of Montenegro from 2007 adopted the classical notion of distribution of powers as prescribed in Article 11:

- Power is regulated by the principle of distribution of powers into legislative, executive and judicial.

- Legislative power is executed by the Parliament; executive power is exercised by the government and the judicial by court.
- The power is limited by the Constitution and the law.
- The ratio of government is based on balance and mutual control.
- Montenegro is represented by the President of Montenegro.
- Constitutionality and legality is protected by the Constitutional Court.
- The military and security services are under democratic and civil control.

The classic understanding of distribution of powers implies the idea that each branch of government is limited to its own area of expertise. Based on belief that citizens are bearers of sovereignty, the authority, whose members are elected in general and direct elections by all adult (female) citizens of Montenegro (in the article in order to label all members of a certain group, regardless of their gender, the feminine gender is used), is entrusted with the function of determining the rights and obligations that apply to all citizens, through legislative action. The legislative power based on the aforementioned article of the constitution appears as the sole holder of legislative jurisdiction, despite the idea of balance and mutual control of power referred to in paragraph 4. Based on this basic idea, we could conclude that the legislative transparency relates primarily to legislative openness to suggestions regarding the content of the law and the legislative process by civil society. We shall examine the legislative process in Montenegro.

The legislative process in Montenegro

The right to propose laws in Montenegro, in contrast to the classical ideas of separation of powers, is not reserved for the Parliament. As holders of the legislative initiative as in Article 93 of the Constitution of Montenegro appear in the first place the Government and an MP. Only secondarily in the same article, paragraph 2, as designated proponents of the law appear 6000 voters, but by means of authorized deputies. In the current work of the Montenegrin Parliament after the adoption of the constitution in 2007 there were no cases that voters appeared as proponents of the law, therefore, based on the provision in question it is not possible to conclude in what way an MP is "authorized" by a number of citizens that the law could be suggested "by" them. The previous constitutional

arrangements implied that the floor of the Assembly can be taken by any representative appointed by citizens and not necessarily an MP[30].

The Assembly, therefore, does not appear as an authorized proponent of the law, despite the fact that legislative activity according to Article 11 is exclusively entrusted to this body based of the Constitution. In addition, deputies in Montenegro very rarely use their right of legislative initiative. Normative constitutional solution according to Article 93, as a result has the fact that the bills as a rule are proposed by the Government of Montenegro. Despite being among its core competencies in Articles 100 and 101 of the Constitution, the legislative authority mentions in the exceptional case of emergency, the Government actually appears as the most important actor in the process of law adoption.

The Assembly in the previous period has seriously worked on informing citizens on the legislative process and in collaboration with the Centre for Democratic Transition (CDT), National Democratic Institute for International Affairs (NDI) and USAID developed the popular brochure entitled "How a bill becomes a law," which is available on the websites of the assembly[31]. The brochure, in detail and accessibly, deals with the legislative process, and in this regard it is an exemplary material which will be available to all interested citizens. In connection with the proposal, stated in that publication, it is pointed out that:

> "The proposal shall be submitted in the form in which the Law is adopted and must be explained in writing in sufficient number of copies and in electronic form. Rationale of the Bill includes: the constitutional basis for legislation, the reasons for the adoption of law, whether it complies with European legislation and ratified international conventions, explanations of the basic legal institutions, the assessment of financial resources for law enforcement, public interest for the proposed retroactive effect, if the Bill contains provisions which propose retroactive effect

[30] The right to propose laws in the Constitution of Montenegro in 1992 was governed by Article 85, which read: The rights to propose laws, other regulations or general acts have the Government, the Parliament and at least six thousand voters. It is clear that by the new constitution it is virtually impossible for representatives of citizens who are not deputies to appear in front of the assembly.

[31] With apologies for the format of web address where the brochure is, we attach, link for reference: http://www.skupstina.me/~skupcg/skupstina/cms/site_data/brosura%20final%20-%20cg%20za%20web.pdf

and the text of the provisions of the law that are changed if the proposed law is on changes. "

Putting the bill in the procedure involves the submission of proposals to MPs and the relevant committees by the Speaker. The proposal is further published on the website of the Parliament. If the proponent is not the Government, the proposal is sent to the Government for an opinion that the Government should submit within 15 days of receipt of the bill. With proper details, the brochure explains the first reading of the law by the Committee on Constitutional Affairs and Legislation and stakeholders. With this brochure, it is emphasized that "in the work of the committee participate representatives of proponents of the acts and applicants of amendments to the act being considered at the meeting. In the work of the committee, by invitation, representatives of the Government can participate, representatives of scientific and expert institutions, other legal entities and non-governmental organizations and individual experts and scientists, without the right to vote." In this way, along with the principle openness of the Assembly of Montenegro to the public, in the form of public access of assembly procedure, even the work of assembly committees is made open to all interested parties that the committee estimates that may be helpful in the legislative process. Invited government representatives and members of civil society cannot decide, but it can be assumed, based on reasons that will become clear in the continuation, that their voice when acting within parliamentary committees is respected.

The elaboration of the difficulty of division of power from the perspective of the legislative process shows significant deviations from the classical conception. 1) Actual setting on reservations of the legislative process for a legislative body weakens under the increasing influence of participation of the Government in the legislative process. This may not automatically be a problem, given that the changes in social relations lead to far quicker and efficient regulation of relations than is currently the case. 2) The second important reason for the disruption of the classical conception of distribution of powers is concerned with the technical lack of equipment of parliaments in countries aspiring to become an integral part of the European Union. In the context of rapid change in legislation the Government appears as a subject that is De Facto and in a normative sense the most important factor in the legislative process, especially in countries where the parliamentary system is

atypical in a way that members of the government are not at the same time members of the Parliament. In these circumstances, the greater part (of course, in content, not in terms of time spent) of the legislative process is associated with the making of laws by the administration. It becomes clear that the parliamentary transparency is not a synonym for legislative transparency, and that under the legislative transparency one must first of all imply the possibility to participate in the proceedings in the drafting of legislation by the holder of the legislative initiative who uses the right as a rule - the Government.

Civil society in Montenegro from the perspective of legislative transparency

After determination of the meaning of legislative activity, in terms of subjects that perform this activity, we shall deal shortly with subjects that suggest the requirement that the legislative process is transparent. In general, the requirement would have to come from civil society in the broadest sense of the word. Its proponents could be individuals, different institutions that are public but do not participate in public policy nor are primarily actively involved in political struggles (University(ies), the Academies of Sciences, mother boards and various professional organizations), companies, etc. The claim for participation in the process of drafting laws, the mentioned subjects in Montenegro, most often do not participate but as central initiators of similar initiatives often appear NGOs.

In this sense, in Montenegro, the request for legislative transparency in the first place is a request for participation in the process of drafting laws that is initiated by a part of civil sector, which we call non-governmental organizations. For this reason and the fundamental question of this article is posed: Is the application of NGOs to participate in the drafting of laws justified, i.e. Legitimate?

Let us start from the question of whether the system as a liberal-democratic legislative transparency can be justified from the point of view of the main characteristics of this system. Liberal, in our phrase, means a system in which individuals possess certain rights granted by the Constitution. Democracy in this formulation indicates the method of selecting individuals who will manage the national organization for a limited period of time (usually 4 years). The first question concerns the justification of legislative transparency from the perspective of the political system within

which we operate and which in the case of Montenegro is constitutionally characterized as a liberal democracy. This formulation has become one of the idola fori (a Latin term - translator's remark), and the same is subject to numerous misunderstandings and misinterpretations.

To make legislate transparency justified from the standpoint of the basic design of the legal system, it must be an integral part of liberal or rights whose holders are individuals or collectivity, or democratic right to participate in the election of public officials. It is possible that the transparency of the legislative functions is a necessary connection between these two guidelines. To examine the extent to which legislative transparency belongs to the definition of liberal, there is nothing left but to examine whether the Constitution provides for any individual right that guarantees the opportunity to participate at any stage of the legislative process. Montenegrin Constitution provides for such a possibility only for the subjects mentioned in the section on the legislative process.

The request for legislative transparency does not appear any better if we analyze it from the standpoint of democracy. As a form of political order, democracy implies a certain form of legitimacy of public officials and decision makers. Justification of actors in government in democratic society is based on majority votes, and the public authority that is not based on the principle of majority cannot be considered reasonable if we want to talk about the democratic system in the formal sense. This especially applies to the legislative process that has just been entrusted to the Parliament and on the basis that the rights and obligations (which cannot be established by lower legal act of law) can be determined by the body composed of representatives of the citizens. Organizations that are not legitimized by majority, in principle, have no authority to participate in the legislative process.

Liberal-democratic character of the Montenegrin political and legal system in general, that we have described, does not guarantee the justification of the request for participation in the legislative process. It is reasonable, then, the question of what the claim is based on, in order to be justified and how it will be justified.

Normative justification of requirements

The legal system of Montenegro, despite the constitutional and political order does not include the participation of NGOs in the drafting of the

bill, but it provides the right of NGOs to participate in this process. The Law on State administration in Article 80 shall in the following way govern relations between the government and non-governmental organizations:

> Ministries and administrative authorities are obliged to ensure cooperation with non-governmental organizations, which is accomplished in particular by:
>
> 1. Consulting NGOs on legal and other projects, and regulations governing the manner of exercising the rights and freedoms of citizens;
> 2. Facilitating participation in working groups for consideration of issues of common interest or for the normative regulation of relevant issues;
> 3. Organizing joint public debates, round tables, seminars and other forms of joint activities and other appropriate forms;
> 4. Providing information on the contents of the work program and reports on the work of the state administration.

The above mentioned article provides NGOs participation in legislative projects and projects of mutual interest through consultation or through participation in the working groups whose task is developing appropriate projects.

The ratio of public administration with the whole civil sector is governed by Articles 97 and 98 of the same law:

> Article 97
>
> The Minister is obliged to prepare laws that govern the rights, obligations and legal interests of citizens, publish the draft law in the media and invite all interested parties to present their comments and suggestions.
> The Minister may decide to conduct public debate in the preparation of other laws.
>
> Article 98
>
> Ministries and administrative bodies when they maintain counseling or other forms of professional treatment of issues of competence are obliged to make a public announcement in

the media and facilitate media monitoring, counseling or other form of professional treatment of issues.

It is clear that in terms of relations with civil society relating to the mentioned articles there is a significant imbalance in favor of non-governmental organizations. Normative solutions in this case confirm our thesis that legislative transparency in Montenegro is understood primarily as a requirement for participation of non-governmental organizations as part of civil society in drafting the law. Normative justification of this request is made in that the Law on State Administration NGO sector given the right to participate in part of the legislative process, which is entrusted with executive and administrative authorities.

Relatively vague way of standardizing the legislator uses in this occasion ("other projects", "issues of mutual interest," "normative regulation of certain issues") specifically regulates the Regulation on the procedure for cooperation between state authorities and NGOs (22 December 2011), Regulation on the procedure and manner of conducting public consultation in preparation of laws (February 2nd 2012). The first-mentioned regulation determines, among other things, the criteria and procedures for selection of NGO representatives in working groups and in working groups that as a task have the creation of the bill. Election of representatives begins by a public invitation which stipulates the conditions to be met to have the representative of non-governmental organizations participate in the activities of the working body (Article 9). Conditions are prescribed by non-governmental organizations are as follows (Article 10):

- [That] it is entered in the register of NGOs before the publication of the call in Article 9 of this Regulation;
- The act of incorporation and the statute have defined objectives and activities in areas related to the mission of the working body;
- Throughout the previous year, it has implemented at least one project or activity related to the task of working body;
- It has submitted a report to the tax authority for the previous fiscal year (balance sheet and income statement);
- More than half of the members of the management of non-governmental organizations are not members of any political

parties, public officials, senior civil servants or civil servants, or employees.

It is not necessary, therefore, for non-governmental organizations to actually engage in a particular activity that is related to the task of working body. It is enough that such an action is provided in the statute of non-governmental organizations. In practice this, in a caricatural sense but not far from the truth, could mean that the beekeepers association may participate in the drafting of any tax law, if their acts of incorporation or statutes mention fiscal responsibility and fiscal conservatism. The possibility that we have mentioned of course does not make pointless precise criteria for the participation of NGOs in the process but shows the relative inability of management to gain insight into the work of the NGO sector, and thus rejecting the introduction of any substantial criteria, in the process of electing representatives to NGOs to the respective bodies.

Article 12 of the same regulation closely specifies obligations of representatives of non-governmental organizations in connection to participation in the working body:

> Non-governmental organizations referred to in Article 10 of this Regulation, with the nomination of members of such working bodies, shall submit:
>
> - A copy of the decision of entry into register of non-governmental organizations;
> - Copies of the act of incorporation and statutes;
> - Review of completed projects and activities in the previous year related to the task of working body;
> - A copy of the filed tax return for the previous year;
> - A statement of the person authorized to represent the non-governmental organization that more than half of the members of the management governmental organizations are not members of any political parties, public officials, senior managers or civil servants, or employees.
>
> Along with the documents referred to in paragraph 1 of this Article, the NGO shall submit the following:
>
> - Photocopy of identity card or other document on which the identity of the candidates for the members of such working body shall be confirmed;

- Biography of the candidate, with details of the experience related to the task of working body;
- A statement that the candidate is not a member of any political party, a public official, senior manager or public officer or employee;
- A statement that the candidate accepts the nomination for a member of such working body.

Only one of the items mentioned eligibility of NGO representatives to participate in the working body. This was of course a formulation in which along with the resume they look for information on the experience of representatives related to the task of the working body. It is clear that this experience is not a requirement to participate, but only procedural requirement, so it could have been left out. Other provisions concern the basic functionality of non-governmental organizations, and are established primarily to omit the non-functional NGOs from consideration. The procedure of deleting NGOs or other associations from the register that since establishment have not undertaken any activity has only lately begun in Montenegro.

Taking the above into account, the nature of things comes to the question of how the participation of NGOs, according to the criteria prescribed by the Law on State Administration and the relevant regulations, contributes to legal solutions in Montenegro. Broadly speaking, there are no adequate guarantees that the participation of non-governmental organizations shall speed up the process of drafting the bill or make it better. It is understood that this does not mean that it will never be the case; certainly it will sometimes happen that representatives of non-governmental organizations contribute to the quality and efficiency of legal solutions drafting the proposal. Broadly speaking, there was nothing in the law or in regulations which guarantees that it will happen. Based on these normative assumptions and conditions, it is far more likely to have a member of civil society, who does not participate in non-governmental organizations (university professor who is an expert in that area, a representative of the company that deals with a particular type of production or services, a representative of the religious community, etc.) to be able to contribute to the efficiency and quality. Expertise in some areas is easier (although not more reliable) checked according to the level of formal education or work experience in an area that is classified as a task of the working body. If transparency, in terms

of participation in drafting the bill, is not taken as a value in itself, it seems that a normative justification of requests for participation is entirely insufficient to guarantee greater efficiency in the development of laws and quality legal solutions.

Problems associated with the normative justification of legislative transparency could be summarized as follows: 1) The right to participate in the process of drafting the law does not guarantee the quality of legislation, 2) Asymmetry in the civil society in favor of the NGO sector, and 3) The possibility of executive power to disregard the proposals of civil society in adopting legislation without an explanation; 4) Ability to disconnect legislative transparency regarding certain categories of law.

Consequential justification of demands

Legal solutions in this area clearly speak in favor of the non-governmental organizations in Montenegro, seeking to participate in the drafting of legislation, they can always rely on their established by law, the right of which we have just spoken. The dynamics of functioning of liberal democracy still testify in favor that the role of NGOs in this process is not necessary, especially given the lack of democratic legitimacy of membership and leadership of these organizations. The fact in question is even more prominent if one takes into account that the Montenegrin legislation does not distinguish between the various non-governmental organizations, and it is impossible to discriminate as to which NGOs have the right to participate in the drafting of laws based on its specific areas of expertise.

In other words, the participation of NGOs in the drafting of laws does not necessarily improve the legislative procedure. On the contrary, sometimes it can be harmful towards timely and efficient submission of the proposal to the Assembly. Legal right of NGOs is not, therefore, according to our judgment, sufficient to justify the participation of NGOs in the process of drafting the law. It is essential that NGOs can contribute to a qualitative process of developing the proposal.

After-transitional conditions in Montenegro imposed as a basic qualitative step forward in terms of legal solutions are twofold: 1) in a consequential sense, the participation of NGOs in the process of making the bill if it contributes to the quality of legislation in a parti-

cular area is justified, 2) in a consequential sense, the participation of non-governmental organizations in the process of making the bill if it contributes to the efficiency of the process of drafting the bill is justified, and finally, 3) in a consequential sense, the participation of NGOs in the process of making the bill if it contributes to the minimization of the existing disputes regarding legislation is justified .

Advancement opportunities for legislative transparency

Before exposing possible directions of progress in the area of legislative transparency of the subjects that I mentioned and appearing as key actors in the field, I shall summarize the conclusions I came to by so far presentation: 1) Legislative transparency deals primarily with the requirement for participation in the legislative process by non-governmental organizations, and in the part of the legislative process, which is based on the constitution under the jurisdiction of the administration. 2) There is no constitutional right to participate in legislative activities guaranteed only to non-governmental organizations. 3) The legal right of participation of civil society in the drafting of legislation is ensured, appropriate regulations specifying the manner of exercising the right have been adopted. 4) Participation of NGOs in the legislative process is politically (morally) justified if appropriate. 5) Consequentially, the participation of NGOs in the process of drafting the law could only be justified if the ability of their representatives to such a level that they can significantly contribute to the quality of the solutions of the bill or the efficiency of the legislative process.

The Parliament, which has been in previous analysis put aside, has a good foundation for the continuation of increase of legislative transparency in terms of public access to the parliamentary materials using newer technology resources. In this respect, the fundamental act of Declaration of parliamentary openness is obliging to Montenegro[32]. In its beginnings the Declaration outlines some basic purposes, which for purposes of this paper are interpreted as trivial:

> The Declaration of parliamentary openness is an invitation to national parliaments, as well as sub-national and transnational legislatures, by civil society organizations involved in monito-

[32] Information about the Declaration can be found on pages http://www.openingparliament.org

ring the work of Parliament (OMRP) to increased commitment to transparency and parliamentary engagement of citizens in the work of Parliament. OMRP are becoming more acknowledged by the important role they play in ensuring parliamentary information becomes more accessible to citizens, strengthening the capacity of citizens to participate in parliamentary processes, and improving parliamentary accountability. Besides the fact that OMRP have a strong interest in advocating for greater access to government and parliamentary information, they also recognize the need for increased dialogue with the parliaments in the world on issues of parliamentary reform. The declaration was intended not only as a call to action, but also as a basis for dialogue between parliaments and OMRP on improving the openness of government and the Parliament, and to ensure that this openness leads to greater engagement with citizens, accountable and representative institutions and, ultimately, a more democratic society .

Stability relations in Parliament and some kind of natural openness of Parliament for the public speak in favor of the fact that these goals in Montenegro are relatively easily attainable. In what way do these findings reflect the activities of government and non-governmental organizations as main subjects in the process of increasing the transparency of the legislative process in Montenegro? From the government point of view it means that representation of relevant subjects shall be adequately ensured. Relevant are those subjects that can substantially contribute to the quality of adopted law based on the expertise and information on comparable and domestic solutions. Legal regulations and provisions should be harmonized with the idea that does not contribute to the transparency of the quality of each law, as with the idea that NGOs do not exhaust the scope of the term civil society. Because of this, the laws and provisions governing this area must at least incorporate more precise criteria for discriminating between non-governmental organizations dealing with various issues related to the content of the law whose proposal is determined. It should also provide an elementary equality among various parts of civil society given that the inclusion of companies, universities, religious groups and others can contribute to the quality and efficiency of legal solutions in the decision.

From the point of non-governmental organizations this means that the level of expertise and awareness must be raised to a higher level. Missing to accomplish that, leads to a lack of political legitimacy to participate in drafting law, despite the fact that it has legitimized the participation of normative legal right that was given to them. Expediency involves the effective participation in quality enhancement of the legislative text and effectiveness of normative solutions. Non-governmental organizations that seek to appear as important participants in the drafting of legislation should plan their restructuring in a form that is commonly referred to as a think-tank that includes specialization of staff to address specific social problems. Non-governmental organizations in Montenegro, which partially succeed in that, play the role of mediators in certain areas of legislation such as the electoral process. Continuation of these trends could lead to the fact that we speak of legislative transparency not only as an unfounded claim, but as a condition for quality legal regulation of society and a more efficient process of harmonization of national legislation with international standards.

Transparency in the adoption of legislation – litmus for Macedonian democracy

Boban Karapejovski
Funkcija

The process of decision-making at all levels in the post-socialist countries, i.e. in the so called Eastern Block is faced with a number of obstacles and challenges. Namely, the transition to a plurality is one type of a change of cultural and mental code, which was cultivated in these societies, for decades. Despite the fact that, logically, the emphasis should be placed on formal and legal rules and procedures concerning the adoption of laws (starting from the law, until some minor decisions at the local level), we must not forget the cultural-social moment on these points on which we shall write more in detail. Because, if we consider the legal basis in the broader context, it should be adapted to the mentality of the place where it is adopted and implemented, expressing the highest level of reality and humanity, as well as the protection of freedoms and rights of citizens. Of course, as the priority, if that base should serve the people, the transparency in all of these processes is an imperative. In this framework, this presentation will be set, by examination of procedures, presentation of cases, the practical application of the *de jure* prescribed steps and analysis as they occur in practice.

Macedonian case is ambivalent in nature. By reviewing what we have in our preludium exhaustively listed, we will come to the conclusion that the legislation is very well set up and that all mechanisms should provide maximum visibility of the entire process in public. Still, the statistics and cases where we put the emphasis, as very paradigm regarding this process, will show that, unfortunately, it is often a dead letter, and that these procedures very finely circumvented or performed in a very superficial way or *pro forma*.

Regarding decision-making at the highest level, where we put the state acts like the Constitution, laws and other regulations, the

Macedonian case is very clear: the supreme legislative authority is the Sobranie (Assembly), which is unicameral.

According to the Constitution, Sobranie adopts three types of laws:

a. those that are made by a simple majority, i.e. majority of votes of those deputies present;
b. the laws that are adopted by a majority of the total number of deputies in the Sobranie;
c. the laws of the two-thirds majority - those who have a greater social impact and a greater degree of agreement among political actors.

A sort of *sui generis* in Macedonian Constitution is, so called, Badinter majority[33]. Namely, the constitutional amendment XVIII, adopted after the conflict in Macedonia in 2001, was introduced under which the majority of those members of the Constitution and laws, as well as some appointments (several judges of the Constitutional Court, of the Republic Judicial Council ...), pertaining to the rights of communities in Macedonia, are adopted by a specified majority, where the required is the majority of members who belong to the communities listed in the Preamble of the Constitution.

Before we explain the legislative process, one must distinguish between those who can propose legislation to the Parliament. Under the Constitution, the right to propose laws have all MPs, the government, and 10 000 citizens[34] .

In practice, it is the government that emerges as the proponent of the law in the majority of cases (more than 90%, i.e. for adopted laws the state is 126:4 in 2011; 181:5 in 2012 in favor of the government). Statistics states that, so far, no law by authorised proponents (10 000 citizens) was adopted at the Assembly. The last such example was the

[33] Colloquially in the media this majority is most called Badinter's, because the proposal is given by the French constitutional expert, former president of the French Constitutional Court, Robert Badinter, who was called in the year of 2001 to make recommendations on modifying the Constitution to be toned down a military conflict at that time. Badinter was known to Macedonian public and before that as President of the Arbitration Commission within the Peace Conference on Yugoslavia, which at the beginning of the 90s gave its opinion (from a legal point of view) about succession and independence of states of the former Yugoslavia.

[34] Article 71, paragraph 1 of the Constitution: "The right to propose the adoption of a law has every Member of Parliament, Government of the Republic of Macedonia and at least 10,000 voters."

proposal of the law of civil association "AMAN", which managed to collect ten thousand signatures, although the procedure of collecting is very complicated (it can only work in the regional office of the State Election Commission, in a given period of time). "AMAN" demanded to change some of the current provisions in energetic sphere towards that increase of social justice through the abolition of some articles of the law, which predict, for example, an item like rate of power input in our bills for the electric current, or restitution of daily cheap electricity, stopping the privatization of the energy sector, and so on.

Even previously there were cases where such initiatives existed, but it is very difficult to gather 10 000 signatures of the citizens, if a party does not stand behind the proposal. When this happens, and it has been very rare so far, there appeared the problems of compliance of laws with the Assembly Rules of Procedure, which provides in what form the proposal must be submitted from the technical and methodological aspects (Article 135 of the Rules of Procedure). After 15 days, in which the authorized proponent can comply the law with the Rules of Procedure of the Assembly (Article 136 of the Rules), the practice says that the proposals were rejected at all levels of Assembly, and there were negative opinions regarding these proposals (we will see what the procedure and what the levels are at which all laws are discussed, including these). In the end, Sobranie on the plenary session has not adopted such and similar proposals.

What are the procedures for the adoption of legislation in the Macedonian case?

General condition is given in the Constitution, and all the steps in the decision-making are developed in detail in The Rules of Procedure of Sobranie.

The Rules of Procedure provides legislation for a regular and shortened procedure, as well as an urgent procedure.

Regular procedure allows for greater transparency in the adoption of the law, because it must go through three readings in Parliament and in the first two in the working bodies of the Assembly - Assembly commissions. When it comes to the legislation that is of a wider interest, Articles 145 and 146 of the Rules of Procedure provide the "public debate," which takes place in the first reading. The central working body can be responsible to organize such a debate.

In the regular procedure, the bill is first sent to working bodies: central working body (commission in whose purview is the content of the law), Legislative - Legal Commission and, if necessary, if there is hiring of some financial resources by that law, and a working body into whose purview are the budget and finance issues. Regarding legislation adopted by the Badinter majority, it should be noted that they have to pass the filter of the Committee on Relations among Communities[35], which is the parliamentary body as are other commissions. This committee is made up of deputies in the Assembly- equal number of members of the Macedonian and Albanian community, and one member who is a part of other communities that are mentioned in the Preamble to the Constitution.

In the first reading, the Assembly and working bodies lead the general debate on the bill. The central working body discusses the law regarding the needs of its adoption, the principles on which to base the law, the basic relationships that are governed by that law, and the way in which their editing is proposed. On the other hand, the Legislative-Legal Commission discusses about the purpose of making laws, as well as its compatibility with the Constitution of the Republic of Macedonia .The commission, in the scope of which there are questions of the budget and finances, discusses the impact of the possible points in the law on the means available and relating to funding sources of proposed decisions. Sessions of the working body take place three days before the date set for the session of the Assembly under the given law. The working group shall render opinion about whether the law should be given to further reading.

The parliamentary session for the first reading of the draft law must be held within ten working days of the decision to convene the session, but no later than twenty working days after submittal of the proposal to MPs (Article 143 of the Rules of Procedure). MPs must get the text of the bill, submitted to the Speaker of the Assembly immediately, and no later than three working days after its submittal to Sobranie. After a general discussion, which is provided in the first reading, the Parliament adopts a decision on further procedure. Namely, the depu-

[35] Whether the former creators of constitutional amendments (those of 2001) incorrectly translated English "committee", i.e. literally poured to "komitet" or they wanted to give more importance to this Assembly Commission, the dilemma remains even today. Facts show that this parliamentary body came out of the Ohrid framework agreement, which was signed in English, and this variant is the only relevant where it is put into practice.

ties may decide that the law goes further, in the second reading, and to extend the process, or decide that the bill is not acceptable and interrupt the legislative process. In this case, the same bill cannot be presented in the following three months.

The second reading in the central working body and in the Legislative-Legal Commission shall be held within seven days of the session held in Sobranie. Unlike the debate in general in the first reading, there are discussions now on provisions of the bill individually, as well as on the submitted amendments which are voted on. Working bodies may submit their amendments. The amendment can be submitted by each deputy individually, parliamentary groups and working bodies of the Assembly .Adopted amendments on the sessions of the working bodies become part of the text of laws and central working body and the Legislative - Legal Commission, after the debate, within five days, the text of the law is submitted to the Assembly. Assembly shall now have a debate on only those articles of law influenced by the amendments adopted by the parliamentary commission, as well as regarding other articles affected by the amendments submitted to Sobranie. Ergo, in this reading there is no longer a general debate by law, but there is a summary of those articles that have been changed or the ones suggested to be changed. The amendments are to be submitted no later than three days prior to the session held, and sometimes during the session, if some adjustments are made which arise from other amendments. Irregardless of the kind of majority that adopts the law, the amendments are adopted by majority vote of the present deputies in the assembly hall, but the number should be at least one-third of the total number of deputies. In the case of the Macedonia, it would mean that out of 123 MPs, if at that moment the hall is attended by 70, the amendment is considered adopted if at least 41 of them voted for it. But, if there are 90 present, then the required number is - 46, and so on.

If a large number of amendments are adopted in the second reading, which affect more than a third of the articles, then upon finishing the second reading, the text is legally and technically edited. If it is found (by the central working body and / or the Legislative - Legal Commission) that after the adoption of the amendment some provisions of the law are in dichotomy or inconsistent, it is reported to Sobranie and possible solutions are suggested.

On the other hand, if the amendments had affected the articles in the law in the smaller size than the third, then it may be decided to hold a third reading at the same session. The Speaker shall make the decision whether it shall be after the second reading or later. Even if none of the amendments are adopted to the text of the amendment in the second reading, then the bill shall be straight voted on in the same session.

The third reading of the law, as a rule, takes place at the next session of the Assembly, after the second reading and at this stage of adoption of laws working bodies do not meet. The amendments in this phase can be submitted on only those articles which have been changed by the amendments in previous phases, i.e. the Assembly decides solely on the amended articles of the law, amendments to those articles, as well as on the entire text of the law.

The difference between regular and urgent procedure consists of the fact that when the law is adopted in an urgent procedure, it begins with the second reading, that is, a general debate of the law is not lead in the first reading. Article 170 of the Rules of Procedure provides that the urgent procedure can be applied to the law that is not "large and complex", when it comes to the invalidation of a law or a provision of the law or when adopting not complex and extensive adjustments of a law with the European Union.

In practice, the urgent procedure is often abused. Namely, this abuse is performed when political parties do not want to open up a wider debate, but also in the expert public regarding certain laws, which during implementation and during time often showed to be extremely harmful to the public.

A typical example of abuse of urgent procedure is the Law on the regulation of pregnancy (also known as the Law on abortion). This law, besides the fact it encroaches upon human rights (an unreasonably long periods for approval, and the approval of multiple instances were offered) and was bound to go through a broader public debate, which is only used in the regular procedure, it was adopted by urgent procedure with an explanation that it was just a small technical adjustment to existing law[36] .

[36] http://www.sobranie.mk/ext/materialdetails.aspx?Id=9ee9d63b-1c63-4329-ba6b-7e105ea858f1

On the occasion of the practice of the adoption of law in a urgent procedure[37] , in a speech in front of Macedonian deputies, the Speaker of the Parliamentary Assembly of the Council of Europe, Jean-Claude Mignon has expressed serious concern, because, as he said "urgent[38] procedure has recently sparked violent clashes even in the Parliament. " Mignon was here alluding to the events on December 24, 2012, when the budget for 2013 was voted on, but this was a special case and we elaborated later in detail.

To adopt the law urgently, the proponent shall explain the need within the framework provided in Article 167 of the Rules of Procedure, concerning the reasons that may be the result of the need for urgency of adoption. These are the prevention and removal of major disruptions of the economy, the interests of national security and state defense, and greater natural disasters, epidemics or "other extraordinary and irremissible needs."In this procedure the general debate is not maintained, but immediately goes to the second reading, and the third takes place at the same session when it is on the agenda and more.

Last wording regarding what is "urgent" may leave room on abuse of the power to legislate in such a procedure, which provides for the shortened deadlines.

For example: This is what the explanation regarding the adoption of the denationalization in 2008 on an urgent procedure looked like, "Due to the fact that the law proposed for adoption does not constitute a long and complex law, it is proposed that according to the article 175 of the Rules of Procedure of the Parliament of the Republic of Macedonia, the bill is to be debated in the same session when the debate on the proposal for the adoption of the law in urgent procedure is on the agenda"(sic!).

[37] According to official Assembly reports, in 2011 (the period 25.6. - 31.12., after holding early elections) under regular procedure 84 laws have been adopted, and 46 in shortened. In 2012 the situation was 143:43 in favor of the laws adopted in the regular procedure. However, one should bear in mind that, for example, the Law on indebtedness of Macedonia at the Deutsche Bank adopted in urgent procedure, while the Law on Equal Opportunities for Women and Men - in the regular procedure.

[38] The Macedonian media are often used interchangeably, "urgent" and "short" process. Not only in this case, but also citing Mignon, but in general the media and amateurs confuse short and emergency procedures probably because they practically are very similar, although the essential difference in motivation of shortening deadlines (the lower level of complexity and volume vis-à- vis the urgency caused by the state of the economy, society and the state in general).

Regarding transparency in the legislative procedure in Macedonia, we shall take into account several reports of civic organizations. This has helped a lot in order to supplement our own observations in any way we could to make a synthesis of facts from which a neutral analysis of the situation originates, but to a large measure tackles the political reality, it is difficult to remain impartial, or even worse, having in mind the adolescent age of our democracy, remain unaccused of being out of the framework of analysis that you have entered the politics or politicking. Of course, political reality is that which dictates the de facto situation in the process of implementing regulations that assume the transparency of decision-making.

What is in the reports of some civil society organizations?

As cited in its latest report of Federation of Chambers of Commerce, civic sectors participate to some extent in the preparation of certain laws. However, this participation is not satisfactory and it is very far from European standards for how high the level of participation should be. The involvement of non-governmental organizations is tantamount to participation in the preparation of legislation, but absent in consultative element, so that they underline the fact that there has been some progress in the area of workers' rights, for example, where they have been consulted, but there is room for a higher level of organization in achieving greater transparency.

On the other hand, there is the logical question: If the Federation of Chambers of Commerce is pleased with the participation in the modeling of legislation on workers' rights, where were the unions and how were they consulted? The opposition claims that the union is partisised to the maximum and is under the control of the government, so they are only the cover that should accept these laws at the expense of workers.

This opens up the question of relevance of organizations in the consultation process, as was shown at the last public debate regarding the Law on media. One of the Association of Journalists (the oldest in Macedonia, the Association of Journalists of Macedonia) had serious objections to the law. The other association, whose heads are journalists from the television station which is claimed to be closer to the government, took part in the public debate and gave suggestions to

the bill, which were partially accepted, but were not essential. The other Association, by the way, says the Association of Journalists of Macedonia is an irrelevant organization, because they cannot prove how many members there are, de facto does not gather a significant number of journalists in Macedonia. Macedonian Institute for Media and Independent Union of Journalists and media workers refused to take part in this, as they called it "draft-farce, er, stage" of the law, because they think that there is no need to bring the law and that all these debates are brought down to an alibi, so that the authorities can again adopt the bill, but now hidden behind all these debates, which were fake.

These examples show that transparency in the decision making of a law, which should be provided by the public debate, and involve and consult expert public, what is most often neglected, avoided, or all stakeholders are not included.

Experience shows that public debate in the assembly practice is quite rare, again because of the political situation, which, ex definitione, should not be an impulse and motivation for the implementation of a procedure, a maximum in the case of proceedings that laws are made and in the case of procedure that allows for greater transparency in the process.

According to the reports of Transparency Macedonia in November 2012[39], there are a number of issues regarding the transparency of decision-making budget allocated for the 2013. The organisation indicates that suggested budget for 2013 is designed to please the ruling parties at the next local elections in 2013, in terms of buying votes. This is the conclusion made if one analyzes budget items that are significantly higher than in the previous budget. Namely, the transparency lists three main items which are highly suspicious and may contribute to nontransparency in/ within election process, that would be a completely unfair. It's a "vote-buying through employment in public administration," because the funding for that increased ten-fold, from 54 million in 2012 to 500 million denars in 2013! Furthermore, goods and services - increased by 8.4% pension increase right in the month of the election, and, finally, the amount of promotion and propaganda sums 11 million euro. Vis-à-vis this, a reduction of 2.7 per cent in the ''integration into NATO" is noted. The secretariat of European Affairs, Ministry of Foreign Affairs will

[39] http://www.transparentnost-mk.org.mk/Upload/dokumenti/20121210Izvestaj-za-noemvri-2012-TM.pdf

receive significantly less in finance in 2013, as envisaged by the budget, 9.5, or 8.8 percent less.

As nothing changed during November, when the report came out, and not even at the beginning of December, the opposition tried to block the adoption of the budget through a number of legal mechanisms of the following type: filing a large number of amendments and marathon talks at the sessions of working bodies. The ruling majority started parallel session of Legislative - Legal Commission, although central working body - the Committee on Finance and Budget - had not completed before the debate on the amendments. The epilogue of 24 December: 23 December the Speaker of the Assembly sent the proposal of the budget to the government, although the working bodies of the Assembly have not completed their sessions on opposition amendments. The government submitted the draft budget to Parliament on December 24, objecting to, as they said, a violation of the Constitution, the Law on Assembly and the Rules of Procedure, deputies took the floor and the parliamentary security expelled them from the hall of the Parliament. The opposition left the Assembly and it all lasted till adoption of the report on the events of December 24, brought by the expert commission, and that commission members were nominated by the largest ruling party, VMRO-DPMNE and the largest municipality opposition- SDSM. Despite the fact that all signed this report to members of the commission that had been proposed by the VMRO-DPMNE put their signatures to note objection that they do not accept legal qualifications, which says that they have violated laws that regulate how the budget is adopted(de facto, the Constitution, the Law on Assembly and the Rules of Procedure). Some even appealed to Geneva Convention, although this is the CONVENTION, and not the REPORT, and although it is a document signed by the government, not the experts, i.e. one cannot rely on multilateral international agreements, which are signatories to the state, as the equivalent of the case[40]. Why this is such a paradigm, and we refer to it: nontransparent procedure, which was still incomplete when the budget proposal was submitted in parliament, and the process is completely broken on December 23 going into the next phase of the budget not be completed all the procedures prescribed by the Constitution Act, Rules of Procedure, contributed to the creation of

[40] According to the social networks some "Onion" news spread that a groom, inspired by this legal stunt, got married to his wife, but by his signature said he would not accept some parts of the law finding them "not suitable".

a political crisis and the serious threats by the EU that they will withdraw Macedonia candidate status if an objective report of the commission of experts is not made. Foundation for Open Society Macedonia produced a special publication about the so-called "Black Monday"[41] with the chronology, photographs, and legal anomalies and statements of stakeholders in the country.

The report on Transparency for Macedonia in February 2013 stated the problem of adopting the law on an urgent basis is the space that enables the growth of corruption. Namely, the Transparency Macedonia states that there are violations of transparency in the adoption of legislation in the laws of the write-off of principal and interest on contributions from compulsory social insurance, as well as the compulsory health insurance, which were created by the end of 2008. This was done prior to the local elections, according to Transparency, in order to buy votes, and laws were passed by urgent procedure. No matter how the government deemed laws as very extensive and very complicated, it still recommended their approval on an urgent basis, a month before the local elections, without having to specify the amount to be written off, putting at a disadvantage those firms that paid their regularly their contribution. According to Transparency, bringing of such laws in such a procedure is stimulated by corrupt motives.

To make vivid way why we believe that the urgent procedure continuously subject of misuse, we present the following examples and cases that now occur in the Assembly, and giving information and openness of the procedure is formally observed. In the procedure is the law establishing new administrative organs at the central level - the State Commission on the decision in the second degree misdemeanor and inspection procedures. It's a kind of a "court" in a nutshell. For all misdemeanor fines imposed in the first instance court (some of which are sums expressed in millions), and for all inspection punishments the new commission shall decided on. Until now, it was not allowed, but the party had to go straight to court. Such a state body, as a rule, is established by the Law on state administration, which is two-thirds. At this point, in order to avoid adoption of law by a two-thirds majority, this establishment is done as a part of the "ordinary" law. This body with enormous powers, a brand new in our public administration, shall be taken without public debate in a week, without consulting the experts,

[41] http://soros.org.mk/dokumenti/foom-crn-ponedelnik-mk-web.pdf

without inviting experts in the Assembly ... with simple outvoting. More generally, the public is not aware that in the procedure is something big of this kind.

Problems exist in terms adoption of the Law on misdemeanors, which is now pending. As it is known, the misdemeanors are also punishable offenses, but of a smaller scale, because the citizen is "sentenced", but not to imprisonment, but with a fine, confiscation of property... etc. Public awareness that something like that happens, i.e. that such a law is in process, has been reduced to a negligible percentage of the population.

Regarding cases where the MPs emerged as proponents, the proposal of MPs from the ruling SDSM was interesting, Esad Rahić and Ivan Anastasovski, who wanted to legalize prostitution by law. This was a good example of where the MPs of the ruling party took the "courage" and proposed a law that did not receive support from the government, and, in the end, failed to be passed and be adopted.

On the other hand, a paradigmatic example is when the ruling party lawmakers of Albanian bloc, DUI, asked for an authentic interpretation of the amnesty law. The media claimed that it is a part of the agreement between Prime Minister Gruevski and DUI leader Ali Ahmeti, his coalition partner, after the parliamentary elections in 2011, on the division of power and privilege of getting some, but the bill in the Assembly submitted MPs of the ruling party, and not the Government, the Prime Minister stated that he does not interfere with the work of Sobranie. The opposition claimed that he was so hiding behind its deputies and thereby derogating the Ohrid Framework Agreement.

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In ultima linea, Macedonian Constitution and Rules of Procedure very clearly and accurately predict all levels and gradual process of making legislation. De jure, Macedonia has very strongly regulated process of decision-making and legislation, which allows an optimal level of transparency. But, not only transparency, but also the participation of civic associations, experts, the media, and citizens in general. Openness of Assembly sessions and its working bodies is a constitutional category, constitutionally prescribed procedure, unless it is decided otherwise, and exclusively by two-thirds majority. But the thing is not

only if the camera is turned on at the time of voting. It is a matter of consistent application of conditionally meta-legislation, i.e. legislation for the adoption of legislation (legislation on legislation). If one is there on the line of the feature that the framers of the Constitution envisioned, then, we are closer to the modern trends of construction of society.

Unfortunately, politics often fails to interpret what was written very precisely, and it works in the current political context, bypassing of procedures or playing with them in order to realize some benefit, profit that works against the citizens, in the long run.

In order to make legislators as open as possible in this process, we need a change in some of the provisions of the existing legislation, but a minimum of good will of the authorities, which would be a real service to the citizens. Because the power which it is not, no matter if it is a logical *contradiction in adjecto,* is the factual situation in which we find ourselves.

Transparency of the legislative process in Bosnia and Herzegovina

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Introduction - Levels of government in BiH

By the Dayton Peace Agreement (DPA) the state of Bosnia and Herzegovina (BiH) was created as a very decentralized country, consisting of two constituent entities: Serbian Republic (RS) and the Federation of BiH (FBiH). Aiming to oversight the implementation, DPA established the Office of the High Representative (OHR) as the supreme authority in the country in terms of civil and economic issues, and the interpretation of the DPA. In March 2000, the District of Brcko was declared an autonomous unit with its executive and legislative power of government, where in addition to District laws, the BiH laws are also applied.

Legislative authority at the level of BiH is executed by the Parliamentary Assembly of Bosnia and Herzegovina. The Parliamentary Assembly consists of two houses:

- House of Representatives and
- House of Peoples.

The House of Representatives comprises 42 members elected directly on general elections, out of which, 28 members are from the Federation and 14 MPs from RS. The House of Representatives has standing (Constitutional and Legal Committee, the Committee on Human Rights, etc.), the temporary and Joint Committees (Joint Committee for the Supervision of the Intelligence and Security Agency of BiH). The House of Peoples has 15 delegates (5 Serbs, 5 Croats and 5 Bosniaks) and they are elected indirectly, i.e. through the entities assemblies. The House of Peoples has standing committees.

The executive power at the state level is executed by the Presidency of BiH and the Council of Ministers.

The Presidency of Bosnia and Herzegovina consists of three members, one Serb elected from the Republic of Srpska, and one Croat, and one Bosniak who are elected from the territory of the Federation. The members of the Presidency of Bosnia and Herzegovina change every eight months in the position of Chairman of the Presidency (rotation). The mandate of the Presidency lasts 4 years, and members are elected in general elections by direct vote. The Presidency of Bosnia and Herzegovina has the function of collective head of state.

The Council of Ministers is the executive power of government. The Council of Ministers has its own Chairman and ministers. The Presidency appoints the Chairman of the Council of Ministers and his cabinet i.e., ministers are elected by Parliamentary Assembly. Currently, the Council of Ministers has 9 ministries and they report to the Parliamentary Assembly of BiH.

The procedure for the adoption of laws

The procedure for the adoption of laws at the state level can be divided into two phases:

- Procedure before the Council of Ministers
- Procedure before the Parliamentary Assembly of Bosnia and Herzegovina.

In practice, the Council of Ministers has the authority to submit bills and draft proposals to the Parliamentary Assembly of BiH. When estimated that a new law should be adopted or the existing law changed/ amended, the Council of Ministers has the constitutional authority to initiate a procedure or legislative changes/ additions to existing law.

The Council of Ministers proposes legislation to the Parliamentary Assembly of BiH within the competence of the Council of Ministers. On the other hand, at the request of the Parliamentary Assembly of BiH and the BiH Presidency, the Council of Ministers shall prepare the required draft laws or other acts.

The rationale of the new law, changes/ amendments to existing law, must contain:

- The constitutional basis for legislation (i.e. the explanation that the new law is within the jurisdiction of Bosnia and Herzegovina and not the jurisdiction of the entity)
- The reasons for the adoption of law,
- A rationale of some proposed solutions and legal principles regulating relations
- The method of law enforcement, especially the question of adoption of so called by-laws, the time of their adoption, authorities that shall ensure the implementation of laws,
- Estimate of required funds needed for law enforcement.

If the Council of Ministers has agreed (decisions may be adopted by a majority vote or consensus) that it should bring a law, or to modify/amend the existing law, then moves on to the second phase.

In addition to the Council of Ministers and the Presidency of BiH, the bill may be submitted by any member or delegate of the homes of the Parliamentary Assembly of BiH, each committee within houses, and each house individually. The bill is submitted to the Chairman of the House, who delivers it to the Collegiums of Representatives. The Collegiums shall deliver the bill to the Constitutional Committee for its opinion, and after deciding which committee is competent the bill is passed to them, too.

In the first committee stage Constitutional Committee is considering the compliance of laws with the Constitution of BiH and the legal system, and the competent committee discusses the principles on which the bill is based. Both committees submit to the home their positive or negative opinion.

In the first reading in the House there is a debate ending with adoption or rejection of the bill in the first reading. If the House adopts negative opinion of Constitutional or competent committee, the bill shall be considered rejected, and if the positive opinion is accepted, it is considered adopted in the first reading. If the committee does not accept the opinions, the House seeks another opinion from the committee based on new guidelines and deadlines set by the House.

Before entering the second committee phase, the responsible committee may decide to open a public debate on the proposed law for the participation of interested bodies, professional institutions and individuals that will not last more than 15 days. Invited individuals and representatives of bodies and institutions express their opinions on

issues related to the proposed law, if so requested by the committee. The committee, in its report, includes the results of laws and public debate in the annex attached and submits the works and materials made during its validity period.

This marks the end of so called "committee phase" and moves into the so called "plenary phase." The discussion at the plenary session of the House of Representatives begins with so called "first reading" of the bill, and this reading is related to questions of necessity and the principles on which the proposal is based. "Second reading" of the bill is made up of the debate and vote on the proposed amendments. Deputies / delegates and caucuses of deputies/ people may propose amendments which challenge the amendments adopted by the committee. After voting on the amendment, they vote on the bill in its final text. If the text of the bill is adopted by one House, the bill is sent to the other House, where the whole procedure is repeated.

The law is considered passed when both Houses adopt it in the identical text. If it does not happen, a joint committee for reconciliation is set up that seeks to agree on an identical text. If one of the houses does not adopt the joint committee report, the bill shall be considered rejected.

The adopted law shall be published in the Official Gazette of BiH.

Rules of Procedure provide that the laws may be reviewed in summary procedures. If the House agrees to consider the bill on an expedited basis, all the terms of the ordinary legislative procedure, shall be reduced by half, and the collegiums can further limit the duration of the debate. Emergency procedures shall apply in the case when a bill is given high emergency status, i.e. that the proposed bill is not so complex that it could be either adopted or rejected in general. For emergency procedure it is not possible to add amendments.

Proposed decision of the Parliamentary Assembly of BiH to the House of Peoples may be declared to be destructive to the vital national interest of one of the three constituent peoples by majority votes of Bosniak, Croatian and Serbian delegates. In the case of opposition to this decision, the Chairman of the House of Peoples shall convene the Joint committee, comprising three delegates, one from each peoples' club aiming to address this issue. If the joint committee fails within five days to resolve the issue, the matter will be referred to the Constitutional Court of BiH to urgently review the procedural regularity. If the

Constitutional Court of BiH finds that vital national interest of one or more constituent peoples is not violated, the law is considered adopted. If, on the contrary, the decision of the Constitutional Court is positive, i.e. that the disputed law has violated the vital national interests of one or more people, the law shall not be adopted.

What is meant by a vital national interest?

Given the decision of the Constitutional Court of BiH on the constitutionality of peoples, all three peoples in Bosnia and Herzegovina are declared constituent throughout the whole country, it is considered that this term implies the exercise of the rights of constituent peoples to be adequately represented in the legislative, executive and judicial authorities, identity of a constituent nation, Constitutional Amendments, organization of public authorities, the equal rights of constituent peoples in decision-making, education, religion, language, cherishing culture, traditions and cultural heritage, territorial representatives, the system of media and other issues.

Public participation in decision-making process

In recent years, in the world, the interest in participatory forms of government administration has suddenly increased. Such interest was created in response to pressure by the citizens to participate in decision-making, but also due to the fact that the government started to recognize the importance of including citizens in democracy building, public service delivery and poverty reduction. To facilitate and stimulate civic participation, in many countries it is necessary to introduce new or modify existing public policies.

The legal and institutional framework for participation of BiH

Direct participation of citizens in decision-making is a political right that must be guaranteed to all citizens by the international documents on human rights ratified by BiH. When it comes to the local level, this right is partially embedded in the valid entity laws governing local government. As already mentioned, these laws provide a number of solutions for communication and consultation with the public authorities,

and leave open the possibility of application and other forms of direct participation of citizens in decision-making. However, the existing legal provisions insufficiently stimulate civic participation. All statutory mechanisms for citizen participation in decision-making are defined in detail by municipal statutes. There are three most commonly mentioned forms of participation: local communities, assemblies of citizens and referendums, which create very few opportunities for citizens to be involved in the decision-making process. Municipalities very rarely develop detailed procedures for other forms of citizen participation, especially newer ones, such as for instance, interactive web portals, which are often used in practice ad hoc for internal staff use.

For years, a significant step forward in involving citizens in decision-making is expected by the authorities in BiH, but this shift is absent according to recent research. Simply put, the citizens of BiH are not partners to their elected representatives in creating public policy, although the development of partnerships with citizens is a frequent topic of public verbal performances of political representatives of authority in BiH.

According to the research of CCI (Centres for Civil Initiatives) from 2011, the data show that declarative commitment of BiH authorities to involve citizens and the development of, so called, participatory democracy, does not project in practical work of government and in reality people have practically no influence on the decision[42].

However, there are examples of good practice, where some municipalities in BiH have achieved significant success in finding ways to involve citizens in the decision-making mechanisms, and to institutionalize the selected ones. Some successful experiences are the result of the help of civil society organizations, international organizations, and others are accomplished by the municipal authorities themselves or by working with local stakeholders. An example of good practice in public involvement is the production of municipal strategic plans in the field of water and environment in the municipalities of the Una River basin. When making these strategic plans the following mechanisms for direct citizen participation in decision-making were used: survey of citizens on priority issues related to water and the environment at the beginning of the development of strategic plans, public hearings in local communities, TV and radio shows aiming to promote public participation, to

[42] Report on the participation of citizens in decision-making processes in BiH - Centres for Civil Initiatives

inform about the process of making plans and interviewing people at the end of the process of developing strategic plans.

One of the examples of good practice at the entity level in BiH was when the Government of Republic of Srpska adopted the *Guidelines for the administration of national authorities on public participation and consultations in law-making* that are mandatory in character and that the minimal form means placing the draft on the website of the bill, which means that the draft law before the assembly instructions for a decision needs to undergo a process of consultation with the public. On the other hand, the National Assembly of the Republic of Srpska conducted public hearings only for those laws that are considered to be of particular interest to the public, with the absence of a clear definition of what a particular interest to the public.

Furthermore, the mechanism of accreditation of non-governmental organization for attending meetings and committees of the RS Assembly was identified and conducted by the Assembly itself. The Rules of Procedure of the National Assembly of Republic of Srpska in a very detailed method treat the possibility of the presence of non-governmental organizations, foundations, trade unions and other associations which are registered in accordance with the law. This mechanism, with the sole assumption that it is implemented in an open and transparent manner and method that guarantees the presence of all organizations, can be extremely effective in terms of involvement of citizens and civil society in a decision-making process.

Given that the best practices of citizen participation in the BiH are the exception rather than the rule, the questions remain of how to build democratic awareness of local leaders and citizens on the need of mutual dialogue and how to provide expertise and resources for meaningful and long-term participative processes. The answer to these questions should provide the new policies for the direct participation of citizens in decision-making processes.

Recommendation of the Committee of Ministers of Council of Europe member states on the participation of citizens in local public life provides the most concrete new manual to the state and entity authorities of Bosnia and Herzegovina in this area. Recommendation requires the authorities to promote the participation of citizens in local decision-making processes that improve legal framework that will allow the use of a wide range of mechanisms for political participation of citizens and

to improve the local regulations and the practical arrangements for the determination of citizens in decision-making.

Participation of civil society organizations and citizens in general and expert public in decision-making processes is one of the indicators of a democratic society. In general, participation can contribute to the creation of better, higher quality and applicable policies and laws. Concrete and rapid steps must be taken to accomplish real accountability and transparency of government to citizens and the general public. Some of these steps are already in place through the adopted legislation in the area of transparency, access to information, the establishment of some mechanism for participation at all levels of government. However, you need the constant education and informing citizens about the existence of mechanisms and proactive work on animating individuals and groups to become actively involved.

With this approach we get a multi-dimensional effect: active citizens, policies and strategies that respond to the real needs of society, more transparent work, social participation and the rise of democracy and the rule of law.

Establishing clear rules for the participation of citizens in decision-making should bring about building trust between government and citizens, which is a prerequisite for the development of the culture of citizen participation in decision-making, but also for many other democratic changes in BiH.

Transparency and legislation in Hungary[43]

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1. Introduction

In this paper we try to provide a national report on the connection of transparency and legislation in Hungary; we focus on *national legislation* on transparency as well as the *realization of transparency in legislative processes both at national and local level*.

Although the meaning of transparency depends on many factors and can be interpreted in a manifold way, for the purposes of this paper we limit ourselves to dealing with transparency as a constituent element of legislation. Nevertheless, we cannot evade showing the position and importance of *transparency in a more complex and comprehensive understanding*. In the paper, however, we do not try to develop an own concept of transparency but we use existing approaches and definitions as our goal is to offer a short and essential background

[43] This paper is based on the recently finalized and submitted/published papers of the authors. See: Anita Blagojević – Tímea Drinóczi – Mikós Kocsis, 'Transparency at local and regional level in Croatia and Hungary', in Tímea Drinóczi – Mirela Župan, eds., *Law – Regions – Development* (Pécs – Osijek, Pécsi Tudományegyetem, Állam- és Jogtudományi Kar – Pravni Facultet, J.J. Strossmayer University 2013) under publication; Tímea Drinóczi – Mikós Kocsis, 'Public consultation – theory and Hungarian practice', paper presented at the Congress of the International Association of Legislation in Veliky Novgorod in 2012; Tímea Drinóczi, 'Quality legislation and law-making. Legislation and legislative processes in Hungary' In *Global Legal Issues 2012 [1]* (Korea Legislation Research Institute, 2012), Tímea Drinóczi, 'Legislature', In Péter Hack – Petra Burai, eds., *Corruption Risks in Hungary 2011. National Integrity Study. 2012* (Berlin, Transparency International Transparency International Secretariat 2012) pp. 43-64., *http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_NIS_2011.pdf*

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(point 2) based on which the Hungarian legislation and practice can be presented and evaluated (points 3-5).

As for practice, we use research results of some NGOs which by conducting researches and publishing outcomes could potentially contribute to the amelioration of legal regulatory environment in Hungary and enhancing transparency even in legislation, provided that the political decision maker do 'understand' not 'only hears' their voices.

Transparency International Hungary conducted an integrity research in 2011 and addressed 13 'pillars' or institutions (grouped as government, public sector and non-governmental bodies) assumed to make up the integrity system of Hungary. Researches on then-existing legislation on and practice of transparency in legislature and government were conducted; these results are used in this report (point 4).[45]

We also use the research results of *Corruption Research Centre of the Institute for Sociology and Social Policy of the Corvinus University of Budapest*[46] *that examined the realization of access to information by checking whether websites contain all necessary information. There was another research* on transparency in the operation of local governments that provided a useful basis for assessing local transparency (see point 5.).[47]

Based on our findings, we summarize the legislative framework on transparency and its practical realization and make recommendations (point 6).

[45] See Péter Hack – Petra Burai, eds., *Corruption Risks in Hungary 2011. National Integrity Study. 2012* (Berlin, Transparency International Transparency International Secretariat 2012) pp. 43-64., *http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_NIS_2011.pdf*

[46] Korrupciós kockázatok, törvénytisztelet és a világháló. A magyar önkormányzatok törvényszegő magatartásának vizsgálata 417 önkormányzat honlapjának elemzése alapján – 2012. I. Riport. [Corruption Risks, Respect for Law and the World Wide Web. Inquiry into the Offending Behaviour of Local Governments in Hungary Based on the Analysis of the Websites of 417 Local Governments – 2012. Report I] Corruption Research Centre of the Institute for Sociology and Social Policy of the Corvinus University of Budapest, Budapest, 2013 (hereinafter Report), available at http://www.crc.uni-corvinus.hu/download/onk_honlapok_2012_elemzes_130221.pdf

[47] A helyi önkormányzatok működésének átláthatósága – kérdőíves felmérés tükrében – Esettanulmány. [Transparency in the Operation of Local Governments – as Reflected in a Survey Based on Questionnaires – a Case Study.] Project № HUSK/0901/1.5.1/0246. (hereinafter referred to as Case Study), available at http://www.transparency.hu/uploads/docs/esettanulmany.pdf

2. Transparency and legislation

2.1. Transparency, as a legal concept employed in a constitutional democracy as well as in the international arena, *commonly connected* to the following notions: good governance,[48] rule of law and supremacy of law and democracy,[49] accountability, representation, participation and

[48] Transparency is one of five essential pillars of (the European) good governance. See also: principles of participation, accountability, effectiveness and coherence; each principle is important by itself (but they cannot be achieved through separate actions) and that the application of these five principles reinforces those of proportionality and subsidiarity. It is defined in the 2001 White Paper on European Governance (European Commission, *European Governance: A White Paper*, Brussels, COM(2001)428, 25.7.2001, available at *http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf*). For the connection among transparency and good governance and corruption, see Anita Blagojević – Tímea Drinóczi – Mikós Kocsis, 'Transparency at local and regional level in Croatia and Hungary', in Tímea Drinóczi – Mirela Župan, eds., *Law – Regions – Development. Legal implications of local and regional development* (Pécs – Osijek, Pécsi Tudományegyetem, Állam- és Jogtudományi Kar – Pravni Facultet, J.J. Strossmayer University 2013) under publication. There are several definition of transparency available in literature, but it seems that transparency is a core and constituent element thereof. See for instance, F. Weiss and S. Steiner, 'Transparency as an element of Good Governance in the Practice of the EU and the WTO: Overview and Comparision', *Fordham International Law Journal,* Vol. 30, Issue 5, 2006, p. 1547.; V. Dvořáková, 'The Metamophorsis of Governance in the Era of Globalization', in *The Scale of Globalization. Think Globally, Act Locally, Change Individually in the 1st Century* (Ostrawa, University of Ostrawa 2011) p. 12, available at *http://conference.osu.eu/globalization/publ2011/11-16_Dvorakova.pdf.* A summary is available at Blagojević – Drinóczi – Kocsis, ibid.

[49] Transparency can be considered as one of the fundamental principles of democracy and the rule of law, which can serve as 'a framework for assessing the state of the political system and the realization of the constitutional principles and constitutional norms in each country'. B. Smerdel, Neposredno odlučivanje i njegove ustavne granice, *Hrvatska pravna revija* 10 (2010), 11, p. 1. In the EU context, the close link between transparency and democracy was for the first time clearly recognized in Declaration No. 17 on the right of access of information. Supremacy of law (legality) encompasses a transparent, accountable and democratic process for enacting laws that is connected i) to the principle of separation of powers and the requirement to act within the power that have been conferred, and ii) the principle of *pacta sunt servanda* in connection with international law. In a representative democracy it is still the Parliament that makes laws, and takes political and legal responsibility for their effectiveness and constitutionality. The content of the law is however not fully formulated in the parliamentary phase of legislative process but also preceding it. Non-state actors are involved – through consultation

quality legislation.[50] *In the field of legislation*, transparency is needed, on the one hand, for realization of rule of law as well as for fight against corruption.[51] Transparency, on the other hand should exist in legislative processes, including consultation and impact assessment as well as the plannability of legislative processes.[52] Furthermore, it should appear in connection with legislative actors (such as lobbyists and MPs), as well. It is of importance to note that from a *human right perspective*, transparency is supported by the right to access to information. The principle of transparency may best be realized by using IT tools.

2.2. The principle of transparency (as well as and other principles of good governance) apply to all levels of government: global, European, national, regional and local and, therefore, require efforts, or 'concerted action by all the European Institutions, present and future Member States, regional and local authorities, and civil society'.[53] At national level, this would also entail a more strengthened approach

and participation (lobbying) – in the decision-making process so as to ensure rational, legitimate and constitutional content of laws. Rationality in this sense means using tools to seek and analyze information within certain boundaries (e.g. time pressure) and to draw decisions from this assessment. Besides the constitutional viewpoint on legitimacy (public and general acceptance of law), it means also that every person affected has the possibility to participate in the decision making process that – due to this possibility – results in a legitimate decision. See Patricia Popelier, Legislation in the 21st century: Legitimate and rational law making in a context of multilevel governance. Legislação N. 50 Outubro – Dezembro 2009. p. 361., 363.

[50] Principles of quality legislation are the following: principle of legality, principle of effectiveness, principle of intelligibility, principles of transparency and accessibility (that is giving reasoning in the draft, duty of consultation and information giving). See Wim Voermans, 'Concerns about the quality of EU legislation: what kind of problem, by what kind of standards?' *Erasmus Law Review* Vol. 2, Issue 1. p. 66. We also may add: 'due' legislative process, planning and proper coordination. Tímea Drinóczi, 'Quality legislation and law-making. Legislation and legislative processes in Hungary' In Global Legal Issues 2012 [1] (Korea Legislation Research Institute, 2012).

[51] As a powerful force, transparency can help improve governance, strengthen local and regional development, and fight corruption; and *vice versa*. Blagojević – Drinóczi – Kocsis, loc. cit. n. 4.

[52] From the aspect of legislation, plannability means transparency, continuity, harmony, scheduling, ensuring the stability of the legal system and the realization of legal certainty by predictable and foreseeable laws. See also: the planning of impact assessment and consultation must be transparent so as to ensure that interested parties can become involved in the process as early as possible. Communication of the Commission, "Smart regulation in the EU", COM(2010)543.

[53] White Paper, loc. cit. n. 4, at p. 9.

towards *quality legislation* of national and local legislators. When dealing with transparency and legislation; we can use the definition of Jacob Söderman. According to him, transparency *in general* means, *inter alia*,[54] that the process through which public authorities make decisions should be understandable and open and as far as possible, the information on which the decisions are based should be available to the public.[55] Besides, transparency at *local and regional level* can be viewed through the prism of 'a tool to help local authorities make public their work, properly conduct their opportunities, and be responsible for their daily activities'.[56]

The keyword, here is the openness,[57] that is supplemented by an obvious 'common-core content in the notion of transparency, namely the opposite of opaqueness, complexity or even secretiveness'.[58] In legisprudence, these elements find their counterpart in the following requirements: legal clarity in terms of setting clear, simple and understandable laws;[59] these comprise the following principles:[60] simplicity, plain language, intelligibility, economy, directness, precision, simple structure, evidence-based legislation, access to legislation.[61] 'As *Sacha*

[54] Other elements: the decisions themselves should be reasoned.

[55] General Report prepared by the European Ombudsman Jacob Söderman for the 1998 FIDE Congress, J. Söderman, 'The citizen, the administration and Community Law', Stockholm, June 3-6, 1998, available at http*://edz.bib.uni-mannheim.de/daten/edz-b/omb/07/fide-1-eng.pdf*

[56] *Local Transparency&Public Participation*, *A Handbook*, supported by USAID, p. 15, available at *http://emi-kosovo.rti.org/repositoy/docs/Handbook-on-Local-Transparency-and-Pubic-Participation.pdf* (accessed April 9, 2013).

[57] See also White Paper, loc. cit. n. 4, at p. 10.

[58] S. Prechal – M.E. de Leeuw, 'Transparency: A General Principle of EU Law', in J. Bernitz, J. Nergelius, and C. Cardner, eds., *General Principles of EC Law in a Process of Development* (the Hague, Kluwer Law International 2008) p. 202.

[59] V. Karageorgou, 'Transparency principle as an evolving principle of EU law: Regulative contours and implications', p. 4, available at *http://www.idec.gr/iier/new/Europeanization_Paper_PDF*

[60] See in more detailed H. Xanthaki, 'Drafting Manuals and Quality in Legislation: Positive Contribution Towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?' *Legisprudence* vol.4 no.2 2010., G.C. Thornton: *Legislative drafting* (Butterworths 1987).

[61] Mainly these elements can be found in literature, see e.g., O. Heitling, *The principle of transparency in public procurement* (Maastricht University, Faculty of Law 2012) p. 4.; Karageorgou, loc. cit. n. 15, at p. 1; W. Davis, *Rights and remedies for public access to documents as an aspect of multidimensional transparency within the European Union* (Durham theses, Durham University)

Prechal and Magdalena E. de Leeuw point out, the principle of transparency functions at (at least) two levels: (1) at the political or constitutional level, transparency operates in respect of the legislative and general policy decision-making process and is closely related to the principle of democracy and legitimacy, and (2) at a (more concrete) administrative level. Onwards, "the most well developed aspect of transparency is that where it is linked to open government, and in particular the right of public access to documents. Openness in the decision-making process and in particular the right of public access to documents underlying this process has been closely linked to the principles of democracy and legitimacy"[62,63].

It also follows that transparency exists in the decision-making processes as a procedural principle as well as in the content of laws requiring proper transparency from the state and offering proper transparency for individuals. In the following point, we will show how transparency is regulated in Hungary.

3. Regulation

In Hungary the regulation on 'transparency' is founded on the Fundamental Law of Hungary.[64] This contains the declaration of the principles of the rule of law and democracy [Article B)] and the most important rules relating to the transparency of state organs and the existence of local governments. Apart from these, mention should be made of the following legal regulations: the Act on the Local Governments of Hungary (hereinafter referred to as: Local Government Act),[65] the Act on the Right of Informational Self-Determination and on Freedom of Information (hereinafter Freedom of Information Act),[66] the

p. 28, available at: *http://etheses.dur.ac.uk/3834/1/3834_1395.pdf?UkUDh:CyT*; Söderman, loc. cit. n. 11. See also opinion of Advocate General: Opinion of Advocate General Colomer in Case C-110/03 *Commission v. Belgium* [2005] ECR I-02801, para. 44. Referred to by Karageorgou, loc. cit. n. 15.

[62] Prechal, de Leeuw, loc. cit. n. 14, at p. 205.

[63] Blagojević – Drinóczi – Kocsis, loc. cit. n 4.

[64] The consolidated version of the text in effect at the time of finishing the paper – incorporating all amendments – was published in the Official Gazette on 1 April 2013. See *magyarkozlony.hu/pdf/16526*. Hereinafter referred to as FL.

[65] Act CLXXXIX of 2011 on the Local Governments of Hungary.

[66] Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

Act on Legislation and the Act on Public Participation in Developing Legislation,[67] Act on the Parliament and Standing Orders of the Parliament.[68]

3.1. Pursuant to Article N) of the Fundamental Law, Hungary shall apply the principle of balanced, *transparent* and sustainable budget management; for the application of this principle the Parliament and the Government shall have primary responsibility. However, according to paragraph (3), the Constitutional Court, courts, local governments and other state organs shall be obliged to observe these principles in performing their duties. Article 36 and 37 requires that all bills on the State Budget and its implementation shall contain all state expenditures and revenues in the same structure, in a transparent manner and that the Government shall implement the budget also in a transparent manner. It has to be also mentioned that in accordance with Article XXVI, the State shall strive to use the latest technical solutions and the achievements of science to make its operation efficient, raise the standard of public services, *improve the transparency of public affairs*, and promote equality of opportunity.

Pursuant to Article 31(1) of the Fundamental Law, local governments shall be established in Hungary to administer public affairs and exercise public power at a local level; related rules – as stipulated by paragraph 3 of the abovementioned Article – shall be defined by a cardinal Act. Article 32(6) declares the properties of local governments shall be public properties which shall serve for the performance of their duties.

The Fundamental Law, beyond 'public property', introduces the concept of 'national asset' as well; Article 38(1) stipulates that the properties of the State and local governments shall be national assets. The management and protection of national assets shall aim to serve the public interest, to satisfy common needs and to safeguard natural resources in consideration of the needs of future generations. The requirements for the preservation, protection and responsible management of national assets shall be defined by a cardinal Act.[69]

[67] Act CXXX of 2010 and Act CXXXI of 2010.

[68] Act XXXVI of 2012 on the Parliament and Decision 46/1994. (IX. 30.) of the Parliament on Standing Orders. There are also several lower level regulations of phases of legislative processes, such as impact assessment, but in the framework of this report we do not examine them.

[69] Act CXCVI of 2011 on National Assets.

Article 39(2) is also essential as it states that every organization managing public funds shall be obliged to *account* for its management of public funds *to the general public*. Public funds and national assets shall be managed according to the *principles of transparency* and the elimination of corruption. The data related to public funds and national assets shall be data of public interest.

Openness of the state and compliance with the above-mentioned constitutional requirements can be monitored by anyone as Article VI recognizes the right to freedom of information, which is in the wording of the Fundamental Law: right to access and disseminate data of public interest.

3.2. Detailed rules on freedom of information can be found in *Freedom of Information Act* that defines 'public information'[70] and 'information of public interest'.[71] Any person or body attending to statutory State or municipal government functions or performing other public duties provided for by the relevant legislation have to allow free access to the public information and information of public interest they have on file to any person, save where otherwise provided for in this Act. These bodies also obliged to disclose public information and make them available through the internet without any restriction.[72] The free access and distribution is limited in the case of classified information (secrets) as well as preparatory documents attached to decision-making processes.

[70] It means any known fact, data and information, other than personal data, that are processed and/or used by any person or body attending to statutory State or municipal government functions or performing other public duties provided for by the relevant legislation (including those data pertaining to the activities of the given person or body), irrespective of the method or format in which it is recorded, and whether autonomous or part of a compilation, such as, in particular, data relating to powers and competencies, organizational structures, professional activities and the evaluation of such activities covering various aspects thereof, such as efficiency, the types of data held and the regulations governing operations, as well as data relating to financial management and to contracts concluded

[71] It means any data, other than public information, that are prescribed by law to be published, made available or otherwise disclosed for the benefit of the general public.

[72] Disclosure through the internet should be made in digital format, to the general public without any restriction, in a manner not to allow the identification of specific individuals, in a format allowing for printing or copying without any loss or distortion of data, free of charge, covering also the functions of consultation, downloading, printing, copying and network transmission. Access to information disseminated as per the above shall not be made contingent upon the disclosure of personal data.

3.3. With regard to social dialogue, Act CXXX of 2010 on Legislation (hereinafter referred to as *Legislation Act*) lays down that the national or local government or another organization shall be obligatorily entitled to give its opinion on a legal regulation if it is expressly authorised to do so by an Act, and even in this case it may only do so regarding draft legislation relating to its legal status or scope of duties. Detailed rules are contained in Act CXXXI of 2010 on Public Participation in Developing Legislation (hereinafter referred to as *Public Participation Act*); pursuant to this, the draft, which shall be submitted for concurrent consultation with government agencies, shall – in line with the objective and entry into force of the draft – be published in a way as to allow sufficient time for the substantive appraisal of the draft, as well as for expounding opinions and for those preparing the draft to consider the merits of the received comments and recommendations.[73] Within the framework of the general consultation procedure, anybody may make comments on the draft and the concept published for public consultation via the e-mail address available on the website of the legislator. Legislation Act and Public Participation Act and Freedom of Information Act replaced (partly[74]) Act XC of 2005 on the Freedom of Electronic Information that introduced for the first time the online publication of drafts (and even anonymized court decisions) and contained regulation of the same content as the Public Participation Act contains now, but the former regulation was less detailed; rules relating to the direct consultation procedure are to be regarded as a novelty. The other consultation procedure is conducted through strategic partnership which we discuss below in point 4.4.

3.4. *Act on Parliament and Standing Orders* regulate the actual operation of the parliament and the legislative process within the parliament. For the purpose of the paper it seems to be enough if we mention most important rules in connection with describing practice, so we deal with related rules in a more detailed manner in point 4 below.

3.5. In general, the *Local Government Act* comprising statutory regulations relating to local governments contains few provisions relating to transparency. At the same time, one may mention Article 2(2),

[73] Art. 10(1) of Public Participation Act.
[74] See also Freedom of Information Act

pursuant to which, in local public affairs local governance expresses and realizes the local public will democratically, *creating a wide range of publicity*. On the other hand, pursuant to Article 114, local governments shall operate an information system – that may be linked to the state information system – which ensures that financial, management, administrative and other basic tasks are performed based on uniform rules and *transparently*, this system shall also function as a means of continuous financial control by the state. The range of data to be recorded obligatorily in the system shall be defined by legislation.[75] The body of representatives of local governments are entitled to adopt decrees governing local issues and executing of and/or regulating national laws in a more detailed manner. Therefore, they also have to comply with both Legislation Act and Public Participation Act.

Following the review of relevant regulations, it may be stated that – from a formal aspect and in general – the principle of transparency is present in the Hungarian legal environment. Concerning the evaluation of specific detailed rules and practical implementation, the following analysis may provide some help.

4. Legislation – practice

4.1. *Electronic publication of draft legislation* – which constitutes a basic condition for consultation – is an obligation that ministries typically failed to comply with in 2009 and this practice seems to continue. As a result of surveys conducted (in 2008 and 2009) the following conclusions were established, that seem to be true also today: i) most draft legislation comes before Parliament without consultation or without a consultation period suitable for forming an opinion; bills are

[75] When examining publicity implemented in local self-governance, first of all, the notion of public interest must be clarified in order to render possible the interpretation of the need for publicity connected with it. In this relational context the creation and ensuring of publicity means the existence of a local method for direct contact between the local government apparatus and the society of the settlement. The question as to what channel of communication is meant by this method is always decided by the rules of organization and operation of the given body of representatives. Kis Mónika Dorota, *A közmeghallgatás helyi önkormányzati jogintézménye* [The Local Government Institution of Public Hearing] (Doktori értekezés, PTE ÁJK Doktori Iskolája, Pécs 2012) p. 14., 17., available at *http://doktori-iskola.ajk.pte.hu/files/tiny_mce/File/Vedes/Kiss_M_D/ertekezes_nyilv_kiss_md.pdf*

submitted to Parliament and even adopted before the end of the time limit prescribed for consultation;[76] ii) the person in charge of the preparation of the draft must prepare a summary of the comments received and, if those comments have been rejected, of the reasons for rejection, which should be published on the website; however, no such summary can be found there.[77]

4.2. Important laws[78] (such as constitutional amendments and laws governing churches) have been *initiated* by MPs without having gone through the necessary and obligatory consultation process required by law. Here are some figures proving the abovementioned statement.

> Between 2006 and 2010,[79] the Parliament adopted 587 laws; 474 of these laws were proposed the government, 90 by MPs, and 23 by committees.[80] The new Parliament, which has a conservative majority, by the end of 2010, adopted more than 150 laws since it was formed; 70 were proposed by the government, 75 by MPs, and five by committees.[81] In 2011, 45 bills were initiated by Government, 48 by the MPs, four by committees.[82] In 2012, 166 bills were initiated by Government, 217 by the MPs, four by committees.[83] In the first half of 2013 94 bills were initiated by Government, 137 by the MPs, and none by committees.[84]

[76] See the amendment bill on expropriation, concerning which the website informs us that opinions may be submitted until 28 June 2012, but the bill was passed by Parliament already on 18 June 2012 (the bill was submitted to Parliament on 19 October 2011).
[77] Tímea Drinóczi – Miklós Kocsis, 'Public consultation – theory and Hungarian practice', paper presented at the Congress of the International Association of Legislation in Veliky Novgorod in 2012.
[78] Until the first half of 2012 see Drinóczi, loc. cit. n. 6.
[79] The Parliament was then composed of a Socialist/Liberal majority.
[80] *http://www.mkogy.hu/adatok/38/intlap21.htm* [accessed 4 March 2011]
[81] *http://www.mkogy.hu/adatok/2010/intlap21.htm* [accessed 4 March 2011]
[82] *http://www.mkogy.hu/adatok/2011/intlap22.htm* [accessed 7 December 2012]
[83] *http://www.parlament.hu/adatok/2012/intlap20.htm* [accessed 6 September 2013]. In the first half of 2012 these figures are as follows: 19 bills were proposed by the Government and 18 by MPs, none by committees. *http://www.mkogy.hu/adatok/2012.1/intlap22.htm* [accessed 4 December 2012]
[84] *http://www.parlament.hu/adatok/2013.1/intlap20.htm* [accessed 6 September 2013]

Moreover, sometimes when a committee formally submits a motion, often the original source of the motion remains unclear.[85] This practice may represent an abuse of power and questions the essence and the logic of the parliamentary governmental system; moreover lacks transparency. It may raise the problem of the undue influence of strong lobby groups, as well. There are examples of passing bills that have been passed against the explicit will of the executive,[86] and as a result of possible undue interference. There has been no instance of undue influence in the last 21 years; however, this seems to be changing: when a bill and/or an amendment are submitted by an MP and/or parliamentary committee, often the real 'author' of the text remains unknown.[87]

4.3. To roll back *corruption, lobbying activities* should be transparent.[88] Act XLIX of 2006 on lobbying used to ensure that, as it required lobbyists to register and established clear rules for lobbying, including the rights and responsibilities of the lobbyist. This Act, however, was repealed and replaced by Public Participation Act.[89] Act CXXXI of 2010 does not contain provisions comparable with that of the Act on Lobbying. Therefore, the transparency of influencing the content of any proposal has become questionable. If the legislative process (including the pre-parliamentary and parliamentary processes) is transparent, changes made to the content of bills can be traced to the original source, thereby allowing accountability rules to prevail, and for unauthorized, undue interferences to be recognised and excluded. Corruption could thus be reduced. Since those involved in corrupt practices try to cover-up their activities, the most effective step would be to trace these individuals in order to achieve transparency and openness. In the executive summary of the integrity research conducted by the Transparency International one can read the following: 'Transparency of

[85] This was the case with the so-called 'anti-smoking law', as well as with the new rules on the right to counsel in criminal cases.

[86] Parliament can modify the original text of the bill submitted by anyone who is entitled.

[87] See the case of the modification of some elements of the criminal procedure; there are rumors that the Public Prosecutor's office is the true 'author'.

[88] See Petrétei József, 'Jogalkotás és korrupció' [Legislation and corruption], In Csefkó Ferenc – Horvát Csaba, szerk., *Politika és korrupció* (Pécs 2010) p. 175.

[89] These changes were also emphasized by the person interviewed at the Office of the Parliament, and he underlined that currently, there is insufficient experience regarding the efficiency of this new statute.

certain public institutions remains a problem. On the top of that lawmaking has become less transparent due to the lack of lobbying rules and the new practice of initiating important legislative changes by individual MPs and parliamentary committees'.[90]

We have to note here the *corruption is criminalised* in Hungary in the Criminal Code. In the last decade, the legislator amended regulations several times, usually by introducing more severe sanctions for different forms of bribery and even created a new crime, namely failure to report bribery in 2001. Even though this rule is in effect since 2001, there has been *no public record* of anyone committing this crime. It is also interesting that these regulations *lacks efficacy*: 'every fifth case the perpetrator of bribery was punished with a fine despite the fact that the intention of the legislator was the use of imprisonment'.[91] It is also the TI research that found that 'there is no comprehensive anti-corruption program in place'; 'effective protection of whistleblowers should be introduced.'[92] They also suggest that special focus should be given to prevention and education on corruption issues, and that 'a code of ethics, including rules on conflicts of interests, gifts, hospitality and post-employment restrictions should be established and implemented in all pillars of the NIS' that is the national integrity system.[93] It is also problematic that 'the total lack of transparency in the case of political financing have been well documented'.[94]

4.4. As regards *consultation*, here we draw attention to some general deficiencies and tendencies in this field.[95]

- Even in spite of the multi-level regulation, there is *no* material provision about legal *consequences* (i.e. sanctions) applicable in case of non-compliance with the rules relating to the preparation of decisions, about the importance of planning or in particular, about the (planned) detailed rules relating to the conduct of impact assessment.
- The actual application of the impact assessment guide is *uncertain*; there is no available information about the existence (or

[90] Hack – Burai, eds., op. cit. 1, at p. 17.
[91] Hack – Burai, eds., op. cit. 1, at p. 31-33.
[92] Hack – Burai, eds., op. cit. 1, at p. 17.
[93] Ibid.
[94] Hack – Burai, eds., op. cit. 1, at p. 249.
[95] Based on and see more in Drinóczi – Kocsis, loc. cit. n. 33.

non-existence) or the possible application of a guide concerning the assessment of administrative burdens in spite of the fact that the Government regards the reduction of the burdens of enterprises a priority.

- In accordance with the Public Participation Act, during direct consultation it is not an obligation of the minister but that of the strategic partner to represent the opinion of organizations not being involved in strategic partnership, but dealing with the given area of law.[96] This renders it *questionable* whether *interests can in fact be expressed* at the level of political decision-making.
- As for strategic partnerships, there is *no guarantee* that the agreement is, as a matter of fact, concluded with partners that are real experts in the field of law on which opinion is needed.[97]
- Involving organizations other than strategic partners in decision-making is *of accidental character*, it depends on the minister's discretionary decision.
- This latter statement seems problematic especially in the light of the fact that during the preparatory procedure ministries have tended to use *accelerated procedures* to a large extent even before, and consultation and impact assessment may also be disregarded based on the present rules in case of an overwhelming public interest (it is up to the minister to decide). There is *no exactly defined time limit* for consultation, it is merely laid down by legislation that this deadline shall be identical with the deadline defined for its submission for consultation to government organs, and in an exceptional case, the minister competent to prepare the draft legislation may also set a time limit that is different from this.[98]
- There is *no institutionalized guarantee against a minister*, using his/her discretionary power, who excludes organizations possi-

[96] Art. 14(1) of Public Participation Act. It may be stated that similarly to the earlier period it is difficult to enforce compliance with effective provisions, the obligations of consultation and impact assessment (or of the provision of reasoning) can rather be considered as declarative provisions.

[97] See: http://www.origo.hu/itthon/20110527-nem-tartja-be-a-kormany-a-jogalkotasrol-es-a-tarsadalmi.html

[98] Art. 5(5) of Public Participation Act, Art. 5(3) of 24/2011. (VIII. 9.) decree of the Minister of Justice and Public Administration on ex ante and ex post impact assessment, Art. 3 of 301/2010. (XII. 23.) decree of the Government on the publication of and consultation on draft laws and regulatory concepts

bly representing wider sections of the society from the institutionalized possibility of consultation.

4.5. Parliamentary *openness*, from a constitutional law perspective, has two forms: openness towards the public and openness towards the media.[99] It creates a possibility to follow the decision-making process, to monitor and control the work of MPs, and to check the growth of assets of MPs. The Standing Orders state that parliamentary sessions must be public; however, parliament may also hold closed sessions.[100] A verbatim *transcript* of the minutes must be published on the parliament *website*. Plenary meetings, hearings and committee meeting are *broadcast* live, through a closed-circuit system; access is provided to all kind of media that need to bear the cost of connecting to this system. The sessions broadcast live on the website of the Parliament. One station, Radio Kossuth, broadcasts plenary meetings from beginning to end. Parliamentary *decisions*, similarly to Acts, are also published in the Hungarian Official Journal. The press may *sit in* to listen to parliamentary debates while the committees are in session, which also ensures transparency of the work of MPs. The Speaker of the House holds regular *press conferences*. He/She goes over the agenda of the plenary meeting of the following week and responds to questions from the audience. Press conferences also help shed a light on the behind the scenes activities of parliamentary. Factions of the political parties also hold regular press conferences to express their views on a draft bills, issue of national or international importance, or any other parliamentary affair.[101]

4.6. Since 1997, MPs have been obliged to submit *declarations of interests*, income and assets, including those of their close relatives with whom they share the same household. Act LV of 1990 on the Legal Status of MPs, and since 2012, the Act on Parliament governs the asset declarations of MPs. MPs' asset declarations are public, and subject to inspection by the Immunity, Incompatibility and Mandate Supervisi-

[99] See Szente Zoltán: 23. § Az Országgyűlés [Art. 23. National Assembly]. In Jakab András (szerk.): Az Alkotmány kommentárja, (Budapest, Századvég Kiadó 2009) p. 791.

[100] Upon petition of the Government or any Member of Parliament and with the assent of two-thirds of its Members, the Parliament may decide to hold a closed sitting. Art. 5(1) FL.

[101] Based on information found at http://www.parlament.hu/angol/publicaccess.htm [Accessed 4 March 2011]

on Committee; if the MP fails to declare his /her assets, he/she cannot receive any allowance or exercise his/her rights as an MP. Possibility of checking the changes in the declaration of an MP may restrain MPs from being involved in an unlawful act, such as corrupt practices, bribery, and office abuses.

The existing *assets declaration* system lacks any form of checks and balances, and as such, it is *unable to prevent corruption*. The current rules are adequate in ensuring that declarations are submitted on time. Before the new rules introduced in 2001, there were only two cases of late submissions, (the MPs had submitted their declarations one day after the deadline). Consequently, one day's payment was deducted from their pay. In addition to this financial penalty on not submitting on time, it is actually the media that plays a vital role in ensuring that declarations are submitted by the deadline, because it is the media that releases information about the asset declarations the day after the due date. Should the MP fail to submit the declaration on time, this is recorded on his/her data sheet. It is common practice for the staff of the Office and the fractions continuously try to establish contact with those MPs who have not already submitted the declaration. According to one political analyst, the only way that asset declaration can have some impact in ensuring transparency is if the MP is politically committed to obeying the rules, and if there are watchdogs and proper journalists to reveal wrongdoings. Without these mechanisms, it is impossible to tell whether or not the MP has provided false data, engaged some shady deal in the background (e.g. going on expensive holidays, hunting, using official cars for personal use, etc.).[102] Here we also can quote the findings of the Transparency International's research that concludes: 'an effective system of declarations of assets should be created.'[103]

4.7. The *website* of the Parliament (http://www.parlament.hu/) gives a full picture of parliament's activities and it provides some insight into life behind the stage. Among others, visitors may learn about the processes whereby laws are adopted, the types of questions, or interpellations that MPs need to respond to, or how parliament voted on a given issue. Visitors can also search for information on past, present and future events. As a recent development, in addition to the minutes of the

[102] http://kuminszerint.blog.hu/2011/02/01/mennyi_ertelme_van_a_kepviseloi_vagyonbevallasnak [accessed 4 March 2011]

[103] Hack – Burai, eds., op. cit. 1, at p. 17.

plenary sessions, the minutes of committee sessions are also accessible on the Internet. The English language version has also been extended to include the new bills introduced during the previous parliamentary semester; however, it does not provide up-to-date information on the activities and decisions.

The list of incompatibility cases as well as data on immunity and incompatibility procedures and the declaration of assets can be found at websites as well. Should questions arise for which answers cannot be found online, the Office of the Parliament is able to provide information upon request, in accordance with the laws governing the freedom of information.

Published legislation can be found free of charge on the following websites: www.magyarorszag.hu, www.magyarkozlony.hu, www.njt.hu. However, neither of these sites is user-friendly. It could even happen that the website of the Parliament was outdated.[104] Laws can also be found on government websites. Library of Parliament play a considerable role in providing access to information. Until they became available electronically through the internet, parliamentary proposals, minutes of the plenary sessions, results of the votes have been made accessible by the Library.

4.8. It is important for citizens and independent groups to be able to monitor the Parliament's activities. A *project called e-Parliament* was launched (including a video server, live webcasts of the plenary, e-archives, minutes, a document digitizing system, electronic courier, legislative programme and the next month's sitting schedule), which was an important development in giving the public access about parliament's activities.[105] In addition, the Parliament maintains a citizen telephone and e-mail service since 1997 in the Information Centre for Members of Parliament. New interactive participatory methods are missing from the practice of the Parliament (eg. e-forum, e-petition, social media tools, etc.).

[104] It did not contain the new constitution (Fundamental Law) and the latest amendments that were introduced during autumn of 2010. This was the situation as of 4 March 2011.
[105] Based on the interview with the personnel at the Office of the Parliament.

4.9. As far as the *parliamentary phase* is concerned in the legislative process,[106] the *Standing Orders* does not provide very detailed rules regarding *consultation*. There is Article 97(2) of the Standing Orders that stipulates that in the justification of a bill or proposed amendment the expected social and (if possible, quantified) estimated economic impacts shall be indicated. In practice, in this parliamentary phase of legislation this provision is not really implemented, even though it may lead to a conclusion that the obligation of making impact assessment and consultation is applicable both to the Parliament and, indirectly, the government. As it could be seen above, recently, the preparation of important bills has shifted to the MPs from the area of central administration; and it is only the latter that is obliged to comply with the Act on Consultation. This situation (may) result(s) in a less transparent and, presumably, non-consulted legislative process.

Experts may be involved[107] in the parliamentary process as well. They are often the politician-experts of a given fraction, representing the mainstream political interests of the party. They have the character of both expert and politician and are highly influenced by the interests of their party. In a parliamentary debate on a bill, interests represented by them are often contrary to that initiated by the government. This, however (along with the involvement of non-politician-experts) opens up the opportunity to confront various interests in the plenum or in the committees, also according to the political fragmentation of the parliament that in a democratic arrangement evidently reflects the political choices of the society. The normatively regulated (e.g., in the standing orders) involvement of political expertise, in this stage is highly welcomed and fosters the democratic decision-making procedures. In the parliamentary process, involvement of experts became a practice. Earlier, it was the *Standing Orders* of the Parliament that provided the possibility of the involvement of experts: they may be invited to committee meetings by the president of the committee. Now, it is *Act* on the Parliament that contains the very same rule. It is another issue whether and to what extent those expert opinions are taken into consideration; nevertheless their important has to be transparent.

[106] Drinóczi, loc. cit. n. 6.
[107] Drinóczi, loc. cit. n. 6.

5. Local legislation – practice[108]

5.1. Article 46 (1) of the Local Government Act lays down as a general rule that the meetings of the body of representatives shall be open to the public. Exceptions are contained in subsection (2), pursuant to which the body of representatives

a. shall hold a meeting in private when discussing official matters of the municipality, matters relating to conflict of interests, dishonourable conduct, awards of decorations, the imposition of disciplinary punishment, or conducting a procedure relating to asset declarations;
b. shall hold a meeting in private when discussing an election, appointment, dismissal, giving or withdrawing an executive assignment, initiating a disciplinary procedure and when discussing a personal matter which requires the taking of positions if the party concerned does not agree to a public discussion;
c. may decree a meeting to be held in private when discussing the disposition of its property, and defining the conditions of and discussing the tender invited by it, if a public discussion would infringe the business interests of the local government or other persons concerned.

The voters – with the exception of a meeting held in private – may inspect the proposals of the body of representatives and the minutes of their meetings. The possibility of access to information of public interest and public information must be ensured even in the case of meetings held in private. Decisions of the body of representatives taken at a meeting held in private shall also be made public.[109]

A *recent research* elaborating the practical aspects of the topic with due thoroughness has established that the persons affected are usually involved in the decision-making as external participants, while regional parliamentary representatives, the leaders of minority self-governments, heads of institutions and, in several municipalities, also the leaders of civil organizations and honorary citizens usually participate in the process as

[108] Based on Blagojević – Drinóczi – Kocsis, loc. cit. n. 4.
[109] Art. 52(3) of Local Government Act.

permanent guest participants.[110] Based on the *sample examined*,[111] the participants of the research concluded that the conditions relating to the participation of inhabitants in the meetings are laid down everywhere – with two exceptions – in the rules of organization and operation, moreover, they are defined in such a way that inhabitants are also entitled to make comments on the items on the agenda without prior announcement. In this respect, different practices have evolved: in some places the body of representatives must vote on allowing the contribution, in other places a definite period of time is devoted to contributions, and apart from these, permission to speak may also be granted by the mayor at the request of the person wishing to contribute. Otherwise – also with two exceptions – the rules governing the order of speaking at the meetings of the body of representatives and the committees are generally laid down by the rules of organization and operation of the local governments.[112]

It is also worth to note another research based on a *substantial sample*, which subjected the *websites* of Hungarian local governments to a manifold analysis.[113]

The participants of this research have shown that although point II/8 of the Standard Publication List contained in Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information lays down an obligation relating to the publishing of the minutes of meetings, the minutes of local government bodies were accessible only on 35% of the websites examined.[114] One may notice a significant difference between the individual types of municipalities. Minutes of

[110] *A helyi önkormányzatok működésének átláthatósága – kérdőíves felmérés tükrében – Esettanulmány.* [Transparency in the Operation of Local Governments – as Reflected in a Survey Based on Questionnaires – a Case Study.] Project № HUSK/0901/1.5.1/0246 (hereinafter referred to as Case Study) p. 7., available at *http://www.transparency.hu/uploads/docs/esettanulmany.pdf*

[111] The research was carried out in two 'rounds'; in the first stage the questions were addressed to the leaders of thirty settlements, then, later on, to the leaders of further forty settlements, and altogether twenty-one replies were received.

[112] Case Study, n.76, at p.7.

[113] *Korrupciós kockázatok, törvénytisztelet és a világháló. A magyar önkormányzatok törvényszegő magatartásának vizsgálata 417 önkormányzat honlapjának elemzése alapján – 2012. I. Riport* [Corruption Risks, Respect for Law and the World Wide Web. Inquiry into the Offending Behavior of Local Governments in Hungary Based on the Analysis of the Websites of 417 Local Governments – 2012 Report I] (hereinafter Report), available at *http://www.crc.uni-corvinus.hu/download/onk_honlapok_2012_elemzes_130221.pdf*.

[114] Report, n. 79, at p. 25.

meetings are shared by almost all districts in Budapest and the county seats, but only by slightly more than 20% of the villages.[115] With regard to the minutes of meetings, the researchers also examined 'updating': 25% of the most recently published minutes were recorded at meetings held earlier than 2012 – the year of the research.[116] Pursuant to point II/9 of the Standard Publication List contained in the Freedom of Information Act, local governments are to publish '[…] motions and proposals submitted to public meetings of the councils of municipal governments' following the time of submission with immediate effect. According to the cited research, the agenda of the forthcoming meeting of the local government body can be found only on 6% of the websites examined.

It must also be noted that under Article 60 of the Local Government Act regarding the convening, operation, publicity, quorum and decision-making of a meeting of a committee, the implementation of the decisions thereof, the exclusion of committee members and the contents of the minutes of meetings, the rules applicable to the body of representatives shall duly apply. As it has been stated by the authors of the Report, altogether 6% of all the local governments examined publish at least one of the minutes of the committee meetings.[117] According to their summarizing conclusion, 'regarding the provisions of the Public Procurement Act, the Freedom of Information Act and the "Glass Pocket" Act, the norm characterising the operation of local governments in Hungary in 2012 was not respect for law, but breach of law'.[118]

5.2. During their research referred to above, the Corruption Research Centre of the Institute for Sociology and Social Policy of the Corvinus University of Budapest examined the websites of Hungarian local governments from the aspect of what information was available

[115] Ibid.

[116] Report, n. 79, at p. 26.

[117] Report, n. 79, at p. 28. The Authors state in advance that the Freedom of Information Act does not apply to the committees. However, in spite of referring – rightly – to the section of the Local Government Act cited in the main text, they also carried out the examination with regard to the committee meetings; according to their explanation 'it is in the committees where the professional work is carried out and questions of detail are discussed. From the range of minutes of committee meetings we have taken into account those that – having regard to the committee structure of the given settlement – are most likely to discuss public procurement (financial, economic, public procurement, assets management etc.) procedures'. Report, n. 79, at p. 28.

[118] Report, n. 79, at p. 36.

on them about the given local government and its operation, with particular attention to its spending and the documentation of public procurement procedures initiated by it.[119]

The websites of the selected local governments were examined based on *86 pre-selected criteria*. The code instruction rendering the regulated examination of websites possible relied mainly on the provisions of three Acts: the Public Procurement Act, the Freedom of Information Act and the 'Glass Pocket' Act. The majority of the analysed questions were formulated based on the above Acts, and the research examined compliance with these Acts. The code instruction also contained some 'soft' questions, by which they meant questions that were not based on any Act of Parliament, but that could reveal a great deal about the transparency of a website and how easy it was for a visitor to find the information they were searching for.[120] At the time of the collecting of information, 60 municipalities had no accessible website (typically very small villages), these settlements were substituted for by other settlements of the same size and geographical situation. In the end, the data of the local governments of *417* municipalities were recorded, that was the amount of observations included in the database, and the analysis was also carried out in this range. In summary, the research *concluded* that local governments had the opportunity to publish differing amounts of information on their websites under the legal regulations in effect, and, accordingly, they complied with the requirement of transparency in different ways (and to a different extent).[121]

5.3. Apart from complying with rules of Public Participation Act, body of representatives of local governments, pursuant to Article 53 (3) of the Local Government Act, shall specify – in its rules of organization and operation – the self-organizing communities, the representatives of which are entitled, within the scope of their duties, to a right of *consultation* at the meetings of the body of representatives and its committees. It shall also lay down the order of the forums (village or town policy forum, city-district conference, village meeting etc.) that serve the purpose of directly informing the population and social organizations and involving them in the preparation of the more important decisions. The body of representatives shall be informed about the stand taken by

[119] Report, n. 79, at p. 8.

[120] For example, 'is there a website map on the page'?

[121] For a detailed description of the research, see pages 10-11 of the Report, n 79.

these forums, and the minority opinions that emerged there. There is *no empirical research available* about the implementation of the above rules.

6. Conclusions and recommendations

5.1. As to the *legal regulation* on transparency, we have observed that it is adequately regulated at constitutional level. The *right to information* has been a component of Hungarian constitutional regulation since the change of regime.[122] Besides, the Hungarian Fundamental Law contains more rules on transparency in financial as well as economic (management) matters that did not form part of the former Constitution. As for Hungary, it can be stated that the economy (management) of local governments is more strongly controlled by the central administration than before, however, at the same time the scope is more economical rather than focusing more on transparent management in economy. State organs, agencies can more easily receive information on the economy (management) of local governments but the 'status' of the public is unchanged, and there is still a lack of rules advocating more transparency (there is an exception: some data shall be provided on a yearly basis). *Consultation* is also regulated; however its proper implementation is still doubtful.[123] It seems that at least at the level of political communication there is a commitment towards open governance/legislation.

5.2. From the analysis of the new *Hungarian regulation of consultation mechanisms* and the practice evolving based on them, it may be concluded that the Hungarian legislator – partly having regard to European tendencies – endeavours to establish a legislative procedure complying with the principle of better/smart regulation, but there are still numerous deficiencies in its filling with real content and its proper application and, therefore, in its effectiveness. This may be caused by the lack of genuine commitment to better/quality/smart legislation. Political decision-makers in Hungary follow trends, but prioritize the formal approach. With regard to legislation, the principle rule of law exists rather formally than substantially. It unfortunately also entails that the 'principle' of rule by law seems to prevail. In the field of consultation, there are

[122] This was not changed by the Fundamental Law.

[123] There are general implementation problem: often there is no feedback, citizens do not feel interested, draft to be consulted is not available at the website, etc.

rules regulating it in Hungary, but their content is not satisfactory. They do not provide possibility for the genuine expression of opinion, which, on the one hand, results in legislation lacking consensus, which acts against representational democracy. On the other hand, such acts are passed that require amendment even before their coming into effect, which could be prevented by due preparation. All this may happen because the content of Acts does not reflect a mature professional opinion, which is caused by the absence of substantial consultation and tunnel vision due to the inadequate choice of strategic partners. These phenomena lead to ineffective laws and non-compliance of legal rules, which does not assist to combatting against corruption.

5.3. Furthermore, for achieving a more appropriate level of *legislative transparency*, some improvement is needed, such as paying more attention to the importance of well-prepared (impact assessed) laws, introducing measures on lobbying activity as well as the anti-corruption programme, creating a more effective declaration of assets, strengthening the compliance with laws on corruption, protecting whistlebowlers, etc. It is hoped that corruption (in legislation) may be reduced by introducing these measures; the measures however need to be of quality that fits into the societal reality and can be complied with.

5.4. The bases of our focus to examine the practice of implementation of transparency by local governments were the right to access to information, transparency of decision-making processes, participation. When researching the practical aspects, we relied on available empirical researches which were fragmented, were not based on a country-sample (geographical location, sample, website-oriented).[124] Yet, based on these Hungarian research results, we can still get a clear picture on the realization of Hungarian local transparency. We can conclude that among state organs, transparency is realized by representative and executive bodies of municipalities the least, and online availability of reports and materials of sessions as well as the realization of rules on consultation is problematic. As for the right to information we could also conclude that

[124] It was interesting to compare the research with a Croatian one in another paper. See: Blagojević – Drinóczi – Kocsis, loc. cit. n. 4. The Croatian research was concentrated (based on indicators), comprehensive (covered all local governments) and recurrent (after 2009 also in 2011-2012) conducted by one organization (GONG), and the two studies do not share common approaches.

it is the municipalities that could not perform properly. It is a suggestion that more attention should be paid to the training and education on freedom of information; the Hungarian regulation could be more coherent and clear: see for instance: 'local governments had the opportunity to publish differing amounts of information on their websites under the effective legal regulation, and accordingly, they complied with the requirement of transparency in different ways (and to a different extent)'. It is a related question whether transparency and access to information is adequately guaranteed to those interested in order to allow citizens to form an informed opinion about the work of the local representative body. Hungary seems to be quite bad at cooperation with civil society; there are no related Hungarian data available but this can be deducted from the general implementation of the Act on consultation. *As a summary* we can establish that formal criteria, such as existence of statutory and other legal measures are realized, but their practical implementation gives rise to some doubts; local governments of larger territorial units are more transparent. However, there are no special efforts to make a better involvement of citizens into the decision-making processes; there is a lack of political culture that could promote a realization of transparency and access to information to a greater extent.

5.5. The newest results of recent research conducted by the Transparency International[125] shows a quite sad picture about the perception of Hungarians about corruption, which is one of the consequences of an inadequately realized transparency. According to the research, 61 people out of 100 think that corruption has increased during the last two years; 63% of Hungarians consider political parties as a most corrupt social organization, that is the very same situation Europe- and worldwide; 56% consider legislation/parliament as a most corrupt organization; 80% of Hungarians perceive that the state functions partly or entirely interweaved with interest of some business groups; 70% of Hungarians would not be a whistleblower, which is an outstandingly high percentage in Europe.

[125] http://www.transparency.hu/GCB2013

Legislative transparency in Poland – legal framework, experience, expectations.

Barbara Grabowska, Helsinki Foundation for Human Rights

1. Scope and aim of the paper

Aim of the paper is to present the legal framework existing under the Polish law which deals with a broad issue of transparency, especially a transparency in the field of legislative process. Meaning of transparency in public life has a similar connotation as "transparency" in science – visibility which allows to see what is inside. According to the Cambridge Dictionary, transparency in a market perspective, is a situation in which business and financial activities are done in an open way without secrets, so that people can trust that they are fair and honest.[126] This shows that the level of transparency in public life has a direct influence on trust in decision- and policy-making processes run by the public authorities.

Limitation only to legal framework and theoretical background does not show however how the rules of transparency work in practice and to what extent public institutions are truly transparent. Thus, a part of this analysis is to show how the law on transparency works in everyday situations but also to verify it critically in the light of the recent evolution in this field in Poland. This evolution shows that even though amendments in law are important tool in fighting e.g. political corruption, it is law enforcement which give the real information about transparency in public life. In this sense, a crucial element is development of political culture, which cannot be prescribed by law.

It should be mentioned however that discussion about the legislative process in Poland should also take the European Union context into account. A great percentage of law binding in Poland is determined

[126] Available at: http://dictionary.cambridge.org/dictionary/business-english/transparency

by the European Union legislation which is a direct consequence of accession to the EU in 2004. In this sense the law enacted by the Polish parliament is affected by the EU law, that needs to be implemented into national legal order. Thus, the argument about the democratic deficit at the EU level is commonly used when the EU legislative and decision-making process is being discussed at the national level.

2. Transparency of public life in Poland

Discussion about transparency is closely related to the most negative aspect of lack of transparency – corruption. According to the Transparency International Annual Report 2012, Poland was classified on the 41st place in the Corruption Perception Index[127]. The current surveys and analysis show that process of transition in Poland that took place during last 20 years, resulted in lowering the level of corruption in Poland. However, still the situation in this field is not perfect.

Before 1989 corruption was a common feature – it was a part of a political and economic system which existed in Poland. Later, after the collapse of communism, it was still present but for different reasons. It became a part of economic transition, especially in the field of privatization of public goods and companies. It is argued that Polish attempts of accession to the European Union influenced the changes in political life when it comes to level of corruption but it also had impact on changes in law against corruption. In 2005 the main political slogan of the winning party in the parliamentary election was fight with political corruption, which ended up with creation of Central Anti-corruption Bureau.

2.1. Legal framework

I would like to start up with the legal analysis of the main issues which influence the transparency of legislative process: constitutional rules on law-making process at national level, status of MPs, regulation of lobbying, avoiding conflicts of interests, obligations to present statements of assets. Furthermore, the picture of transparency of public life

[127] The report is determined by expert assessments and opinion surveys. It is available at: https://www.transparency.org/files/content/publication/Annual_Report_2012.pdf

will be completed by the legal framework on mechanisms of access to public information in Poland and its practical implications.

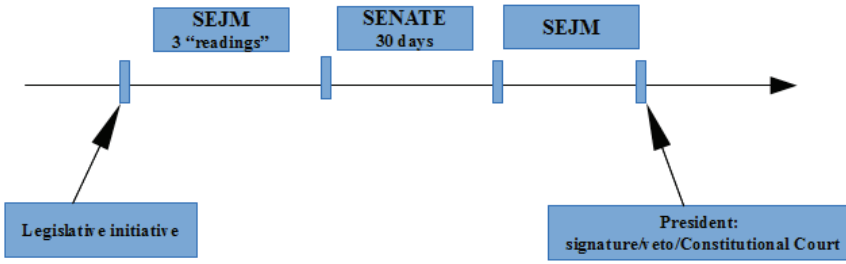
Transparency of public life is one of the constitutional principle in Poland expressed as an individual right to obtain information on the activities of public authorities (Article 61). It covers also information on professional and economic self-governments "relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury". Right of access to public information has a special limitation clause[128] that allows for statutory limitation (Article 61.4) of the right for the protection of freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

2.2. Legislative procedure

Rule of transparency covers all aspects of public life (with mentioned above objective exceptions), especially those dealing with functioning of public authorities. When it comes to the legislative process, it shall be transparent at both levels – the national and regional one. However, I will limit analysis of Polish legal system only to the national legislative procedures.

Legislative process in Poland consists of cooperation between two chambers of parliament (Sejm and Senate) and executive branch – President who is entitled to sign or veto the bill. There are 5 subjects who are entitled to initiate a legislative procedure: Deputies (*posłowie;* Members of a "lower chamber" - Sejm), Senate, President, Council of Ministers and a group of 100 000 citizens. Practice of recent years show that the most important "actor" in proposing the drafts of law is the executive branch – Council of Ministers. Technical, informational and administrative background of each Ministry allows for preparation of complete reforms, especially those which require huge financial expenses.

[128] Special in relation to the general limitation clause (Article 31.1).



Legislative process in Poland.

"Governmental legislative process"

Since the major amount of drafts is prepared by the government it is also the governmental legislative (drafting) process which is crucial for the later (parliamentary) stages of legislative process. Governmental process is divided into two stages. The first one is aimed at preparation of draft of bill's assumptions (*projekt założeń*). After its acceptance by the Council of Ministers, in the second stage, the appropriate draft of bill (*projekt ustawy*) is prepared. Those both stages require conducting public consultation and agreement between different government departments.

Moreover, according to Act on Lobbying, Council of Ministers should work on the basis of their legislative plan, which is a part of a broader government "plan of actions" and which is available to the public. However, in special cases the Council of Ministers can agree to start a drafting process even if the draft was not included into plan.

§ 9.3 of the Rules on Council of Ministers provides what are the elements of the bill's assumptions, especially the Ministry or government department needs to justify why the proposed legal act is needed. This regulation is aimed at prevention of inflation of law – a situation when drafts of bills are treated as the only means to solve social problems. When the bill's assumptions are prepared, they need to justify (as briefly as possible) why the bill needs to be enacted, what kind of social or legal problems it will solve and whether there are other means to achieve this aim. Moreover, draft has to present Regulatory Impact Assessment (*ocena skutków regulacji*, OSR). At the stage of bill's

assumptions OSR takes the form of so called "regulatory test" - a two page form[129] which contains all the elements that Rules on Council of Ministers requires.

From the NGOs perspective, the crucial element is public consultations. The Rules on Council of Ministers require that both: bill's assumptions and draft of bill are consulted with the society. Unfortunately the Rules do not precise who exactly should be consulted. A good example that the current rules on consultations may not be enough is the draft of amendments to Law on Juveniles prepared in January 2013 by the Ministry of Justice[130]. It was consulted only with 3 authorities (National Council of Judiciary, Supreme Court and National Board of Trustees). During consultations only one of this authorities responded to the Ministry (National Council of Judiciary) and stated that the it does not have any comments to the draft. It is hard to assume that such consultation could achieve the objective of e.g. gathering additional knowledge.

It may happen that process of public consultations takes a lot of time and effort. That is why sometimes each Minister (who is usually an active politician) decides to skip long process of consultations and to "give" the draft to the Members of Parliament and suggest them to present it as a legislative initiative in the Parliament. This process is often called "by-passing" which shows that the main aim of this mechanism is to avoid the public consultations and to submit legislative initiative as soon as possible. It also directly influences the scope of future parliamentary procedures, since the parliament cannot broaden the scope of the draft. Thus avoiding the public consultations results in a situation that amendments which could have been introduced at the governmental stage of drafting the law, will not be introduced later.

Apart from drafting the bills, the Government and each Ministries can be entitled to enact executive resolutions (*rozporządzenia*). Also in this case drafts of resolutions should be consulted with the relevant organizations and authorities, which usually happens. It should be however noted that freedom of each governmental department to create resolutions is limited by the statutory authorization. That is why,

[129] Form is available at: http://bip.kprm.gov.pl/download.php?s=75&id=5694

[130] The government legislative process is available at: http://legislacja.rcl.gov.pl/archiwum/lista/2/projekt/84724

in case of resolutions "by-passing" is impossible, but on the other hand, scope and main directions of the resolution is already defined in the bill.

Legislative process in the Parliament

Most issues and procedure dealing with legislation is regulated in the Constitution of Poland adopted in 1997. The more detailed rules are expressed in the Rules of Sejm (Regulamin Sejmu, 1992), which is an internal resolution of Sejm and has its legal basis in the Constitution[131]. It is the Constitution which gives the main argument that legislative process shall be transparent. Article 113 states that sittings of the Sejm shall be open to the public[132]. As an exception, when vital interest of State requires, Members of Parliament may decide to hold a sitting behind closed doors, without publicity. Such situation are however a very rare exceptions.

Even though, the same rule is not expressed about the parliamentary commissions, the practice of last years show that there is presumption that sitting of commissions and subcommissions are open unless secrecy of these sittings is clearly established. In practice all committees sittings are available online. It should also be a rule in case of subcommittees, however in practice the records of sittings are not always available online after the meeting took place. The same situation is with the transcripts of the subcommittees meetings. The major exception in the rule of transparency is the Committee on Special Services – its sittings are always secret, unless the sittings takes place with other committees.

Procedure of enacting the bill in Sejm consists of three readings (Article 119). The amendments to draft can be introduced by the draft's sponsor (initiator), Deputies and Council of Ministers. The right to introduce amendments by the Deputies is often criticized and understood as a reason worsening the quality of law. The sponsor may decide to withdraw the draft before the end of the second reading. After the bill is enacted by Sejm, it is submitted to Senate, which has 30 days

[131] In the sphere of internal organization of the Parliament is often defined as a „regulatory autonomy" of Parliament. Article 112: "The internal organization and conduct of work of the Sejm and the procedure for appointment and operation of its organs as well as the manner of performance of obligations, both constitutional and statutory, by State organs in relation to the Sejm, shall be specified in the rules of procedure adopted by the Sejm."
[132] The same rule applies to Senate (Article 124).

to accept the draft without amendments, to propose amendments or to reject it. In case of proposing amendments and rejecting the bill, it is submitted again to Sejm to vote on it. Resolution of Senate (which proposed amendments or proposed its rejection) can be rejected by Sejm with absolute majority in the presence of at least half of the statutory number of Deputies (Article 121.3).

After the legislative procedure is completed, the bill is submitted to the President who decides whether to sign the bill or to veto it within 21 days. Before signing a bill, the President may refer it to the Constitutional Court to review its conformity with the Constitution (Article 122.2). In case of veto, Sejm may "repass" the bill with three-fifts majority of votes. Interesting issue dealing with transparency of the Presidential decision-making procedures in the field of legislation was case initiated in 2011 by M.B. - NGO lawyer, who filed for access to legal opinions delivered by the experts to the President before signing important statute on pension system. Probably those opinions contained arguments which resulted in signing this act. However, the President refused this access arguing e.g. that this sphere of Presidential competences are his so called "prerogatives" and that is why they are not covered by definition of public information. The court of the first instance ruled that the requested opinions were public information[133]. In recent cases, the courts uphold this reasing and transparency of "presidential" stage of legislative process is increasing. However, there is a danger connected to this tendency, that experts will not be eager to prepare such expertise if they will be available to the public afterwords and that written opinions will be replaced with oral view presented by the experts.

2.3. Lobbying

The Polish Act on Lobbying in the Lawmaking Process was enacted in 2005 as a reaction to so called "Dochnal scandal". Marek Dochnal was described by media as lobbyist, whereas his activities were rather corruption in fact. Unfortunately, because of that affair, the words "lobbying" and "lobbyist" still have negative connotations. According to the statute, lobbying activity is any activity conducted with legally permitted met-

[133] Case before the Regional Administrative Court in Warsaw, no. II SAB/WA 277/11, judgement of 6 October 2011 available at: http://orzeczenia.nsa.gov.pl/doc/4E1A032259

hods designed to influence public authorities in the legislative process. Additionally, the act defines "professional lobbying activities" that are paid and carried out on behalf of third parties for inclusion of interests of these persons in the lawmaking process. Ministry of administration carries on a public register of people performing professional lobbying.

Even though there is a binding law which regulates the process of lobbying, there is a set of practical concerns in this sphere. Competence to invite "guests" to the meetings of committee or subcommittee are often seen as a possibility to overcome the restriction of (official) lobbying activities. That is why Group of States against Corruption (GRECO) existing withing Council of Europe recommended in its last Evaluation Report[134] adopted in October 2012 (Greco Eval IV Rep (2012) 4E) that "interactions by parliamentarians with lobbyists and other third parties who seeks to influence the legislative process, be made more transparent, including with regard to parliamentary subcommittee meetings"[135].

A good examples of such dangerous practice can is a story described in September 2013 by "Tygodnik Powszechny", which deals with lobbying against liberalization of car batteries' recycling market. The main concern was however the fact that "organizer" of social campaign against this proposal was a private company (and PR agency hired by them) who was a monopolist on this market. In result a proposed amendments (who were also required by the EU law) did not come into force.

Moreover, Act on Lobbying regulates the issue of public hearing of the draft of law (Article 8) or public hearing of the draft of resolution (Article 9). According to the Rules of Sejm, it is the committee of Sejm which decides (by majority votes) whether the public hearing of draft should be organized (Article 70a). Persons interested in taking part in the public hearing shall register at least 10 days prior to the public hearing. Each registration is making public on the Sejm website. Even though the legal framework is precise, the practice of organizing the public hearings varies. Some of public hearings are very popular and gather a great number of participants, while others seem to be unpopular, even though the draft raises social concerns. In 2013 also Senate

[134] Available at http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4%282012%294_Poland_EN.pdf

[135] Greco Report, page 14

decided to introduce an institution of public hearings in Senate at the stage of drafting the bill.

2.4. Statements of assets and conflict of interests

Another institution which aims at securing transparency of decision making process in the field of legislation is the obligation to present annually statements of assets. According to Article 35 of the Act on Exercise of Deputy and Senator Mandate deputies and senators are required to submit a statement of their financial standing, which are afterwords controlled by the Central Anti-corruption Bureau. Failure to submit a statement of assets results in a parliamentary liability, while entering false information or concealment of the truth in the statement of assets results in criminal liability.

Further, in order to ensure transparent legislative process, mechanisms of avoiding conflict of interests need to exist. In case of Poland the main one is expressed in Article 103 of the Constitution which states that the mandate of a Deputy shall not be held jointly with the office of the President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights, the Commissioner for Children's Rights or their deputies, a member of the Council for Monetary Policy, a member of the National Council of Radio Broadcasting and Television, ambassador, or with employment in the Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic, or with employment in government administration. However, this prohibition does not apply to members of the Council of Ministers and secretaries of state in government administration[136]. Moreover, no judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of a Deputy[137].

The above provisions play also an important role of mechanisms aimed at avoiding conflicts of interests among Deputies. Other norms which try to minimize conflict of interests are expressed in Article 107 of the Constitution which states that Deputies shall not be permitted to perform any business activity involving any benefit derived from the property of the State Treasury or local government or to acquire such

[136] Compare with the judgement of the Constitutional Court of 20 April 2004, no. K 45/02.
[137] In 2011 the Supreme Court ruled that the „retired" prosecutors cannot be Deputies either.

property. Detailed rules on this issues are expressed in Act on Exercise of Mandate of Deputies and Senators of 1996. In case of violation of this prohibition, the Deputy may be brought to accountability before the Tribunal of State.

Additional source of norms on conflict of interests are Rules on Parliamentary Ethics, which underline, that Members of Parliament shall be guided by the public interest. Similarly, Act on Exercise of Mandate of Deputies and Senators mentions that the good of Nation is the main guidance for their activities. Unfortunately, there is no direct legal provision which obliges Deputies to inform or announce that the he/she is in a situation of conflict of interests. That is why GRECO recommended that Principles of Deputies' Ethics should be "complemented in such a way so as to provide clear guidance to Sejm Deputies with regards to conflict of interests (…) and related areas". Moreover, it recommended "development of of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians (…) with regard to concrete legislative (draft) provisions".[138] Apart from those mechanisms, it is argued that there should be established a "dedicated confidential counsellor with the mandate to provide parliamentarians with adivce on ethical questions and possible conflicts of interests".

Within the system of Polish law, there is also a set of norms on criminal liability for corruption – both active and passive (Article 228 and 229 of the Criminal Code)[139]. Moreover, there is a set of more detailed crimes in the criminal code such as corruption in voting (Article 250a). The main public authority responsible for combating corruption is Central Anti-corruption Bureau (*Centralne Biuro Antykorupcyjne*) - a special service established in 2006. The definition of corruption established in the Act on the Central Anti-corruption Bureau was found unconstitutional by the Constitutional Court in 2009 "insofar as it defines corruption in the private sector as the conduct of any person not performing a public function, without narrowing down the definition with the premisses of socially detrimental reciprocity"[140].

[138] Greco Report, page 16

[139] Article 228. § 1. Whoever, in connection with the performance of a public function accepts a material or personal benefit or a promise thereof, or demands such a benefit shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years. Article 229. § 1. Whoever gives a material or personal benefit or promises to provide it to a person performing public functions shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

[140] Judgement of 23 June 2009, no. K 54/07

3. Access to public information

The main mechanisms which gives the answer to what extent transparency is truly a constitutional value in Poland is a right of access to public information. Article 61 of the Constitution does not only states this right but also requires a special statute, which will regulate the scope, limitations and detailed procedure of access. The Act on Access to Public Information (2001) gives a broader definition of "public information" than Article 61.1 of the Constitution. According to Article 1 of the Act, "each information on public matters constitutes public information in the understanding of the Act and is subject to being made available on the basis of principles and under the provisions defined in this Act."

The direct limitations are expressed in Article 5 of the Act, which states that "the right to public information is subject to limitation to the extent and on the principles defined in the provisions on the protection of confidential information and on the protection of other secrets being statutorily protected." Apart from these official-based secrets, the Act limits the right to public information because of "privacy reasons": "the right to public information is subject to limitation in relation to privacy of a natural person or the secret of an entrepreneur. The limitation does not relate to the information on persons performing public functions, being connected with performing these functions, including the conditions of entrusting and performing these functions and in the event when a natural person or entrepreneur resigns from the right to which he was entitled to" (Article 5.2). Moreover, it is possible that other statues will also impose such limitations[141]. Furthermore, there are also "indirect" limitations, such as a requirement to provide a "public interest" in receiving "processed information"[142].

The presumed mechanism of access to public information is Public Information Bulletin – obligatory website of each public authority, where basic public information shall be exposed. Public information, which was not made available in the Public Information Bulletin, is made available on the petition (Article 10.1). Then, information shall be made public within 14 days. If the petition of access is refused, the authority shall express it in "decision", which may be appealed, since the provisi-

[141] The provisions of the Act shall not breach the provisions of other acts defining different principles and the mode of access to the information being public information.
[142] Article 3.1.1 of the Act.

ons of the Code of Administrative Proceedings applies to this procedure (Article 16).

In the practice of Helsinki Foundation for Human Rights there was a set of cases, which were litigated as strategic ones, dealing with access to public information. In general they show the tendency that the right of access to public information is respected more often, however still there is a set factual and legal limitations, such as e.g. time between filing request for public information and final court ruling in case of refusal of access. In 2009 the Helsinki Foundation for Human Rights started litigation against the Agency on Internal Security (Agencja Bezpieczeństwa Wewnętrznego, ABW) about the access to statistics on wiretapping conducted by the Agency in a certain period of time. After set of judgement, the final ruling was delivered in 2012 – after 3 years since the information was requested[143].

4. Good practices and initiatives

The practical experience of these "transparency aspects" of the legislative process is quite optimistic. It should be underlined that availability of legislative drafts and procedure is a constant process of evolution, especially in last 2-3 years. In my opinion, one of the crucial element of this evolution is a good will from the governmental side, especially Governmental Legislative Center (Rządowe Centrum Legislacyjne , RCL). The main goal was to make all those crucial information on legislative process (which includes process of drafting) available online. Important tool used to achieve this aim is a website of the Governmental Legislative Center called Government Legislative Process (Rządowy Proces Legislacyjny, available at: http://legislacja.rcl.gov.pl/), where Government departments and Ministries are obliged to post information about the drafts, that are being currently consulted. This obligation covers also requirement to post the results of these consultations and opinions gathered during the consultations. Moreover, it is planned to make public consultations entirely online (one the government department is running a pilot project in this area).

Also parliamentary websites are interesting examples of transparency in practice. Internet website of Sejm (www.sejm.gov.pl) contains

[143] A similar Serbian case ruled by the European Court of Human Rights - *Youth Initiative on Human Rights v. Serbia*, no. 48135/06, judgement of 25 June 2013.

all drafts which have been submitted to Marshal of Sejm – those before or during the preliminary formal verification and those are already proceeded. Furthermore it contains the main opinions received during consultation at the parliamentary stage, however not all are published. In this aspect website of Senate is better, since it shows all the opinions received during consultations. Unfortunately, Sejm website does not contain information about the amendments proposed during the legislative procedures (e.g. in the committee or subcommittee). Moreover, parliamentary websites contain links records of sittings of Sejm and committees (but not always to subcommittees), after which transcriptions are made (except sittings of subcommittees).

There is also a set of interesting initiatives which are worth mentioning, such as steps to access to Open Government Partnership or publication in September 2013 the Green Paper on law-making[144]. The document is result of wide expert consultations and debates in Forum of Public Debate organized by the President of Poland dealing with law-making process. It contains set of interesting recommendations and rules on public consultations.

5. Conclusions

The above analysis show that Poland is probably a good example of process where the level of transparency systematically increase. It should be noted however, that this process is neither automatic nor easy and to great extent it depends on development of political culture. When it comes to legislative transparency in particular, the main disadvantage is that the legislative process (especially at the level of government) is not regulated at the statutory level. There is still no single act on law-making. The main rules are contained in the rules of council of ministers and rules of each parliamentary chambers. They are quite general, thus they may be reasons why public consultations on drafts of law are not wide enough.

Furthermore, it still happens that the main factor in legislative process is pressure of time, especially when enacted law is aimed at implementing the judgements of the Constitutional Court. When it comes to the access to public information, probably one of the best

[144] Green Paper is available at: http://www.prezydent.pl/download/gfx/prezydent/pl/defaultaktualnosci/2487/739/1/system_stanowienia_prawa_zielonaksiega.pdf

solution is to make more information available on websites run by the public authorities, especially on Bulletins on Public Information.

Recommendations for increasing legislative transparency in the Western Balkans

National level

Starting from the following facts:

a) the general characteristics:

- that the involvement of the public and relevant stakeholders (professional associations, civil society organizations (CSOs), the media) in the legislative process is of great importance for democratic development and the construction of democratic and political culture in the countries of the Western Balkans (WB)
- that a strong oversight role of the public and civil society is a clear indicator of democracy in any society
- that the role of experts, NGOs and the public is very important at all stages of the legislative process: in the phase of drafting the law, in the phase of public debate and monitoring the implementation of laws
- that it should provide transparency and communication between Brussels and WB countries in the legislative process

b) the specific characteristics

- that in the WB countries (Serbia, Bosnia and Herzegovina, Montenegro, Macedonia) key requirements for making quality and applicable laws are not met, including: timeline/ plan for legislation; sufficient time for consultation with representatives of

parliamentary experts, regular organizing of public hearings in parliaments and public debate in the general public

- that emergency procedures are still often applied, which unduly restricts the time and discussions that are required for a thorough check of the bill
- that due to the above in the WB countries there is a remarkably low transparency in law-making and the legislative activity is mostly a formal mechanism to adopt laws prepared in the executive branch
- that the content of the law is not affected enough by the holders of legislative power in the Western Balkan countries, i.e. MPs, due to overload of the number of laws, lack of competence and lack of professional support
- that the impact of citizens, interested target groups in the population, professional associations, trade unions, CSOs at the content of the law is even smaller than the MPs' and that it is almost not existent
- that in the Western Balkan countries, the recommendations of the European Commission to increase transparency in law-making are still insufficiently respected, which is slowing down the process of European integration of the countries[145]
- that all of the above leads to arbitrary ruling of political parties in the Western Balkan countries, strengthening the influence of particular political and other interests, and to the lack of transparency in the legal proceedings, which causes a storm of public disapproval of professional associations and a clear criticism of the EU

It is necessary to:

1. maximally promote the principle of transparency in law-making and legal mechanisms and procedures for public involvement in the submission of legislative proposals and other phases and aspects of the legislative process

[145] European Commission report on Serbia's progress in 2013, p. 9-10, section Political Criteria, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_2013.pdf

2. increase the participation of all relevant stakeholders (political parties, CSOs, professional associations, the media) in the legislative process.
3. develop a more proactive approach to reviewing and monitoring the recommendations of the independent regulatory body by the national parliaments
4. more clearly define specific situations/ conditions under which shortened procedure to adopt laws can be applied and the content of such procedures
5. monitor the implementation of the legislative process and the ways that ensure public participation and transparency in these processes in other countries, as well as the adoption of examples of good practice in the WB countries
6. provide free access to information of public importance relating to the legislative process and ways of their participation in them, as well as the information regarding the current laws
7. provide regular and qualified informing the citizens through the media and objective reporting of any changes regarding the laws and legal procedures
8. strengthen the controlling role of the public and relevant entities in monitoring the implementation of laws, improve mechanisms for public control and monitor the implementation of the adopted laws and ensure greater involvement of the public and relevant stakeholders in these processes by using existing legal mechanisms for information of public importance.
9. specify mechanisms for sanctioning entities which within the legislative process do not comply with prescribed procedures to ensure transparency

Local level

Starting from the following facts:

- that the involvement of civil society in the affairs of local government and in the decision-making process at the local level varies across the region of WB

- that all local authorities in the WB share common tendency to become inert with respect to representatives of civil society, if representatives of civil society do not put constant pressure on decision-making and implementation aimed at improving the daily life of the local community
- that therefore, the monitoring of the work of the executive and legislative structures of local authorities carried out by civil society is very important for improved service delivery, increased transparency and accountability of local level institutions as well as the quality of living for all citizens in local governments

It is necessary to:

1. encourage proactive role of CSOs in local communities, which is essential for the process of decentralization and local government reform in the WB region
2. formulate and adopt a set of mechanisms which would define, enable and encourage citizens to participate in decision-making process
3. insist on the legal obligations of municipal authorities to provide citizens the right of access to public documents
4. review the applicable legislation to ensure government accountability in accordance with country-specific
5. intensify the exchange of information and cooperation between CSOs in WB countries in order to promote good practices and increase citizen participation in all matters affecting the lives of citizens in local communities
6. continually work to increase public awareness and to train staff in local institutions on the importance of access to public/ official documents
7. work to strengthen partnerships and relationships of trust between CSOs and local institutions
8. provide interactive channels of communication between local government and citizens (city/ municipal web portals with updated information, the ability to ask questions, filing civil initiatives through online petitions, etc.).
9. ensure enforcement of mandatory consultation during the course of adopting decisions of special importance to the local

community (capital investments for the next year, making the local budget, etc...) by the local governments by involving the general public and all stakeholders and target groups in the consultation process

10. ensure the adoption of a bylaw that would oblige local government (the mayor) to develop and make available to the public the action plan, a one-year plan whose implementation would be monitored throughout the year and at the end compared with the adopted plan.
11. define obligations of the periodic reporting of the local authorities on the implementation of the budget and time frame - the minimum period for the public debate on local budget, and the obligation of reasoning decisions rejecting a citizens' initiative or proposal

The role and contribution of civil society in the legislative process to increase transparency in the Western Balkans countries

Gathered around the principal values of democratic processes, human rights protection and strengthening the rule of law in their countries and the region and possessing the professional and activist capacity of civil society organizations (CSOs) from the Western Balkan countries in a particular case shall contribute in the following way:

1. create coalitions and partnerships in education and advocacy in the area of increasing legislative transparency in the region, monitoring the implementation of laws and mutual harmonization of laws within national legislation, as well as compliance with EU laws
2. disseminate examples of good practice from the Visegrad Fund and other European countries
3. educate and inform citizens of their rights within the legislative process in their countries
4. monitor (non)enforcement of these rights
5. educate journalists on issues of legislative transparency

6. work to further improve their own professional capacity with aim to professionally participate in the process of creating and submitting legislative proposals and ensuring transparency in all aspects of the legislative process
7. get involved in the working groups for drafting legislation and parliamentary committees within the legislative process
8. initiate more clearly the definition of the mechanisms for consultation processes of government with CSOs, academia and other stakeholders in drafting legislative proposals.
9. encourage the practice of direct consultation with citizens within the process of defining and submitting legislative proposals
10. initiate more clearly the definition of the obligations of government explain the reasons for the rejection of their initiatives to applicants of legislative proposals.
11. initiate adoption of legislation on the media (Bosnia and Herzegovina, Macedonia) or ensure the release of the state out of media ownership and making regular media markets (Serbia).
12. constantly reviving questions of transparency of media ownership and financing, as well as their work