

THE LAW MAKING PROCEDURE and CITIZENS' PARTICIPATION in the REPUBLIC OF MACEDONIA

1. The legislative procedure

When defining the procedure that will be used for adoption of laws and other regulations, the following two criteria must be met: *firstly* it must be democratic and *secondly* it must enable development of laws and other regulations with the highest possible expertise. In the Macedonian practice very little attention is being paid to the fact that adoption of laws or other regulations is also a process that will determine the relations between the people and the citizens. Thus the Macedonian legislative practice reflects the relatively low level of democratic relations.

The law making process is an issue of specific importance which is regulated by the Parliament of the Republic of Macedonia, as the legislative Body (Official Gazette of the Republic of Macedonia" no.60/2003). As it is defined with the Rules of Procedure of the Parliament, the law making process is the main function exercised by the Parliament as the legislative Body. The legislative procedure enables and provides for the implementation into the Macedonian legal system of the basic goals of the legal government structures. The legislation procedure also provides for a dominant role of the Parliament in all phases of the development and adoption of the laws. Formally the Rules of Procedure of the Parliament of the Republic of Macedonia (the Rules of Procedure) provide for the involvement of various social stakeholders, bodies and organizations in the process of developing a law but only as participants in certain phases. According to the Constitution, the Parliament is both a legislative Body where legislative powers rest and also the Body adopting the laws. In practice, laws are prepared outside the Parliament, namely by the Government and by the Ministries. A deputy or 10.000 voters can propose the adoption of a but it rarely occurs. Laws are usually proposed by the Government. In exercising its legislative the Parliament function's implies having strong and specialised expert departments skilled to shape the ideas, the goals and the programmes of the plural Parliament. This means that the Members of Parliament (MPs) who carry the legislation initiative into the Parliament.

In the Republic of Macedonia, the legislative procedure is defined in the Constitution. The details and procedures are specified in the Rules of Procedure of the Parliament. Certain aspects of the procedure for certain kind of legal instruments are provided for by specific laws. This is the case for example with regards to the signing of international agreements. Rules are laid down in the Law on Concluding International Agreements. This is also the case with the procedure for the adoption of general regulations (acts) in the Companies Law. .

There are provisions in the Constitution defining the following phases or other issues relevant to the legislation procedure:

- Use of the official language as well as the usage of languages and alphabets of the minorities (**Article 7**);
- The pillar values of the constitutional set-up upon which the law and the legal system are founded: rule of law; separation of power into legislative, executive and judicial powers; abiding to the all-accepted norms of the international law; the scope of freedom (**Article 8**, freedom is everything which is not forbidden by the Constitution and the law);
- The principles of constitutionality and legality (**Article 51**);
- The obligations to publish the laws and other regulations before they enter into force (**Article 52**);
- The period before the law enters into force (*vacatio legis*) and the prohibition for retroactive effect except in cases when the new law (regulation) is more favorable for the citizens (**Article 52**);
- The areas for which the Parliament is competent, namely when it is authorized to adopt laws (the limits of the legislative powers) (**Articles 61 and 68**);

- The required quorum for work and merit decision making as well as the decision making of the Parliament when adopting laws and other procedures (**Article 69**);
- The right to propose adoption of a law and the right for initiative for adoption of a law (**Article 71**);
- Promulgation of the laws and other regulations (**Article 75**);
- The working process and the role of the Working Bodies in the legislation procedure (**Article 76**);
- The competences of the President of the Republic in the legislation procedure (**Article 75**);
- The authorization of the Government in the legislation procedure and its competences during this process (**Articles 91 and 126**);
- The unified application of laws by the courts (**Article 101**);
- The Constitutional Court (and related) and the legal consequences from the Constitutional Court decisions over the laws and other regulations (**Articles 108 to 115 and Article 118**);
- The legislative function, the competences of specific bodies as well as the legal effect of the normative acts adopted during state of emergency (**Article 126**); and
- The competence of the Parliament of the Republic of Macedonia to define the organization and the functions of the Parliament with its Rules of Procedure and to define the frames of the legislation procedure (**Article 61**).

2. Phases in the legislation procedure

There are three procedures. The **"regular procedure"** has the most phases. The **"shortened procedure"** for its part only has two phases: initiation for adoption of law with proposal (project) law and adoption and publishing of the law. The **'urgent procedure'** also consists of two phases like the shortened procedure but the phases have shorter deadlines. With regards to the 'urgent procedure', the specified deadlines applying to the phases in the regular or in the shortened procedures do not apply.

2.1. The start of the procedure for legislation

The procedure for the adoption of new legislation starts with the submission of the proposal by the **authorized initiator** to the competent legislative representative Body. All MPs, the Government and a group of citizens (minimum of 10,000 petitioners) have the right to propose adoption of laws (**Article 134**). The authorized initiator has the constitutional power to address directly to the Parliament and is thus able to directly activate the process. In other words, the authorized initiator submits directly to the Parliament its law proposal and the Parliament submits the proposal directly into the legislation procedure. The carrier of the legislation initiative submits this initiative to the Parliament where it is put on discussion. After the discussion it is decided whether the initiative will be accepted and whether it is possible to continue with the next step - proposal for adoption of law.

In accordance with **Article 71** of the Constitution, the Rules of Procedure foresee the opportunity for the involvement of the wider public. According to **Article 134** of the Rules of Procedure, the initiative for adoption of laws can come from any citizen, from a group of citizens, from institutions and from associations. This initiative is submitted to the authorized initiator. If the initiative is addressed to the Parliament then it is submitted to the deputies and to the Government, informing the initiator accordingly. If the authorized initiator accepts the initiative for adoption of a law, it submits to the Parliament the proposal. A proposal for adoption of a law that is not initiated by the Government or the President of the Parliament submits it to the Government in order to receive the Government's opinion. Pursuant **Article 140**, the Government submits its opinion on the proposal for adoption of the law to the Parliament at the latest three days before the day of the session (meeting) of the Working Body (committee).

2.2. Content of the law adoption proposal

The proposal for the adoption of a law contains the following: the constitutional basis, the rationale, the basic principles upon which the law should be based and finally the content of the proposed Law. The later includes the basic relations that shall be regulated by the law and a proposal on how they are going to be regulated (**Article 135**). The Rules of Procedure of the Parliament have provisions according to which in the procedure of discussion, the numerous interests that are advocated and defended by their initiators are taken into account. During the legislative procedure this is possible through consultations with the representatives of different interest groups. Furthermore a public debate can be organised.

The Rules of Procedure foresee the possibility for organized participation of the interested bodies, organizations and individuals in the consideration of certain issues. Apart from the Economic Council, the Government also establishes a Legal Council as a permanent expert-consultative Body.

Following a request by the Government, **the Legal Council**, either on the initiative of the management bodies or on its own initiative, considers certain legal, economic and other issues of their competence. This is especially so with regards to the realization of the rule of law principle as a pillar value of the constitutional system. For considering specific issues in its competence as well as for the purpose of developing certain legal instruments, the Government i.e. the competent Ministries with ministerial Decision, can create **occasional working bodies (such as expert groups, teams etc.)**. In urgent cases, the working bodies or the working groups can be created by the Prime Minister who must inform the Government of its decision at the earliest possible time (before the Parliament session).

The proposal for adoption of law, the draft law and law proposal or other materials can be prepared by **a special commission, scientific or expert institution(s), or individual experts**. In this event, the Government receives the supporting documentation and submits the material for an opinion to the competent Ministry or to the Legislative Secretariat.

2.3. Submission and referral the proposal for adoption of law

If the proposal for adoption of a law (hereafter proposal) is developed in accordance with the Rules of Procedure, the President of the Parliament immediately - but no later than 5 days from the date of submission of the proposal - submits it to the deputies and to the competent working bodies (**Article 137**).

When issues are of importance to the local self-government units, the Rules of Procedure foresee that the President of the Parliament submits the proposal also to the local self-government units (municipalities) in order to seek their opinion (Article 138).

The President of the Parliament puts the proposal on the agenda of the Parliament session no later than 30 days from the date of submission of the proposal. If it is not a complex or extensive law, this deadline can be shorter but no shorter than 15 days (**Article 139**). Since the notion of "complex and extensive" laws is not defined, the practice that the majority of the proposals for adoption of law are considered not complex and extensive has developed (**Article 139**).

2.4. Submission and referring the draft law

No later than 60 days from the date when the proposal has been approved, the initiator is obliged to submit a draft law. If requested by the initiator, the Parliament can extend the deadline by an additional 60 days. If the initiator does not submit the draft law within the deadline, he is obliged to inform the Parliament for the reasons (**Article 141**).

The work of the working bodies (Committees) is not public but all foresee cases when it is possible to deviate from this rule. The basic principle is for openness to the public of the work of the legislative Body with the opportunity to exclude or to limit the public presence for special reasons. It can be said that there are no countries where there is complete openness to the public of the activities of the Committees.

Permanent and occasional Committees can be created under the Rules of Procedure and by a Decision of the Parliament. Their work is to consider draft laws, other regulations and general acts, to monitor (steer) the implementation of Parliament regulations as well as to consider and discuss other issues of their competence. Members of these Committees are not all lawyers but they can contribute to the work of the Committees with other expertise. In the Parliament each deputy is a member of one Working Body. The deputy attends and is involved in the work of a Working Body that he/she is not a member of. However he will not have voting power. The working bodies can have session and can discuss issues falling within their competence if a majority of the Committee members are present during the session. They can decide with majority of the present members.

The proposal is considered by the competent Committee. According to the Rules of Procedure, the proposal for adoption of a law must be considered by the competent Committee and by the Legislative Committee of the Parliament before it is put on the agenda of the Parliamentary session.

The competent Working Body considers the proposal mostly from a viewpoint of *ratio legis* i.e. from the need for adopting the law, the reasons for proposing the law, the basic principles on which the law should be based, the main relations that this law will regulate or change, means of regulating these relations, the goal needing to be achieved and in which direction people's behaviour can be influenced. Defining precisely the *ratio legis* is of importance if we want the norms in the law and the law itself to be effectively implemented .

If the proposal contains provisions involving financing, the proposal must also be considered by the Committees competent for the budget and finances to determine how these provisions shall influence the available funds and the possible sources of financing for the proposed solutions.

If two or more Working Bodies are competent to consider the proposal for adoption of law, they cooperate and if necessary, they organise joint sessions in order to consider the issues that are of mutual interest or to approximate their opinions. The joint session can be convened by the presidents of the working bodies. On the joint sessions the working bodies vote separately.

The proposal for adoption of law can also be considered by a Committee which is not directly competent if the proposal is touching certain issues within its field of competence. It is referred to as an 'interested Working Body'. Every proposal is considered by the Legislative Committee of the Parliament from their legal-systematic and from nomo-technical aspects as a Working Body but above all, as a independent expert Body of the Parliament. The Legislative Committee considers the proposal from different angles: the need for adoption of this law, how it will contribute to the overall legal system and its synchronization with the National Constitution. The Legislative Committee produces an opinion on the proposals submitted to the Parliament

The Working Body has the right to ask for the presence of a Government representative or a proxy during its meetings when it considers proposal for adoption of law submitted by the Government. The representative is a member of the Government or its deputy. The proxy is a person who is authorized by the Government to represent it when the proposal for adoption of the law is being considered. Proxies are usually the state secretaries and counselors in the Government or in the competent Ministries. **However, a proxy can also be a recognized expert with legal background.** Only an official representative has authority to accept or refuse specific proposals and amendments in the name of the Government.

In order to provide expertise and competence in the discussion, the Working Body can involve in its work scientists, experts or other public workers. In order to take on board consideration of implementability and practice, it can also involve representatives from the local communities (the municipalities), from companies, from the trade unions and other organizations, institutions and associations. These representatives do not have voting power but they are able to express their opinions with regards to the proposals.

Their participation in the law making process can be arranged in several ways but the following three are mostly in practice:

- Invitation for their participation during the session of the Working Body so they can be involved in the discussion;
- Creation of working groups that will consider specific legal (law) projects.
- Involvement in the work of the Working Body as a permanent member of the Body.

After the discussion on the proposal, the Committee can propose to the Parliament to suspend discussions, to approve it or to reject it with or without its opinion or comments. The interested Working Body submits its opinion and proposals to the competent Working Body and this usually happens before the session of the competent Working Body. The opinion of the Working Body is expressed in writing and submitted to the Parliament.

This written report includes the opinion of the Working Body, all other opinions and proposals raised during the discussion on the proposal as well as an explanation as to why this is the final opinion for the Working Body. When considering the proposal the Committee takes into account the opinions from bodies, organizations and institutions received to the Parliament. In its report the Working Body nominates a *rappporteur* (who must be an MP). In accordance with opinions of the Working Body, the rapporteur represents the Committee during the Parliamentary session when the report is being discussed. However it cannot change the proposal made by the Working Body. .

2.5. Discussion on the proposal for adoption of law

In the Republic of Macedonia, the Parliament has sole authority to decide on the submitted proposal for adoption of law. Before deciding (and voting), the Parliament conducts discussion on the basis of report on the proposal by the Working Bodies, the Government opinion (if the Government is not proposing the Law) and the report of the Legislative Committee. The discussion on the proposal is conducted during the Parliamentary session and it is not subdivided into specific sections. All issues be they general or issues of details are discussed. The discussion on the proposal is done on the basis of the report and its content.

As an introduction to the discussion, the initiator of the proposal usually makes a presentation. The initiator plays an active part during the discussions of the Working Bodies. He has the right to be involved during the entire discussion process in order to provide additional explanations. The Government also plays an active part in the discussion at Committees' level even though it is not the initiator of the proposal. The Government representative can participate during the entire discussion process.

Citizens' participation:

An important element regarding the participation of the general public in the legislative procedure, relates to the Conclusions of the Parliament. In other words, future participation will be decided in the conclusions for adopting the proposal. The Parliament will decide if the authorized initiator to **develop a draft law or proposal of the law**. The Parliament can determine that by adopting the proposed law, **systematic issues will be regulated or complex and extensive matter will be regulated** or in view of other reasons, it will determine that it is necessary for a **draft law** to be developed. **Along with the conclusion for adopting the proposal for adoption of law, the**

Parliament can emphasize the need for consultations during the development of the draft law or of the law proposal, for special advice to be organized as well as other forms of collaboration with appropriate bodies and organizations.

The conclusions of the Parliament on the proposal for adopting a law will determine: the level of consultation, which stakeholders (subjects) needing to be involved in those consultations, how the consultations will be carried out, the timeframe, the method for collecting and presenting opinions and proposals emerging from the consultative process. Finally it will decide on the Working Body (or the Body) that will conduct the consultations and will summarize the output.

When dealing with laws that are of public interest i.e. of importance for the overall social-economic relations and for relations in the socio-political system, the **Parliament can organize a public discussion on the draft law**. This public discussion is a democratic means arising from democratic relations based on the principle that sovereignty is derived from the peoples and belongs to the citizens. According to the Constitution the citizens exercise the power through democratically elected representatives, through referendum, but also through other forms of direct forms of participation. In a wider sense, the public discussion is one of the forms of direct citizens' participation. The Parliament can decide to carry out public discussion on certain draft laws that are deemed to be of wider general interest.

When the Parliament decides to put the draft law to public debate, it is obliged to set-up one or several Working Bodies (Committees) to:

- ensure that the draft law is published to be available to the citizens, companies, public institutions, institutions, associations of citizens, the political parties, the trade unions and other interested parties;
- collect the opinions, comments and suggestions raised during the public discussion;
- prepare a report on the results of the the public debate.

For performing these tasks the Parliament can also establish a specific Working Group. If the draft law is proposed by the Government, the Parliament can take decision to transfer the responsibility of these tasks to be Government.

The draft law that is put on public discussion is published in the Bulletin (Gazette) of the legislative Body, in the daily newspapers (press) or as a separate publication. According to the Rules of Procedure of the Parliament, the draft law put on public discussion is published in newspapers chosen by the Parliament. Also published along with the law is the public call for submission of opinions and suggestions as well as the deadlines for their submission. The opinions and suggestions expressed during the public debate are collected and put together by the Working Body designated to organize and monitor the debate. It is usual to prepare a report from the public discussion. This report is submitted to the legislative Body. The Body (the Parliament) considers the report, gives its opinion and informs the initiator of the law accordingly.

On the basis of opinions and suggestions raised during the public discussion, the initiator of the law submits a law proposal. The initiator annexes to the law proposal the report based on the public discussion with explanatory summary of the initiator's opinions on the views raised during the public debate.

2.6. Law proposal

The law proposal is submitted in the form of a law within 60 days of the date of adoption of the proposal for adoption of a law, i.e. the draft law. Upon submission of the law proposal, the Parliament can if it deems it necessary put the law proposal for discussion as in the case of the draft law (if the draft law has not already been put up for discussion during a parliamentary session).

During the procedure on the law proposal, amendments can be submitted. Amendments to the law proposal can be submitted by any deputy, by the Government or by 10.000 voters. The amendment is submitted in writing and must be signed by the initiator. If the amendment is submitted by 10.000 citizens (group petition) it must be signed by the 10.000 citizens. The amendment is submitted at latest as 7 days before the day of the Parliamentary session on which the law proposal will be put to the floor for discussion. In exceptional cases, an amendment can be submitted during the Parliamentary session until the end of the discussion on law proposal. The amendment must be submitted in writing and must be explained. Every amendment that has not been submitted at the latest 7 days before the date of Parliamentary session on which the law proposal will be discussed, shall be considered as submitted on the day of the Parliamentary session. The amendment must be supported by explanations. To this end, the initiator must address two points:

1. If the amendment has provisions require financing, the initiator of the amendment is obliged to point out the possible sources for financing;
2. The amendment initiator is obliged to say whether the amendment imposes consequences to the material and other integrity of the citizens, companies, public institutions and institutions.

The procedure for the amendment starts with the submission of the amendment to the President of the Parliament who submits it to the deputies, to the initiator of the law and to the Government when it is not the initiator of the law. The President of the Parliament also submits the amendment to the competent Working Body (committee) in order to receive its opinion. Every submitted amendment is also submitted to the Legislative Committee of the Parliament. Further procedure on the amendment depends on the opinion of the initiator of the law proposal on the amendment and on which party (or subject) submits the amendment:

- If the amendment is submitted by the same initiator of the law proposal, it shall be considered that the amendment is an integral part of the law and thus there will be no specific discussion on the amendment. The discussion will be on the overall law proposal.
- If the amendment is submitted by a deputy, by the Government (not initiator of the law) or by a group of 10.000 citizens and it is accepted by the initiator of the law proposal, there will be no specific discussions. It shall be considered that the amendment is an integral part of the law proposal.

For all other amendments there will be specific discussions. First the initiator of the law and the *rapporteur* of the relevant Working Body will give an opinion. The Government can give its opinion on all amendments submitted no matter whether it is initiator of the law or not. In the case of an amendment that has been submitted during the discussion on the Parliamentary session, the Parliament can act in three ways:

1. It can decide to postpone the discussion and continue on a later session;
2. It can stop the session until the competent Body and the Legislative Committee have considered the amendment
3. Following a request from the initiator of the law, from the Government, from the competent Working Body or the Legislative Committee, the discussion on the amendment can be postponed to allow enough time to consider it and form opinion.

In all three cases the Parliament decides whether the conditions for this are met i.e. if the deputies agree. This is decided during the session. However if the amendment concerns provisions resulting in significant changes in the text of the law proposal, or finally if the amendment requires additional finances, the amendment cannot be put on the Parliamentary session if the procedure explained above has not been met.

The decision on the amendment is taken before voting for the provision of the law proposal concerned. The discussion and voting on the amendment are conducted in different ways according to the order of submission and also according to the content of the amendments.

If two or more different amendments are submitted for the same provision of the law proposal, then the amendments are voted upon in the order of submission. Deviation from this rule is possible in

cases when the submitted amendment proposes deletion of specific provisions of the law proposal. In this case there is first voting for the amendment. If accepted, there will be no voting for the other amendments on the article concerned.

The adoption of the amendments depends on the majority required for adoption of the law. If the law can be adopted with simple majority of the present deputies but at least one third of the total number of deputies, the amendment is adopted with a simple majority of the present deputies but at least one third of the total number of deputies. If the law can be adopted only with two-thirds majority (qualified majority) of the total number of deputies, the amendment is then adopted if voted by majority of the total number of deputies.

2.7. Adoption of the law

The Parliament adopts laws with simple majority of the present deputies but at least one third of the total number of deputies unless the Constitution requires qualified majority. Laws affecting directly the culture, the use of the languages, education, the personal (ID) documents and the use of national symbols are voted by the Parliament with simple majority of deputies present. However there must be a majority of votes from present deputies belonging to the minorities in the Republic of Macedonia. Any dispute regarding the application of this provision will be resolved by the Committee for Relations with Minorities.

3. Shortening the procedure and the deadlines in the law adoption procedure

In the Macedonian Parliament practice so far, there are often cases when the initiator submits both the proposal for adoption of a law and also submits the law proposal and proposes that both be discussed on the same Parliamentary session. Such a case arose with the recent adoption of the new Company Law. Given the premature procedure in the adoption, the law is not in force and a procedure for adoption of new Companies Law has been initiated

If we are not dealing with complex or extensive law, the authorized initiator of the law, along with submitting the proposal for adoption of the law or the law proposal can also propose the shortening of certain procedures foreseen in the Rules of Procedure. Proposal for shortening the deadlines can also be submitted by the President of the Parliament, by the Working Body and by the Government in cases when it is the initiator of the law. Of course, reasons for the proposal to be shortened the deadlines must be presented.

The President of the Parliament can in urgent cases, convene a session of the Parliament in a period shorter than the 10 days deadline (the usual time) and can also propose the agenda of the session on the session itself. During the same session, the Parliament will thus first vote for the shortening of the deadlines and if adopted, it will continue with the discussion on the proposal for adoption of law or the law proposal.

4. Urgent procedure for adoption of the law

On exceptional cases, a law can be adopted under the “urgent procedure”. A law can be adopted in urgent procedure **only** when it is necessary in order to stop or remove major disruption of the economy or in other exceptional cases affecting the security and defense of the Country or large-scale human and natural disasters. The initiator is obliged to explain the proposal for urgent adoption of the law proposal. Along with proposal for urgent adoption, the law proposal whose adoption is requested urgently is also submitted.

The Parliament decides on the justification of the proposal for urgent adoption of the law without discussion. If this proposal is not submitted by the Government, the Parliament shall ask for opinion of the Government before deciding on the proposal. If the Parliament adopts the proposal that the law

should be adopted under the urgent procedure, the law proposal is put on the Parliament agenda (session). Before or during the discussion, the Parliament can ask from the competent Working Body and from the Legislative Committee to report urgently within the boundaries of their competences.

Conclusions

It is not disputable that citizens must have an influence in the law adoption procedure. In a formal and legal sense there are a lot of possibilities for exercising this right in the Republic of Macedonia. The above mentioned procedures as defined in the Rules of Procedure of the Parliament confirm this. However it can be said that the practice so far is in discrepancy with the formal and legal "offering". In reality the influence of the citizens in the law adoption procedure is far from what it could be under the law. To support this argument, one can point to the fact that the majority of laws are submitted for adoption according to the shortened procedure. The number of laws that have first been through the phase of draft-law, namely the phase providing for the involvement of the wider public through a public debate, is actually marginal. The reasons for this situation can be found in the very general provisions in the Rules of Procedure. For example, the Rules of Procedure do not define standards and criteria for what is a "complex and extensive law" which would need to pass through all the phases of the law adoption procedure. The consequences resulting from this "gap" in the Rules of Procedure is that in practice, the majority of the adopted laws have been as "not complex" or "not extensive" laws. It has thus been possible for these laws to be adopted under shortened procedure and in turn excluded the participation of citizens in the law making process.

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