

## HOW TO IMPROVE THE DIALOGUE BETWEEN PARLIAMENTS AND GOVERNMENTS IN SOUTH EAST EUROPE

### *CHALLENGES AND LESSONS LEARNT IN MONTENEGRO REGARDING THE DIALOGUE BETWEEN THE GOVERNMENT AND PARLIAMENT*

This issue can be considered in three ways.

- a) normatively
- b) institutionally
- c) operation

Bringing of the national legal order closer to the requirements of Acquis implies also significant changes of rules and procedures for regulations adoption, i.e. building of a modern legal order which will be able to respond to the requirements of membership. Rules and procedures for the adoption of regulations should include:

- Strategic planning of legislative activities in terms of institutions and time,
- Coordination of the regulations adoption process at the level of the ministries,
- Coordination between the executive and legislative authorities,
- Adoption of the law implementation plan,
- Introduction of an analysis of normative performance –ex ante and ex post
- Introduction and respect of unified standards and practice in preparation and development of regulations both in view of their structure and their parts – content of regulations, legal-technical proofreading, statement of reasons
- Introduction of the obligation to prepare a statement on compatibility of regulations with EU regulations
- Involvement of civil society and economy through their active participation – involvement of their representatives into commissions and boards or passive participation through giving of commentaries.

#### **Current state**

**Rules of Procedure of the Government of Montenegro** ("Off. Gazette RoM", no. 45/01, 09/03, 71/04, 71/06 and 18/08.....) regulate more closely the organization, manner of work and decision making of the Government, manner of work of its commissions and other issues important for the work of the Government, as well as procedures for preparation of materials, time limit for their submission, obligation to obtain adequate opinions by the ministries for representatives of all local partners or the obligation of harmonization with the Secretariat for Legislation, considering by the competent Government Commissions, adoption of Government decisions.

In compliance with the Government Rules of Procedure, along with a draft law, or draft of some other regulation or general act, the body preparing it is obliged to submit the following:

- **opinion of the Secretariat for Legislation** on degree of harmonization of that draft act with the Constitution and the legal system of Montenegro.....;
- **opinion of the Secretariat for European Integrations on the statement on degree of compatibility of a draft act with adequate EU regulations** prepared by the entity preparing the draft regulation;
- **opinion of the Ministry of Justice** for laws, other regulations and general acts regulating the procedure before courts as well as the provisions of the law regulating sanctions and the necessary administrative and petty-crime procedure;
- **opinion of the Ministry of Internal Affairs and Public Administration** for laws, other regulations and general acts regulating the procedure before state bodies, system of state bodies and local self-government;
- **assessment of the fiscal impact** which enforcement of that act has on the Budget, the budget of the pension and disability insurance fund, the budget of the Health Insurance Fund, budget of the Employment Agency of Montenegro and the budget of local self-government, in compliance with the instruction from the Ministry of Finance;

Along with the draft act, the body preparing it is also obliged to submit to the Secretariat for European Integrations regulations of the European Union and ratified international conventions that act is harmonized with.

Also, in order to ensure operative coordination of overall activities in the administrative reform process and monitoring of obligations realization of all participants in the process of adequate decisions making and project preparation in this area at the general level, the Government has established an **Inter-ministry committee for operative coordination of administrative reform** (Off. Gazette RoM no. 11/08) which includes secretaries of adequate ministries, representatives of administration bodies and services participating in the proposing and adequate coordination of regulations preparation. Realization of the Project of Work and action of the Inter-ministry committee for operative coordination of administrative reform, is under way, which determines program and synchronized activities of operative coordination in order to ensure further administrative reform process and monitoring of obligations realization by all the participants in this process.

Having in mind the fact that the Administration Reform Strategy of Montenegro from 2002- 2009 envisaged introduction of **regulatory analysis system** of the regulations effects into reform priorities until 2010, Committee for Operative Coordination of Administration Reform also included this obligation as priority, by concluding that it is necessary to engage foreign experts for regulatory impact analysis development (RIA) and its implementation into the legal and institutional system. The Government has made a decision to prescribe on the occasion of adoption of the new Rules of Procedure an obligation for proponent of acts and other materials to perform regulatory impact analysis (cost assessment, arrangement of revenues, strengths and weaknesses of options) in the phase of determining of policy priorities, prescribe the obligation of proponent of acts and other materials to submit along with the draft system laws also an implementation plan as well as to establish the obligation of consultation of the non-government sector and specific associations which this policy refers to. Bearing in mind that

development of regulatory impact analysis requires consideration of all aspects, which includes multidisciplinary activities, and in particular staff that will have to be trained, it was assessed that this issue should be tackled in phases. Within RESPE – Regional School for Public Administration, with the seat in Montenegro - Danilovgrad, holding of necessary seminars, workshops and other forms of education of civil servants will be organized, especially those who will be performing these affairs in ministries. Through the training system it is possible to ensure also wider project teams for analysis of regulatory influence which would also include local experts, and the academy. It is only after the creation of these prerequisites that an explicit obligation to prepare regulatory impact analysis will be established. Rules of Procedure of the Parliament of the Republic of Montenegro („Official Gazette of RoM”, no. 51/06 and 66/06) determine that procedure for adoption of a law is initiated by submitting a draft law.

Law enactment procedure is set into motion by submitting the bill.

A bill is submitted in the form in which the law is enacted and it would have to be explained, in written and in electronic form.

Explanation of the bill contains:

- constitutional basis the enactment;
- reasons for the enactment;
- harmonization with european legislation and ratified international conventions;
- explanation of basic legal institutes;
- assessment of the financial resources for law enforcement;
- public interes why the retroactive effect is proposed, if the bill contains provisions that the retroactive effect is envisaged for;
- the text of the provisions of the law that are changed, if amandements to the law are proposed.

Rules of Procedure of the Parliament envisage new institutes for strengthening of the legislative power of the Parliament, and which primarily refer to consideration of the draft laws, with a significant role of the Committee for Constitutional issues and legislation. These institutes are:

#### **Consideration of draft laws at committees (first reading)**

Before consideration at the Parliament session, a draft law is considered by the competent committees (Committee for Constitutional Issues and Legislation and committee in charge of these issues). If the draft law includes particular issues which are under the competence of other committees as well, the draft law can also be considered by those committees as regards these issues. If the draft law creates obligations for the Budget of the Republic, draft law shall be considered also by the Committee competent for the budget.

After the first reading of the draft law, the competent committee must submit a report to MPs at latest 24 hours before the discussion and debate at the Parliament session begins. In the report the competent committee can propose to the Parliament to adopt a draft law on the whole, to adopt it as amended text in relation to the text submitted by the proponent or not to adopt the draft law, and the committee in charge of these issues will consider opinions submitted to it by other committees which considered the draft law.

### **Consideration of the draft law at the Parliament session (second reading)**

Consideration of a draft law at a Parliament session begins with the discussion and debate in principle on the draft law. Discussion and debate in principle includes discussion on: constitutional base, reasons for passing of the law, its harmonization with the European legislation and ratified international agreements, the essence and effects of proposed solutions and assessment of the necessary resources from the budget for law enforcement. If the draft law in principle is not accepted, no discussion and debate on particulars will be conducted on that draft law, and if it is adopted, before passing to discussion and debate on particulars, the competent board additionally considers the draft law with amendments and submits a report on this to the Parliament. The amendment is submitted at latest with the day of conclusion of discussion and debate in principle, and the proponent of the law and the competent board can submit amendments until the beginning of discussion and debate on particulars .

### **Discussion and debate of the draft law on particulars (third reading)**

After additional discussion and debate at committees and the submission of reports on that, the Parliament moves to discussion and debate on particulars of the draft law which includes: discussion and debate on solutions in the draft law, submitted amendments which are not harmonized and views and proposals of committee. At the beginning of discussion and debate on particulars the reporting official of the competent board informs the Parliament on the results of discussion and debate at committees and explains the position and the proposal of the committee, and then MPs and the representative of the proponent participate in the debate. If a large number of amendments were submitted to the draft law and remained unharmonized which substantially change the content of the draft law or, for the purpose of its improvement, it is necessary to perform a larger number of changes, the Parliament can, upon a proposal of the competent committee and with the consent of the law proponent, decide to consider the draft law as a draft bill. The proponent of the law can withdraw the draft law until the end of the discussion and debate on particulars of the draft law. The competent committee is obliged to propose to the Parliament which amendments to accept, and which to refuse. An amendment submitted by the proponent of the law and an amendment accepted by the proponent of the law becomes an integral part of the draft law and the Parliament shall not decide on it separately.

The Parliament decides by the majority of votes of the present MPs at the session attended by more than half of all MPs, unless the Constitution stipulates otherwise. In compliance with Article 91 of the Constitution of Montenegro, by the majority of votes of all MPs the Parliament passes laws regulating: the manner in which the freedoms and rights of citizens are exercised, Montenegrin citizenship, referendum, material obligations of citizens, state symbols and the use of state symbols, defence and security, the army, joining and abolishing of municipalities; proclaims the state of war and the state of emergency; adopts the Physical Plan, adopts the Rules of Procedure of the Parliament; decides on calling for the state referendum; decides on the shortening of the mandate; decides on dismissal of the President of Montenegro; elects and dismisses the Prime Minister and members of the Government and elects the Government members and decides on trust in Government; elects and dismisses the President of the Supreme Court, presidents

and justices of the Constitutional Court; appoints and dismisses the Protector of Human Rights and Freedoms.

The Parliament makes decisions by the two thirds majority of votes of all MPs on laws regulating the electoral system and the property rights of foreigners. In the first voting by two-thirds majority and in the second voting by the majority of all MPs at earliest three months later, Parliament decides on laws regulating the manner of exercise of acquired minority rights and use of Army units in international forces.

b ) Deputy Prime minister for the political system ,domestic and foreign policy of the Government of Montenegro shall coordinate participation of members of Government in the work of the Parliament.

Member of the Government, who is delegated as the representative of the Government, shall personally participate in the work of the Parliament of Montenegro (hereinafter: the Parliament) and its working bodies.

On the other hand, collegium of the Parliament ,which consist of vice presidents and the presidents of parliamentary clubs and secretary general, considers , besides other things , organisations issues and works of the Parliament and committees and plan agenda of the the session of the Parliament.

C) On parliamentary level there is a system of verification of the new legislation with Acquis Communautaire. The Parliament had adopted Declaration on joining the European Union (8. June 2005), Resolution on fulfilling the obligations of Montenegro in the frameworks of the Stabilizations and Association Agreement (27. December 2007) and Resolution on the necessity of acceleration of the process of integration of Montenegro into European and euro Atlantic structures.

With the before mentioned acts, among other things, the need for closer cooperation between the Government and the Parliament is specified, when the procedures for the adoption of the new legislation are concerned. As I already mentioned, the Government is in the obligation to propose a law, and along with it submit to the Parliament the Form of assessment of compliance of laws with primary and secondary primary sources of European law or to conclude that it is the matter of national legal issue. The authentication whether the bill is in harmonization with Acquis Communautaire is realized through parliamentary Committee on International Relations and European integration, which follows and if needed initiates harmonization of legal system of Montenegro with the European law and monitors the exercising of rights and obligations of Montenegro, stemming from international treaties and acts of the Council of Europe. If the Bill does not contain the Form of assessment of compliance of laws with primary and secondary primary sources of European law, it could not be discussed on the session of the Committee on International Relations and European integration.

Montenigrin Government has recently initiated the next step in checking the harmonization process –conformity or correlation table which will be in use at the beginning of 2010 . This model should provide detailed comparison of specific articles of the national legal act with corresponding articles of EU measure one by one.

**The Parliament of Montenegro has reached the Decision on forming the National Council for European Integration, as a strategic advisory body, of the high level of participation of the Montenegrin society's representatives, who should contribute to the better coordination and oversight of the implementation of the Stabilizations and Association Agreement and following the future negotiations on Montenegro's joining the European Union.**

**Lessons to be learnt .**

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- 1. The process of making plans for the work of parliament has to be improved.**
- 2. It is very important to improve administration capacity.**

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