

OCTOBER

2018

How can we make the decision-making process in the Parliament of the Republic of Moldova more transparent?

Sorina MACRINICI



PUBLIC POLICY DOCUMENT

How can we make the decision-making process in the Parliament of the Republic of Moldova more transparent?

Sorina MACRINICI



This publication is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of the Legal Resources Centre from Moldova and do not necessarily reflect the views of USAID or the US Government.

Chişinău, 2018

Contents:

Introduction	4
Framework for decision-making transparency	5
Public consultations	5
Legal framework	5
The practice of public consultations	7
Conceptual amendments to draft laws without holding public consultations....	8
Access to information	15
The legislative programme of the Parliament	15
Accessibility of information on draft regulatory acts	16
Activity of the parliamentary committees, public sessions of the Parliament and parliamentary committees	17
Open Parliament	17
Examining drafts in the emergency procedure.....	18
Active involvement and dialogue	20
Conclusions	21
Recommendations	22

Introduction

Transparency in the decision-making process is an important component of the rule of law. Civil society organizations (CSOs) make an essential contribution to the development and implementation of democracy and human rights, in particular by participating in public life and ensuring transparency and accountability of public authorities.

There are a number of international and European standards regarding the effective participation of the civil society in the decision-making process, such as the United Nations Human Rights Council Resolution on the Civil Space,¹ European Union Standards on Good Governance,² the Recommendation of the Committee of Ministers of the Council of Europe on the Legal Status of Non-Governmental Organizations in Europe,³ the Code of Good Practice for Civil Participation in the Decision-making Process,⁴ Guidelines for Civil Participation in Political Decision Making of the Committee of Ministers of the Council of Europe,⁵ the UN Council of Human Rights Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs,⁶ and so on.

The present policy document aims to analyse the regulatory framework and national practice that concern ensuring transparency in decision-making at the level of the Parliament of the Republic of Moldova. To this end, the relevant legislation, the information published on the web page of the Parliament of the Republic of Moldova, as well as the analyses currently in place on this subject were analysed. Several case studies regarding draft regulatory acts adopted by the Parliament have also been carried out. The author of the document also carried out a public opinion poll among the CSOs regarding the transparency in decision-making in the Parliament. The document outlines the main conclusions and recommendations for improving the decision-making transparency in the Parliament.

1 UN Human Rights Council, Resolution: Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment, A/HRC/RES/24/21, 9 October 2013, <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/22/6&Lang=E>.

2 European Commission, European Governance – a White Paper, COM(2001) 428, 25 July 2001, http://europa.eu/rapid/press-release_DOC-01-10_en.htm.

3 Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2007)14 of the Committee of Ministers to Member States on the Legal Status of Non-governmental Organisations in Europe, 10 October 2007, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d534d.

4 Conference of the INGOs of the Council of Europe, Code of Good Practice for Civil Participation in the Decision-making Process, 2009, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c>.

5 Committee of Ministers of the Council of Europe, Guidelines for Civil Participation in Political Decision Making, CM(2017)83-final, 27 September 2017, <https://rm.coe.int/guidelines-for-civil-participation-in-political-decision-making-en/16807626cf>.

6 UN Human Rights Council, Draft Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs, A/HRC/39/28, 20 July 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/230/45/PDF/G1823045.pdf?OpenElement>.

Framework for decision-making transparency

This policy document provides analysis of both legislation and practice of the Parliament of the Republic of Moldova with regard to compliance with decision-making transparency at different levels of participation, and namely within the framework of public consultations, access to information and active involvement and dialogue with civil society.

Public consultations

Public consultations include inviting the public to submit notices, comments, opinions and answers regarding a document or agenda of a meeting. While the public authority would typically define the issues for consultation, the process should also allow contributions concerning other aspects of the draft document.⁷

Legal framework

The legal regulation of public consultations at the level of the Parliament is provided by several regulatory acts. These are, in particular, the Law on Transparency in Decision-making Process, the Rules of Procedure of the Parliament, the Concept on Cooperation between the Parliament and the Civil Society and the Instruction on the circulation of draft legislative acts in the Parliament.

Initially, the Law on Transparency in Decision-making Process⁸ no. 239 as of 13 November 2008 provided that it also applies to the Parliament.⁹ Subsequently, a new regulation was introduced in 2014, according to which the transparency of the decision-making process in case of the Parliament is ensured in line with its Rules of Procedure.¹⁰

In 2010, the Rules of Procedure of the Parliament¹¹ were amended and a new article 49¹, "Organization by the lead Standing Committee of the public consultation procedures", was added.¹² However, art. 49¹ of the Rules of Procedure of the Parliament does not set out clear rules and minimum standards on the public consultation process, which is left entirely at the discretion of the parliamentary committees.

The Concept on Cooperation between the Parliament and the Civil Society (the Concept),¹³

7 European Centre for Not-for-Profit Law (ECNL), Civil participation in decision making processes. A review of the standards and practices of the Council of Europe member states, p. 33, <https://crim.org/wp-content/uploads/2018/09/ECNL-Paper-WEB.pdf>.

8 The Parliament of the Republic of Moldova, Law no. 239 as of 13 November 2008 on Transparency in Decision-making Process, <http://www.legis.md/cautare/rezultate/106638>.

9 Art. 3 of the Law on Transparency in Decision-making Process.

10 Art. 7 par. (2) of the Law on Transparency in Decision-making Process.

11 The Parliament of the Republic of Moldova, Law no. 797 as of 2 April 1996 on approval of the Parliamentary Rules of Procedure, <http://www.legis.md/cautare/rezultate/111777>.

12 Art. 49¹ of the Parliamentary Rules of Procedure stipulates:

"1) The lead Standing Committee shall ensure public consultation of draft legislative acts and legislative proposals with stakeholders through the organization of debates and public hearings through other consultation procedures established by the legislation on transparency in decision-making.

(2) The lead Standing Committee shall establish the procedure for consultation of draft legislative acts and legislative proposals, taking into account the nature of the project, stakeholder concerns regarding the addressed subject, other relevant issues.

(3) In the case of the organization of public meetings for the purpose of consultation, the lead Standing Committee shall set out the rules for the organization and conduct of such meetings.

(4) The lead Standing Committee shall order to place, under the law, the summary of the recommendations received during the public consultation on the website of the Parliament in order to ensure transparency in the decision-making process".

13 The Parliament of the Republic of Moldova, Concept on Cooperation between the Parliament and the Civil Society, approved by Parliament Decision no. 373 as of 29 December 2005, <http://www.legis.md/cautare/rezultate/20911>.

although referring to the cooperation mechanism, sets out some minimum rules for public consultation. The general consultation period within which Civil Society Organizations (CSOs) and stakeholders can submit their comments is 15 working days since the date of publication, which can be both either extended or reduced in cases of urgency.¹⁴ However, the Concept does not specify exactly the procedure for extending or reducing the deadline for submission of comments and how the Parliament shall inform the CSOs about it. The Concept also indicates that the CSOs must be notified of the date of convening ad-hoc meetings at least 10 days in advance. Neither the Rules of Procedure nor the Concept indicate the deadline for notification of the CSOs about public debates and hearings.

Another act of the Parliament which regulates public consultations is the Instruction on the circulation of draft legislative acts in the Parliament (Instruction).¹⁵ It sets out, among other things, the stages of preparing of the draft regulatory acts for debates in the Plenary of the Parliament, indicating the stages of public consultations as well. The Instruction regulates the procedure for public consultation of drafts by the parliamentary committees under p. 3.6, but makes reference to the provisions of the Rules of Procedure of the Parliament, which are quite general.

As the Association for Participatory Democracy „ADEPT” mentioned already in 2013, the legislative framework on public consultations in the Parliament is too general to be explicit and enforceable. As a result, the provisions are not enforced or are applied inconsistently and inefficiently.¹⁶ Including in the opinion of the NGOs, there are gaps in the regulation of the aforementioned regulatory framework. Within the framework of a survey carried out among the CSOs regarding the transparency of the decision-making process in the Parliament, about 86% of respondents believed that the legislative framework on this issue was not sufficiently regulated, 7% considered it was sufficiently regulated and another 7% did not know the respective provisions.

On 2 November 2018, a legislative initiative of three MPs regarding the adoption of a Code of Parliamentary Rules and Procedures (“Parliamentary Code”) was registered.¹⁷ In case of adoption, the document would replace the Rules of Procedure of the Parliament. However, paradoxically, but the document to regulate transparency in the decision-making process at the level of the Parliament was drafted in violation of the rigors of the decision-making transparency. On the website of the draft there is no anti-corruption expertise of the draft, which is mandatory under the Law on Normative Acts no. 100/2017, as well as the Government opinion, which is mandatory under art. 58 of the Rules of Procedure of the Parliament no. 797/1996. On 22 November 2018, the draft was adopted at the first reading. An analysis of the content of the document highlights the existence of very vague provisions on access to information, transparency in decision-making process and cooperation with the civil society.

The draft Parliamentary Code contains regulations on public consultations that are even vaguer than those currently in force mentioned above. The forms, stages and deadlines of the public consultation process, as well as the obligations of the parliamentary committees, are regulated fairly confusingly and sporadically. These regulations are set out in different sections of the Parliamentary Code, which makes it even more difficult to understand the public

14 Ibidem, p. 4.3.

15 Instruction on the circulation of draft legislative acts in the Parliament, approved by Decision of the Standing Bureau of the Parliament no. 30/2012, <http://www.parlament.md/LinkClick.aspx?fileticket=LnMHXo6mDHg%3d&tabid=197&language=ro-RO>.

16 Association for Participatory Democracy “ADEPT”, Transparency in the Parliament’s decision-making: legal provisions, applicability and application, p. 8-12, 2013, <http://www.e-democracy.md/files/td/transparenta-decisionala-parlament-2013.pdf>.

17 Draft Code of the Parliamentary Rules and Procedures no. 374 as of 2 November 2018, http://www.parlament.md/ProcesulLegislativ/Proiectdeactelegislativ/tabid/61/LegislativId/4433/language/ro-RO/Default.aspx?fbclid=IwAR2BiWrT_Osrolb9fsg55bqJ9IJEN0KI4o-Ruwu1aGuer_yaij6Ts1W08Yys.

consultation process in the Parliament, including for the staff of the Parliament, who will be obliged to enforce new rules. Some regulations on public consultations are set out in Chapter XI "Collaboration of the Parliament with the Civil Society" (articles 211-216). These are taken from the Concept on Cooperation between the Parliament and the Civil Society, but yet some important provisions have been excluded. It is the right time to concentrate the regulations on public consultations at the level of the Parliament in a single chapter and to regulate in detail the procedures for public consultations and to indicate the obligations of the responsible institutions.¹⁸ Therefore, we propose either to set out the detailed regulation of transparency in decision-making in the Parliamentary Code by re-naming of Chapter XI "Collaboration of the Parliament with the Civil Society" into "Transparency in Decision-making", with separate regulation of the public consultation process (forms, stages, deadlines, obligations of the responsible institutions), or to regulate it under the Law on Transparency in Decision-making no. 239/2008 amending the latter. In both situations, the regulations should include the following elements:

- a. the deadline for submitting comments on the draft regulatory acts published on the website of the Parliament;
- b. the obligation of the parliamentary committees to consult the stakeholders' list for targeted information;
- c. the detailed regulation of all forms and stages of public consultation, indicating the deadlines and responsible institutions, similarly to the regulations of Law on Transparency in Decision-making Process no. 239/2008;
- d. the obligation of the parliamentary committees to hold public debates when comments received from the civil society raise issues that are argued quite seriously;
- e. regulations concerning the sanctions imposed on responsible persons for violating requirements on transparency in the decision-making process.

The practice of public consultations

In practice, public consultations in the Parliament are limited to the publication of the draft regulatory acts on the website of the Parliament.¹⁹ Although publishing of drafts provides general information and is a step forward for genuine public consultation, this is not enough. Stakeholders' lists are practically not used by the parliamentary committees for targeted information.

The summary of recommendations is usually published prior to the adoption of the draft in the final reading, in the form of an annex to the report of the responsible parliamentary committee. The summary of recommendations contains all the proposed amendments, but their late publication hampers the representatives of civil society and stakeholders to know them and intervene, if necessary. At the same time, the summary of recommendations is often published in a format that does not allow quick search in text by keywords, i.e. a scanned photocopy of the original document. In case of a lengthy summary, this prevents civil society representatives and stakeholders from effective monitoring of all amendments to the original draft.

To the question of how many times they received requests from the parliamentary com-

¹⁸ See more detailed comments on the provisions of the draft Parliamentary Code regarding public consultation in the comments made by the LRCM and ADEPT on 22 November 2018, <https://crim.org/wp-content/uploads/2018/11/2018-11-22-coment-Cod-Parlam.pdf>.

¹⁹ The Parliament of the Republic of Moldova, draft legislative acts, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/language/ro-RO/Default.aspx>.

mittees to comment on draft regulatory acts within the last 3 years, out of 29 respondents of the survey among the CSOs regarding the decision-making transparency in the Parliament, 13 respondents (45%) answered that they received requests up to and including 3 times, other 13 (45%) – never and only 4 (10%) – between 4 and 10 times. Asked how satisfied they are with the results of public consultations, 9 respondents (31%) replied that they did not know the outcome, as the summary of objections and comments had not been published; 5 (17%) responded that they were dissatisfied; 14 (48%) – rather dissatisfied; and only 1 (3%) – satisfied.

It is important that stakeholders have the possibility of genuine involvement and public consultations could influence public policies, not just to be limited to a public relations exercise.

Conceptual amendments to draft laws without holding public consultations

According to the Constitution of the Republic of Moldova, the right of legislative initiative belongs to the Members of the Parliament, the President of the Republic of Moldova, the Government and the People's Assembly of the Autonomous Territorial Unit Gagauzia.²⁰ In a number of cases, the legislative initiatives of the Government have been substantially amended in the Parliament without organization of public consultations. In other cases, Members of the Parliament proposed to introduce some amendments that were irrelevant to the subject of the draft submitted by the Government, which were voted without consulting the Government, without public consultations and without debates in the parliamentary committees or in the plenary of the Parliament.

Under art. 71 (1) of the Rules of Procedure of the Parliament, if during the debate on the draft legislative act, the Parliament accepts amendments that essentially modify the text of the draft, the Parliament may decide to send it to the responsible parliamentary committee for final drafting before its final adoption. However, at this stage of law-making, public consultations are already over and the regulatory framework does not oblige the parliamentary committees to consult new amendments with the public.

As a rule, in such cases, the draft regulatory acts were previously publicly consulted by the executive. However, following the essential modifications during the final reading in the Parliament, these public consultations become useless as the purpose and content of the drafts is changed. As a result, the Parliament can essentially amend a draft law without any public consultation and without giving reasons, making useless the process of inclusive drafting of the law organised by the executive.

This practice of conceptual modification of draft regulatory acts at the second reading without holding public consultations has become quite often used in the Parliament of the Republic of Moldova. In the section below we present six draft laws in the areas monitored by the LRCM from 2011 to 2018, which were conceptually modified in the Parliament without holding public consultations in one of their forms, although in some situations experts in the field indicated that the amendments were inappropriate and requested the organization of public debates. In some cases, the amendments were made in the absence of an opinion of the Government or even when the opinion of the Government was negative. We think it is a negative practice, which affects the principle of transparency in decision-making and the rule of law. The Parliament should abandon this vicious practice.

20 Art. 73 of the Constitution of the Republic of Moldova, http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731.

Also, it is necessary to regulate situations when the Parliament intervenes substantially in the draft legislative acts either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures, which has been announced as currently being drafted in the Parliament. When the drafts submitted by the Government or Members of the Parliament do not meet the rigours and there is a need to intervene with essential modifications, we recommend two solutions. The first solution is to return the draft regulatory acts to the authors, mentioning the issues to be improved. The authors can make the changes requested by the Parliament, with an impact assessment and organization of public consultations. The second proposed solution is the public consultation of amendments that substantially modify the draft regulatory act, either through organization of public debates, or by requesting written comments from interested parties.

CASE STUDY NO. 1.

Exclusion of the obligation to provide reasoning for court judgements

On 22 December 2011, a draft law submitted by the Government and drafted by the Ministry of Justice on the amendment of the Code of Civil Procedure (CCP) was registered in the Parliament.²¹ According to the explanatory note on the draft, it was elaborated by a joint working group created by the Ministry of Justice, involving the representatives of the Supreme Court of Justice, the Superior Council of Magistracy, the academic environment, lawyers and representatives of civil society, who worked on the draft for over a year. The draft was publicly consulted, coordinated with the relevant authorities, and anti-corruption expertise was carried out.

The draft law proposed, among other things, the amendment of art. 236 of the CCP, which regulates the deliberation and adoption of the judgement by the court of the first instance. The authors of the draft proposed that after the court debates, the judge shall set a deadline, not exceeding 30 days, for the delivery of the judgement and handing to the parties of the fully reasoned judgement. Thus, the parties to the proceedings would find out at the same time all the grounds on which the judgement was based (both the operative part and the reasoning).

After the adoption of the draft law at the first reading, there was a proposal to amend art. 236 of the CCP by excluding the mandatory reasoning of judgements and to introduce the concept of reasoning only on request or in case of challenging. This proposal was discussed within the Working Group of the Ministry of Justice at the phase of drafting the law and was not supported by the majority of members.²² This modification was not publicly consulted, despite the disagreement expressed by several non-governmental organizations and independent experts.²³ They mentioned, inter alia, that the proposed amendment was contrary to the objectives stated in the

21 The Parliament of the Republic of Moldova, draft law no. 2829 as of 22 December 2011, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1003/language/ro-RO/Default.aspx>.

22 See section VII of the explanatory note to the draft law.

23 Public Appeal concerning the initiative to amend the Code of Civil Procedure as regards the reasoning of judgements addressed to the Parliament, the Government and the President of the Republic of Moldova, 26 June 2012, <https://crim.org/wp-content/uploads/2012/06/2012-06-26-Apel-Parl-Motiv-Hot-I-inst-final-semn.pdf>; Public Appeal regarding the need for public and qualified consultations of the proposals concerning the reform of the civil procedural law, the status of the judge and ensuring the activity of some court instances, 4 July 2012, <https://crim.org/wp-content/uploads/2012/07/2012-07-04-Apel-consult-publ-propuneri-reforma-leg-proces-civile.pdf>.

Justice Sector Reform Strategy for 2011-2017, that it was a regress in the process of reforming the justice sector of the Republic of Moldova and requested organization of public debates. On 27 June 2012, the Legal Committee for Appointments and Immunities approved the proposal to amend art. 236 of the CCP as regards the exclusion of the obligation to provide reasoning for court judgements, without holding public consultations. On 5 July 2012, the Parliament approved the draft at the second reading, and it entered into force on 1 December 2012.²⁴

The modification introduced at the end was also critically assessed by an international organization. The International Commission of Jurists stressed²⁵ that the amendment affects the capacity of the judiciary to ensure access to justice and to ensure effective protection of the rights of litigants to a fair trial, as protected by art. 6 of the European Convention on Human Rights. The Ministry of Justice informed the International Commission of Jurists delegation that the enforcement of the law would be monitored. The International Commission of Jurists mentioned in its report that the results of such monitoring should be published after one year of implementation, and consideration should be given to repealing the amendment, should it in any way give rise to concerns about the quality of court decisions or access to justice. Although almost six years have passed since the implementation of this amendment, the Ministry of Justice has not published the results of such an assessment.

CASE STUDY NO. 2.

Reform of retirement benefits and allowances for judges

On 29 October 2013, a draft law submitted to the Parliament by the Government²⁶ concerning the adjustment of retirement benefits and allowances for judges²⁷ was registered. This reform was done in the context of the considerable increase of the judges' salaries starting with 1 January 2014, with the view to adjust the way of calculation of retirement benefits for judges, which were calculated based on the size of the judges' salary.²⁸

The draft law registered by the Government provided for the following amendments:

- modification of the way of calculating the retirement benefit for judges, which should not depend on the salary of judges in office, but on the sum of all the insurance monthly payments of the judge in office;

24 Law no. 155 as of 5 July 2012, <http://lex.justice.md/md/344626/>.

25 The International Commission of Jurists and Soros Foundation Moldova, *Reforming the Judiciary in Moldova: Prospects and Challenges*, 2013, p. 53-54, http://www.soros.md/files/publications/documents/ICJ_SFM_Report.pdf.

26 The Parliament of the Republic of Moldova, draft law no. 422 as of 29 October 2013, <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/LegislativId/1984/language/ro-RO/Default.aspx>.

27 At that time, the Law on the Status of the Judge stipulated that at the age of 50, the judge was entitled to a special retirement benefit in the amount from 55% to 80% of the average monthly salary of the judge in office that was paid regardless of the fact whether the judge had resigned or continued to perform his/her duties. This retirement benefit had to be recalculated if the salary of the judges had increased. The law also provided for the judge's right to a single redundancy allowance equal to his monthly average wage multiplied by the number of years worked in the capacity of a judge. High retirement benefits and allowances were justified by offsetting the low remuneration of judges at that time.

28 Law on the Remuneration of Judges and Prosecutors no. 328 as of 23 December 2013, <http://lex.justice.md/md/351189/>.

- indexation of the judges' pensions had to be carried out according to the general rules established by Law no. 156 on State Social Insurance Pensions as of 14 October 1998;
- exclusion of the simultaneous payment of salary and pension to judges. They were to receive the pension only after resignation or after they were dismissed from office after having reached the age limit for retirement;
- the judges in office who already benefitted the payment of pension had to receive it in the amount established until the increase of the salary on 1 January 2014;
- reduction by 50% of the single redundancy allowance, which was calculated by multiplying the average monthly salary of the judge in office by the number of full years worked in the position of judge.

The draft provided for the entry into force of the new provisions on 1 January 2014, simultaneously with the new legislation on salary increase for judges.

This draft was developed by the Ministry of Justice in collaboration with the Ministry of Labour, Social Protection and Family (MLSPF) and the National Office of Social Insurance, subjected to consultations with the public and competent authorities and subjected to anti-corruption expertise.

The draft was substantially modified before it was voted at the second reading, which took place on 4 April 2014. The Parliament removed all the provisions proposed by the Government and maintained most of the provisions in the law in force at that time concerning the judges' pensions. The Parliament has kept two proposed amendments: (1) exclusion of the simultaneous payment of salary and pension to judges who have reached the age of 50 for judges who will be retired after the entry into force of the law, who will receive the pension only after their dismissal and (2) reduction by 50% of the single redundancy allowance.²⁹

An analysis of the costs to be borne by the state following these legislative amendments was not published on the website of the Parliament. The amounts to cover these costs were not planned and seriously affected the state budget and social insurance budget.³⁰ Also, the opinion of the Government was not published, which is, according to the Constitution, compulsory in case of budgetary spending increase.

These amendments to the draft submitted by the Government have significantly changed the essence of the draft, were not published before adoption, the positive opinion of the Government was not obtained and they were not consulted publicly.

29 As regards the single redundancy allowance, the draft law was adopted, promulgated and published in the Official Gazette very late, in May 2014, during that period 39 judges submitted their resignations (about 10% of judges in Moldova) to receive the full amount of redundancy allowance. This has jeopardized the activity of small courts of law from which most of the judges have resigned.

30 After the increase of the judges' salaries in 2014, the judges' pensions increased by 137% (about 2.4 times). The amount planned to cover the costs of the judges' pensions in 2015 was 2.6 times higher than that planned for 2014 before the salaries of judges have increased: Legal Resources Centre from Moldova, Achievements and faults in reforming the justice sector of the Republic of Moldova: 2012 – July 2014, 2014, p. 65, <https://crjm.org/wp-content/uploads/2014/09/Studiu-reforma-justitiei-web-1.pdf>.

CASE STUDY NO. 3.

Cancellation of the condition to have minimum 3 years of experience in the position of judge to be appointed as investigative judge

On 9 July 2016, the Parliament amended the procedure of appointment of investigative judges,³¹ a reform promoted by the Government through the Ministry of Justice. According to the new law, investigative judges had to be appointed by the Superior Council of Magistracy (SCM), with their consent, at the proposal of the chairperson of the court. [According to an analysis](#),³² most of the investigative judges were either former prosecutors or former criminal prosecution officers, and their activity raised many critical remarks. Also, some investigative judges were newly appointed as judges, and they still lacked the necessary experience to exercise the investigative judge's duties. For this reason, among other amendments, the law introduced the experience of at least 3 years in the position of judge as a condition of appointment to the position of investigative judge.

On 9 December 2016, five months after the adoption of Law no. 126, the Members of the Parliament postponed the new system of appointment of investigative judges for one year, starting on 1 January 2018 instead of 1 January 2017, notwithstanding the fact that it was counter the reform adopted shortly before.³³

On 22 December 2017, about a week before the entry into force of the new conditions for the appointment of investigative judges, the Parliament excluded the condition of having the experience of at least 3 years in the position of judge for the appointment to the position of investigative judge.³⁴ This amendment was added at the second reading to a draft already adopted by the Parliament at the first reading³⁵ and referring to a completely different subject – Secretariat of the courts. The amendment was proposed by two Members of the Parliament who grounded the amendment by the fact that *“the activity of the investigative judge does not differ from the activity of a simple judge, both being the exponents of the judiciary and both pursue justice in order to defend and realise the fundamental rights and freedoms of the citizens”*. This amendment is problematic for at least two reasons. Firstly, the amendment was introduced contrary to the spirit of reform of the investigative judge's institution voted in 2016. The specific nature of the investigative judges' activity (the promptitude with which the decision has to be taken and the impact of these decisions on human rights) requires experience in the position of a judge. Secondly, this amendment did not refer to the subject concerned in the draft law elaborated by the Ministry of Justice that had been consulted with the relevant authorities and the public, but fundamentally modified the draft to which it was introduced, was not stated in the explanatory note on the draft law and was not consulted publicly.

31 Law no. 126 as of 9 July 2016, <http://lex.justice.md/md/365750/>.

32 Legal Resources Centre from Moldova, Reform of the investigative judge institution, 2015, <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>.

33 Law no. 266 as of 9 December 2016, <http://lex.justice.md/md/368040/>.

34 Law no. 315 as of 22 December 2017, <http://lex.justice.md/md/373760%20/>.

35 The Parliament of the Republic of Moldova, draft law no. 361 as of 23 November 2011, <http://parlament.md/ProcesulLegislativ/Proiectedeactelelegislative/tabid/61/LegislativId/3983/language/ro-RO/Default.aspx>.

CASE STUDY NO. 4.**Prosecutors' right to reopen criminal prosecution**

On 24 October 2017, the Government registered a draft law that provided for the adjustment of the regulatory framework to the provisions of the Law on Judicial Expertise.³⁶

After the voting at first reading in the version proposed by the Government, the Legal Committee for Appointments and Immunities approved an amendment of a Member of the Parliament to art. 287 of the Code of Penal Procedure (CPP),³⁷ which grants prosecutors the right to reopen criminal cases that have been previously closed, if their limitation period has not expired. This amendment refers to a completely different matter than the draft law submitted by the Government. It implements the decision of the Constitutional Court as of 2015 where it was found that reopening of criminal prosecution after its termination, after the criminal case was dismissed or after dropping of the criminal prosecution of the person, without any clear time limits and clearly defined grounds, is unconstitutional.³⁸

The amendment was adopted at the second reading on 22 December 2017, in the absence of public consultations or discussions in the plenary of the Parliament. The explanatory note on the draft does not mention the need to adopt this norm.

CASE STUDY NO. 5.**Duty-free incentives**

On 4 October 2017, the Government approved budgetary and fiscal policy and on 17 October 2018 submitted it to the Parliament for adoption.³⁹ Among other things, it provided for removing of tax and customs incentives granted to the duty-free stores located on the territory of the country or at the entrance to the country starting with 1 July 2018. The draft stipulated that they could continue to operate on a general basis with the payment of all import duties.⁴⁰ In the explanatory note on this draft it was indicated that the amendment was based on the commitments included in the Association Agreement between the Republic of Moldova and the European Union, on the Court of Accounts Decision no. 34 as of 29 July 2016⁴¹ and recommendations by EUBAM, the European Union and the World Bank. On 3 November 2017, the Parliament voted the draft law at the first reading, keeping this provision proposed by the Government.

When adopting the draft at the second reading, on the proposal of the Committee for Economy, Budget and Finance,⁴² this provision was excluded. There was

36 The Parliament of the Republic of Moldova, draft law no. 328 as of 24 October 2017, <http://www.parliament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3950/language/ro-RO/Default.aspx>.

37 Law no. 316 as of 22 December 2017, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=374157&lang=1>.

38 Constitutional Court, Decision no. 1222 as of 14 May 2015, <http://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=543>.

39 The Parliament of the Republic of Moldova, draft law no. 317 as of 17 October 2017, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3938/language/ro-RO/Default.aspx>.

40 Ibidem, art. XVIII, par. (3).

41 Court of Accounts, Decision no. 34 regarding the Report on the compliance audit associated with the performance audit of the tax and customs incentives system, 29 July 2016, <http://www.ccrm.md/hotariri-si-rapoarte-1-95?idh=793>.

42 The Parliament of the Republic of Moldova, Committee for Economy, Budget and Finance, Report on the draft law no. 317 as of 17 October 2017, II reading, p. 239-240, <http://parlament.md/LegislationDocument.aspx?id=0d71dac9-c829-4a6c-a733-902c897b4073>.

provided no reason to exclude this provision proposed by the Government without an economic analysis of its impact. In addition, this amendment was not publicly consulted. The amendment was adopted by the Parliament at the second reading on 15 December 2017.

CASE STUDY NO. 6.

Trade in petroleum products under duty-free regime

On 6 June 2018, the Government registered in the Parliament a draft law that provided for the alignment of several regulatory acts with the Law on Public Finance and Budgetary and Fiscal Responsibility, with the mention that it should be considered as a matter of priority.⁴³

After the first reading, a Member of the Parliament proposed several amendments to this draft law, one of which provided for the exemption from VAT and excise duty for importing of petroleum products that have to be marketed under duty-free regime.⁴⁴ The amendment did not include any reasoning for this proposal and any economic and financial analysis, neither did it explain how it affects the state budget, nor did it explain how it refers to the draft proposed by the Government. The amendment was adopted at the second reading on 27 July 2018, in the absence of public consultations or any discussions in the plenary of the Parliament.⁴⁵ Although no Government opinion on this amendment was published, the report of the Committee for Economy, Budget and Finance shows that the Government was against this amendment.⁴⁶ Under art. 131 of the Constitution, any amendment affecting the state budget shall be adopted following the approval of the Government. Therefore, given that the Government has expressed negative opinion about this amendment, it is unconstitutional.

According to the experts of Transparency International Moldova,⁴⁷ this amendment is contrary to the international commitments with the European Union on the elimination of duty-free incentives and practices and will have a negative impact on the state budget revenues.

43 Draft law no. 185 as of 6 June 2018, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4229/lan-guage/ro-RO/Default.aspx>.

44 Amendment proposed by the MP Vladimir CERNAT on 16 July 2018, <http://parlament.md/LegislationDocument.aspx?id=f77706b0-c32b-43e8-8b1e-d92b4cca889a>.

45 Law no. 172 as of 27 July 2018, <http://lex.justice.md/md/376888/>.

46 The Parliament of the Republic of Moldova, Committee for Economy, Budget and Finance, Report on the draft law no. 185 as of 6 June 2018, II reading, p. 22, <file:///C:/Users/user/Downloads/185.2018.raport2.CEB.pdf>.

47 Transparency International Moldova, Public Policies Observer no. 13, September 2018, <http://www.transparency.md/wp-content/uploads/2018/09/Observator-Nr-13-1.pdf>.

Access to information

Access to information is a fundamental and important right that underpins the entire process of participation. This includes the right of the public to access all information (e.g. drafts of documents, comments and arguments) throughout the entire policy-making cycle. This level does not require intense interaction between the public and public authorities. However, the public authority must ensure that the public receives information in a due time, that the information provided to the public is accurate and relevant to the process, throughout all stages of a policy.⁴⁸

The legislative programme of the Parliament

Since 2010, the Law on Legislative Acts⁴⁹ provided for the obligation of the Parliament to adopt programmes for the drafting of legislative acts, with the view to ensure the regulation of all areas of social relations, transparency of the decision-making process, and to harmonize legislative acts with the European community legislation. The legislative programme of the Parliament had to include the titles of the acts planned to be drafted and amended in order to harmonize them with the regulations of the European community legislation, the areas of social relations to be regulated, the authorities, the institutions and the persons responsible for their elaboration and public consultations, etc. The legislative programme of the Parliament had to include the most important acts and did not exclude the drafting of other legislative acts. Upon adoption it had to be published on the website of the Parliament.⁵⁰ Although the provision was introduced in 2010, this happened only once when the Parliament published its legislative plan for the autumn session of 2015.⁵¹

In the Law on Normative Acts,⁵² which replaced the Law on Legislative Acts, such an obligation is not stipulated. However, in art. 31 par. (1) the law stipulates that *"the alignment of national legislation with the legislation of the European Union is carried out in compliance with the commitments assumed by the Republic of Moldova on the basis of the international agreements concluded with the European Union, with the legislative programs of the Parliament..."*. Therefore, we can conclude that the law presumes the existence of the legislative programmes of the Parliament. We consider that, even in the absence of a legal norm, drafting and publishing of legislative plans of the Parliament is a good practice that allows greater transparency of its activity, and also a greater opportunity for the CSOs to organize their capacities and be more efficient during public consultations.

Article 48 of the draft Code of the Parliamentary Rules and Procedures provides for annual drafting of the legislative programme of the Parliament by the Standing Bureau at the beginning of the spring session and publishing it on the website. We consider these provisions are welcome and support them.

48 European Centre for Not-for-Profit Law (ECNL), Civil participation in decision making processes. A review of the standards and practices of the Council of Europe member states, p. 30, <https://crjm.org/wp-content/uploads/2018/09/ECNL-Paper-WEB.pdf>.

49 Law on Legislative Acts no. 780 as of 27 December 2001, repealed as of 12 July 2018, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313239>.

50 Ibidem, art. 14.

51 Legislative Program of the Parliament of the Republic of Moldova, September-December 2015, <http://www.parliament.md/LinkClick.aspx?fileticket=lz29BqWyWz4%3d&tabid=203&language=ro-RO>.

52 Law on Normative Acts no. 100 as of 22 December 2017, <http://lex.justice.md/md/373698%20/>.

Accessibility of information on draft regulatory acts

Draft regulatory acts, the date on which they were registered, the reports of the parliamentary committees which include the summary of objections and comments, as well as the dates on which the draft was discussed and adopted by the Parliament are published on the website of the Parliament.⁵³ In few cases, the amendments proposed by the Members of the Parliament are also published.

Information on the date of the publication of the project and the deadline for submitting comments; the names of the staff of the parliamentary committee directly responsible for this draft; date of public hearings / debates, if any; as a rule, the amendments proposed by the MPs, meetings at which this draft was discussed, all preliminary versions of the draft; until the adoption in final reading – the changes that were made in the regulatory act, the author of the proposals for amendments, the results of the vote, the results of the public consultations is missing on the website where drafts of regulatory acts are published. With a few exceptions, amendments to draft regulatory acts are not published on the website of the draft or are published too late. The summary of recommendations, which includes all proposals for amendments and comments, including those from civil society, is usually published either on the day of adoption in final reading or immediately after the adoption of the drafts in final reading when it is too late to comment. The format of the summary of recommendations is often a scanned document that does not allow searching by keywords. Often, the summary of recommendations is a rather lengthy document, and the absence in the document of the search option by keywords limits the access of public to information. Also, explanations, provided in a way accessible for all, regarding the decision-making process and the involvement of those interested are missing on the website of the Parliament.

Within the framework of the survey among the CSOs regarding the decision-making transparency in the Parliament, 16 respondents (59%) replied that they could not find the amendments proposed by the Members of the Parliament to draft regulatory acts on the website of the Parliament, 8 respondents (30%) answered that sometimes they could find them, and only 3 respondents (11%) responded affirmatively. When asked whether they were able to find on the website of the Parliament the modifications in the drafts of the regulatory acts between readings until their adoption, 19 respondents (70%) replied that they could not find them, 6 respondents (22%) answered that they could sometimes find them, and only 2 respondents (7%) responded affirmatively. When questioned how simple it was to follow the fate of a draft regulatory act, including information when the committee meetings where it was discussed took place, the modifications proposed and accepted, the date of the Parliament meeting for its adoption, 8 respondents (30%) answered that it was difficult; 17 respondents (63%) said it was difficult enough; and only 2 respondents (7%) said it was simple enough.

If the publication of contact information of the persons responsible for drafts and the deadline for submitting comments is a technical matter, political will is required for the publication of the proposed amendments and preliminary versions of the drafts.

Neither the Rules of Procedure of the Parliament nor the Instruction on the circulation of draft legislative acts in the Parliament provide for the publication of amendments proposed by the Members of the Parliament and amendments to draft regulatory acts that are done after their registration in the Parliament.⁵⁴ Thus, the law-making process becomes very vague, and civil society is de-

⁵³ The Parliament of the Republic of Moldova, draft legislative acts, <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/language/ro-RO/Default.aspx>.

⁵⁴ A positive example is the model used in the Parliament of the UK, for example, the website regarding draft law on Personal Data 2018 <https://services.parliament.uk/Bills/2017-19/dataprotection/documents.html>.

void of the opportunity to know what is happening with the drafts and, if necessary, to comment on the proposals made. Publication just of the registered drafts of the regulatory acts and the adopted drafts does not fully represent the transparency of the decision-making process, because it does not provide sufficient information for the civil society to decide whether there is any need for intervention or not and, therefore, it has no power to influence the public policies. Thus, public consultations are not authentic; it is rather a technical exercise for the publication of drafts.

Activity of the parliamentary committees, public sessions of the Parliament and parliamentary committees

In October 2016 contact details of the parliamentary committees were published on the website of the Parliament,⁵⁵ and subsequently the names and telephone numbers of the consultants of the parliamentary committees responsible for communication with civil society were published.⁵⁶ However, the contacts of the MPs, assistants and committee staff are not yet available on the website of the Parliament.

Parliamentary committees hold meetings to examine draft laws within 60 days since the registration of the draft law. The meetings are public. In practice, the agenda of the meetings is usually published a day or two in advance, which does not allow the CSOs and stakeholders to plan, request approval of the Parliament for participation, and prepare for the meetings. Sometimes the announced agenda is not complete or is completed on the day of the meeting.⁵⁷

The plenary sessions of the Parliament are public, but the agenda of the meeting is approved just on the last day of the previous week.⁵⁸ In practice, the agenda is published on the website of the Parliament only one or two days in advance, which does not allow the CSOs and stakeholders to organize themselves for the participation in the meetings. It is recommended to publish the agenda of the plenary sessions immediately after their drafting, i.e. one week before the meeting.

Also the minutes of the meetings of both the parliamentary committees and the Plenary of the Parliament are missing on the website of the Parliament, which would facilitate the access to decisions taken during the sessions.

Open Parliament

One of the *Open Government Partnership* initiatives is "Open Parliament", which represents the commitment of the state to adopt a public policy paper on the transparency of the legislative body.⁵⁹ We recommend to the Parliament of the Republic of Moldova to follow the example of Ukraine⁶⁰ and Georgia,⁶¹ which have adopted action plans regarding the Open Parliament.

55 The Parliament of the Republic of Moldova, Standing Committees, <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/language/ro-RO/Default.aspx>.

56 The Parliament of the Republic of Moldova, contact details of the standing committees, <http://parlament.md/TRANSPAREN%C8%9AA-DECIZIONAL%C4%82/Cet%C4%83%C5%A3eanul/tabid/110/language/ro-RO/Default.aspx>.

57 On 1 April 2016, the Legal Committee examined the questionable candidature of a judge proposed by the Superior Council of Magistracy for promotion to the Supreme Court of Justice, and this issue was published only on the day of the meeting, in a supplement to the agenda <http://parlament.md/LinkClick.aspx?fileticket=vRcNli7ybUI%3d&tabid=84&mid=486&language=ro-RO>.

58 Art. 45 of the Parliamentary Rules of Procedure.

59 Open Government Partnership, Open Parliament, <https://www.opengovpartnership.org/about/working-groups/legislative-openness-0>.

60 The Parliament of Ukraine, the Action Plan for an Open Parliament, https://drive.google.com/file/d/0ByP1nXAlz_meTmNtaWgwVT-NCZDA/view.

61 The Parliament of Georgia, the Action Plan for an Open Parliament, 2015 -2016, https://drive.google.com/file/d/0ByP1nXAlz_meWJlpUXZ3dGloVmM/view.

Examining drafts in the emergency procedure

The Parliament can examine certain draft laws under the emergency procedure (art. 44 of the Rules of Procedure of the Parliament). The Rules of Procedure of the Parliament do not provide criteria for the selection of drafts to be adopted under the emergency procedure. This procedure is not regulated, but decided by the Standing Bureau of the Parliament, which does not publish a written decision. The responsible Committee should organize public consultations and present the report within 10 days. This procedure raises serious concerns about the lack of transparency in decision making and appropriate public consultations.

Art. 75-79 of the draft of the Parliamentary Code regulates the adoption of the regulatory acts as a matter of emergency and priority. Compared to the Rules of Procedure of the Parliament in force, the regulation of adoption as a matter of emergency and priority is more detailed. However, the grounds and criteria for selecting draft legislative acts to be adopted by these procedures are not specified when they are ordered by the Parliament and not required by the Government. Also, as compared to the current regulations, when the Standing Bureau of the Parliament decides on the adoption of the act under the emergency procedure, under the draft Parliamentary Code, this power should be assigned to the President of the Parliament. It is advisable to assign the power of taking such a decision to a collegial body, i.e. the Standing Bureau. Furthermore, it is not indicated that the decision of the President of the Parliament on the establishment of the urgency procedure regime is published on the website. Also, the deadlines for drafting of mandatory legal expertise and of the Government approval for adoption of drafts as a matter of emergency or priority are not stipulated.

Within the framework of the survey among the CSOs regarding the decision-making transparency in the Parliament, to the question how simple it was to figure out from the information published on the website of the Parliament that a draft normative act had been adopted under the emergency procedure, 13 respondents (48%) responded that it was difficult, 12 respondents (44.5%) responded that it was difficult enough, and only 2 (7.5%) responded that it was simple enough.

In practice, several important draft laws were adopted under the emergency procedure, without the public being aware that the drafts had to be adopted as a matter of emergency and without knowing the deadline for submission of comments.

Under this procedure, either amendments to important laws or new laws were adopted. Below are some regulatory acts that have been modified or adopted as a matter of emergency:

- **amendment of the Electoral Code in 2016** to introduce modifications regarding the election of the president of the country directly by the people. The draft law⁶² was registered in the Parliament as a legislative initiative of several Members of the Parliament on 7 April 2016 and voted at the first reading in a week, on 14 April 2016. It is unclear when the draft was published on the website of the Parliament, where it should be indicated that the draft had to be adopted as a matter of emergency. After the first reading, some CSOs requested organization of public debates. On 16 June 2016, following the insistence of the civil society, the Legal Committee for Appointments and Immunities organized public debates that were announced the day before holding them.⁶³ On 15 July 2016, the draft was adopted at the final reading. It was not clear why the project was examined as a matter of

⁶² The Parliament of the Republic of Moldova, draft law no. 144 of 7 April 2016 on amendment and supplement of the Electoral Code, <http://parlament.md/ProcesullLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3166/language/ro-RO/Default.aspx>.

⁶³ The Parliament of the Republic of Moldova, Announcement regarding public consultations on amendments and supplements to the Electoral Code, 15 June 2016, <http://parlament.md/Actualitate/Noutati/tabid/89/NewsId/1554/language/ro-RO/Default.aspx>.

urgency at the first reading and it took 3 months to adopt it at the second reading.

- **adoption of the Law on the Organization and Conduct of Gambling.** The draft law⁶⁴ was registered on 5 December 2016 and voted at the first reading 3 days later on 8 December 2016, and in final reading – a week later, on 16 December 2016. 11 days have passed since the registration of this draft to its adoption in final reading. The draft was adopted after the statement of the chairperson of the Democratic Party on the need to end with casinos and gambling.⁶⁵ The decision of the Standing Bureau was not published for to see the need to adopt this draft as a matter of emergency.
- **adoption of the Law on Voluntary Declaration and Fiscal Incentives.** The draft law⁶⁶ was registered on 24 July 2018 and adopted in both readings with an astonishing promptitude, two days later, on 26 July 2018, and the day before the closing of the summer parliamentary session of 2018. As in the previous cases, no decision of the Standing Bureau was published that would indicate the necessity of adopting this regulatory act as a matter of emergency.

64 The Parliament of the Republic of Moldova, draft law no. 459 as of 5 December 2016 on Organization and Conduct of Gambling, <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3506/language/ro-RO/Default.aspx>

65 <http://www.plahotniuc.md/ro/intrevederi-cu-oficiali-straini/este-o-noua-victorie-a-noastra-a-tuturoreste-o-noua-victorie-a-noastra-a-tuturor/>.

66 The Parliament of the Republic of Moldova, draft law no. 284 as of 24 July 2018 on voluntary declaration and tax incentives, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4329/language/en-US/Default.aspx>.

Active involvement and dialogue

Active involvement refers to collaboration and shared responsibilities at all stages of the decision-making process as the highest form of participation (e.g. agenda setting, problem identification, document drafting, decision-making and implementation, delegation of some specific tasks to NGOs).⁶⁷ Dialogue is an institutionalized participatory global form that is long lasting and is the most sustainable when it is developed in a structured way (e.g. joint councils).⁶⁸

The Concept on Cooperation between the Parliament and the Civil Society as of 2005 provides for the creation of expert boards from among the CSOs under the standing parliamentary committees (p. 3.5 a). So far, there is no public information on the existence of these boards, their composition and the criteria for selecting members. Within the framework of the survey among the CSOs regarding the decision-making transparency in the Parliament, out of the 29 respondents only 4 (14%) responded affirmative to the question whether the CSO they represent was invited to be part of a board of experts under any parliamentary committee; 23 (80%) responded negatively, and 2 respondents (7%) did not know the details.

The Concept on Cooperation between the Parliament and the Civil Society as of 2005 provides for holding an annual conference as a form of cooperation (p. 3.5 e). The annual conference is an instrument for a permanent dialogue. It is convened by the President of the Parliament for to assess the degree of cooperation and to decide on new directions of cooperation between the Parliament and civil society organizations. Six such annual conferences were organized since 2005 until 2018.⁶⁹ The last conference was held in August 2016. There has been no annual conference during the last two years. As this tool can be very useful it needs to be organized for to have impact. If it is difficult to hold the conference each year, one could consider the possibility of organizing the conference biennially.

Following the annual conference of 2016, with the main subject of transparency in decision-making, in October 2016, the Parliament set up a joint working group on legislation regarding the transparency in decision-making. This working group had a single meeting in 2016. The President of the Parliament invited the member CSOs and stakeholders to comment in writing. The CSOs comments have been submitted to the Ministry of Justice. So far, no draft law amending the legislation on transparency in decision-making based on those proposals has been drafted. Most of the proposals concerned amending of the Rules of Procedure of the Parliament. It is recommended to fulfil the public obligations assumed by the Parliament on the legislative modifications regarding the transparency in the decision-making process and to inform the public about the reasons for ceasing the activity of the working group created by the Parliament in this regard.

67 European Centre for Not-for-Profit Law (ECNL), Civil participation in decision making processes. A review of the standards and practices of the Council of Europe member states, p. 36, <https://crim.org/wp-content/uploads/2018/09/ECNL-Paper-WEB.pdf>.

68 Ibidem, p. 40.

69 The Parliament of the Republic of Moldova, annual conferences "Cooperation between the Parliament and the Civil Society", <http://parlament.md/TRANSPAREN%C8%9AADECIZIONAL%C4%82/Conferin%C5%A3eanuale/tabid/75/language/ro-RO/Default.aspx>.

Conclusions

The legislative framework on the transparency in the decision-making process in the Parliament of the Republic of Moldova is split in several regulatory acts and creates confusion in practice. Also, the Rules of Procedure of the Parliament contain regulations on public consultations that are too general to be applicable. There are also other regulatory acts containing rules on public consultation and transparency in decision-making, which are also not clear enough. As a result, the provisions are not enforced or are applied inconsistently and inefficiently. The draft Code of the Parliamentary Rules and Procedures, registered at the beginning of November 2018, contains regulations on public consultations that are even vaguer than those currently in force mentioned above. It is the right time to concentrate the regulations on public consultations at the level of the Parliament in a single chapter and to regulate in detail the procedures for public consultations and responsible institutions.

Public consultations are reduced to the publication on the website of draft regulatory acts and the summary of recommendations before the final reading. Stakeholders' lists are not used for targeted information. The conceptual modification at the second reading of the draft regulatory acts submitted by the Government to the Parliament, without holding public consultations, affects the principle of decisional transparency and the rule of law.

Access to information on the legislative activity of the Parliament is quite limited. The legislative plans of the Parliament are not published and hamper a better organization of the CSOs in the public consultation process. The current legal framework does not provide for the publication of amendments proposed by the MPs and preliminary versions of the drafts before final reading. Therefore, the civil society is devoid of the opportunity to know what is happening with the drafts and, if necessary, to come up with comments on the submitted proposals. Such limited information does not allow genuine involvement of the stakeholders in the decision-making process. Publishing of the summary of recommendations and objections in scanned PDF format does not allow searching by keywords and substantially reduces the access to information for the stakeholders.

Although the meetings of the parliamentary committees and the Plenary of the Parliament are public, the publication of the agenda of the meetings shortly before they are held (one to two days) makes it impossible to get access to the meetings. Also, the minutes of the meetings of the parliamentary committees and of the Plenary of the Parliament are not published.

The Rules of Procedure of the Parliament do not provide criteria and the procedure for the adoption of draft regulatory acts as a matter of urgency. This procedure is left to the full discretion of the Standing Bureau of the Parliament, which does not publish a written and reasoned decision. The responsible parliamentary committee should organize public consultations and present the report within 10 days. This procedure raises serious concerns about the lack of transparency in decision making and authentic public consultations.

Although the current regulatory framework provides for some tools for active dialogue and involvement, such as the creation of standing boards of experts under the parliamentary committees or the organization of an annual conference, they are either not applied at all or are applied rather sporadically so that not to produce visible impact.

Recommendations

1. To organize public debates on the draft Code of Parliamentary Rules and Procedures and give sufficient time to discuss this draft both in the Parliament and with civil society as a stakeholder;

Regarding public consultations:

2. Detailed regulation of public consultation procedures in the Rules of Procedure of the Parliament or introduction of a separate chapter on public consultation in the draft Code of the Parliamentary Rules and Procedures published on the website of the Parliament in early November 2018 or the regulation of these aspects in the Law on Transparency in Decision-making Process no. 239/2008, by amending it. It shall regulate in detail the forms of public consultation, the deadlines and obligations of the responsible institutions, and namely:
 - a. the deadline for submitting comments on the draft regulatory acts published on the website of the Parliament;
 - b. the obligation of the parliamentary committees to consult the stakeholders' list for their targeted information and consultancy;
 - c. the detailed regulation of all forms of public consultation, indicating the deadlines and responsible institutions, similarly to the regulations of the Law on Transparency in Decision-making Process no. 239/2008;
 - d. the obligation of parliamentary committees to hold public debates when comments received from the civil society raise issues that are argued quite seriously;
 - e. the sanctions imposed on responsible persons for violating requirements on transparency in the decision-making process;
3. Regulation of situations when the Parliament intervenes substantially in the draft regulatory acts either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures. We consider that the Parliament should minimize the cases of conceptual amendment in final reading of draft regulatory acts submitted by the Government or Members of the Parliament to the Parliament. However, when the drafts submitted by the authors do not meet the rigors and there is a need to intervene with essential amendments, we recommend two solutions. The first solution is to return the draft regulatory acts to the authors, mentioning the issues to be improved. The authors can make the changes requested by the Parliament, with an impact assessment and organization of public consultations. The second proposed solution is the public consultation by the Parliament of the amendments that substantially modify the draft regulatory act either by asking for a written opinion or by organizing public debates;

Regarding the access to information:

- 4.** Regulation of the publication of the legislative plans of the Parliament on the website either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures. The publication of the legislative plans will demonstrate genuine transparency of the Parliament and will allow the CSOs to plan their activities better and be more efficient in their contributions to draft laws and public policy documents;
- 5.** Publication of the contact details of the responsible person and the deadline for submitting comments on the draft regulatory acts published on the website of the Parliament;
- 6.** Regulation of the obligation to publish the amendments proposed by the MPs immediately after their registration, either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures;
- 7.** Publication of the summary of recommendations in a user-friendly format that would allow quick search by keywords;
- 8.** Regulation of the obligation to publish the preliminary versions of the draft until the adoption in final reading, either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures;
- 9.** Regulation and publication of the agenda of the meetings of the Plenary of the Parliament and of the parliamentary committees in full and in due time, at least seven days in advance;
- 10.** Regulation, drawing up and publication of the minutes of the meetings of the parliamentary committees and of the Plenary of the Parliament;
- 11.** Regulation of the criteria and the procedure for the adoption of draft regulatory acts in the emergency procedure, either in the current Rules of Procedure of the Parliament or in the draft Code of the Parliamentary Rules and Procedures;
- 12.** Drafting, approval and publication of the Action Plan regarding the Open Parliament;

Regarding active involvement and dialogue:

- 13.** Setting up of standing committees of experts under the parliamentary committees, consisting of the representatives of civil society organizations, in line with the main activity directions of the committees, publication of the selection criteria and selection procedure for members;
- 14.** Regular organization of annual conferences regarding cooperation between the Parliament and the civil society.

Legal Resources Centre from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

Legal Resources Centre from Moldova

📍 33, A.Sciusev str., MD-2001 Chişinău,
Republic of Moldova

☎ +373 22 843 601

📠 +373 22 843 602

@ contact@crjm.org

🌐 www.crjm.org

📘 CRJM.org

📺 CRJMoldova

🏠 CRJM

