

Open Parliaments 2012

Transparency and Accountability
of Parliaments in South-East Europe

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Preface

The present comparative volume of case studies provides a snapshot and analysis of the existing normative regulation, practices, and public debates regarding the openness and transparency of parliaments in the Balkans. On the basis of in-depth research, the volume identifies a set of good practices, and elaborates recommendations for the improvement of the public knowledge and understanding of parliamentary work. The volume is the result of a project initiated by the Friedrich-Ebert-Stiftung, Office Bulgaria (FES) and the Regional Secretariat for Parliamentary Cooperation in South-East Europe (RSPC). Its implementation was tasked to the Centre for Liberal Strategies (CLS) in Sofia. The empirical research for the project, entitled „*Transparency and Accountability of Parliaments in South-East Europe*“ took place for the first time in 2009 /2010. In 2012 the research for the second issue was done. Its main goal was, firstly, to study the norms and practices of ten Balkan countries, and, secondly, to disseminate the findings of this research, and to discuss them with politicians and civil society. The first step in the implementation of the project was the setting up of a team of country contributors: experts on parliamentary matters. Ultimately, ten countries were covered by the project: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Kosovo, Macedonia, Moldova, Montenegro and Romania. The main task of the contributors was to prepare a country case study following guidelines and questionnaires provided by the CLS.

The main focus of the case studies is an analysis of the legal framework and the developed practices regarding the transparency and accountability of parliamentary work. In addition to that, they provide a wide range of information on the attitudes of relevant

stakeholders, as media, trade unions and employers' organisations, and NGOs. The studies have been prepared on the basis of examination of documents, journalistic materials, reports from NGOs, as well as on a number of in-depth interviews. The comparative volume is not meant to be purely descriptive: it attempts to evaluate and assess the openness of a particular legislature by using a set of common criteria. For the achievement of this purpose, each of the chapters contains:

- assessment of relevant legislation/ internal regulation of national Parliaments regarding public access to information, participation in the legislative process (attendance at parliamentary meetings, standing committees' meetings, public hearings etc.);
- assessment of the relevant stakeholders' (NGOs, trade unions, mass media) actions towards gathering information related to parliamentary works, of relevant advocacy work at parliamentary level done by these stakeholders in the seven countries and of the corresponding results;
- assessment of the accountability mechanisms in practice: access to individual MPs' votes, activity of elected officials in constituency offices, mechanisms for communicating with MPs;
- review of the main problems in the implementation of the legal framework;
- recommendations on the improvement of both the legal framework and the practices in the given system. In general, the criteria which the contributors have used in composing their case studies, fall into three main groups – legal and constitutional; stake holders' opinion; and public opinion.

As the findings of the project indicate, there is still significant room for improvement of the openness and transparency of

parliaments in the Balkans. A lot has been already achieved, and the countries in the region could be deservedly proud of their vibrant parliamentary traditions. But the advent of new technologies – such as the Internet and satellite TV – provides ever more sophisticated opportunities for bringing the work of parliaments closer to the citizens. Unless very good reasons to the contrary exist, a general principle of transparency and disclosure of the workings of both plenary sessions and committee meetings should be followed. This principle should cover issues such as the financing of politicians and parliamentary

groups, and should not be confined only to the walls of the parliamentary building: the work of deputies in the constituencies should also be open and transparent. With this project we wish to enrich the debate between parliaments and civil society both within the respective countries and between the member states of the SEECP and thus contribute to a more informed and substantive parliamentary cooperation in the region. The very well elaborated research gives a sound empirical basis for further debate and – hopefully – ever more transparent and open parliaments in South-East Europe.

Sofia, December 2012

Regine Schubert
Director

Friedrich-Ebert-Stiftung
Office Bulgaria

OPEN PARLIAMENTS BULLETIN 2012

Albania Country Report

Gjergji Vurmo

1. Introduction

Albania is a parliamentary democracy with a unicameral Assembly vested with legislative authority by the Constitution. The right to take a legislative initiative rests with the Council of Ministers, every Member of Parliament, as well as on petition when signed by 20,000 registered voters. The place of the Parliament in Albania's political regime is defined by the Constitution, which was adopted in a referendum (1998) and has since been amended twice by Parliament - in January 2007 and April 2008. The Assembly's organisation and functioning are governed by the Rules of Procedure adopted by the majority of its members. The 140-seat Parliament is elected by direct, universal suffrage in regular parliamentary elections held every four years. The constitutional amendments of April 2008 changed the electoral system from mix to a regional proportional one which was first "tested" in the June 2009 General Elections. These amendments, swiftly agreed by the Democratic and Socialist parties with no broader political and public consultations, were aimed at a more stable political system and simplified electoral machinery. However, the subsequent two-year political impasse (2009 – 2011) proved quite the opposite. Furthermore, the new electoral system made it impossible for a significant number of small parties and their candidates to enter Parliament. Another serious consequence of the new electoral system is the increasing gap between MPs and constituencies, not only due to the system as such (party candidates lists do not allow for a clear bound between MPs and

constituency in a given region) but also due to the fact that party lists for candidates MPs are under the full control of the parties' leaders. Accordingly, the amendments dramatically changed the former (under mix majoritarian system) practice of MPs' communication with their constituencies, as the "weight" has now shifted from the electorate towards the "office of the party leader".

Following two years of pressure from the European Union (EU), a parliamentary committee has been mandated by the Albanian Parliament to improve the electoral code in line with OSCE ODIHR recommendations (2009). Nevertheless, the main two political parties from the ruling coalition (Democratic Party – DP) and opposition block (Socialist Party – SP) do not seem supportive of an electoral system that allows more space for smaller parties. In addition to the electoral reform, Albania is struggling to act on another priority pointed out by the European Commission's (EC) Opinion on the country's EU membership application (2010), namely the parliamentary reform aiming "to ensure the proper functioning of Parliament on the basis of a constructive and sustained political dialogue among all political parties". However, by June 2012 the main two political parties in Parliament have failed to reach an agreement and approve reform steps on electoral and parliamentary reform.

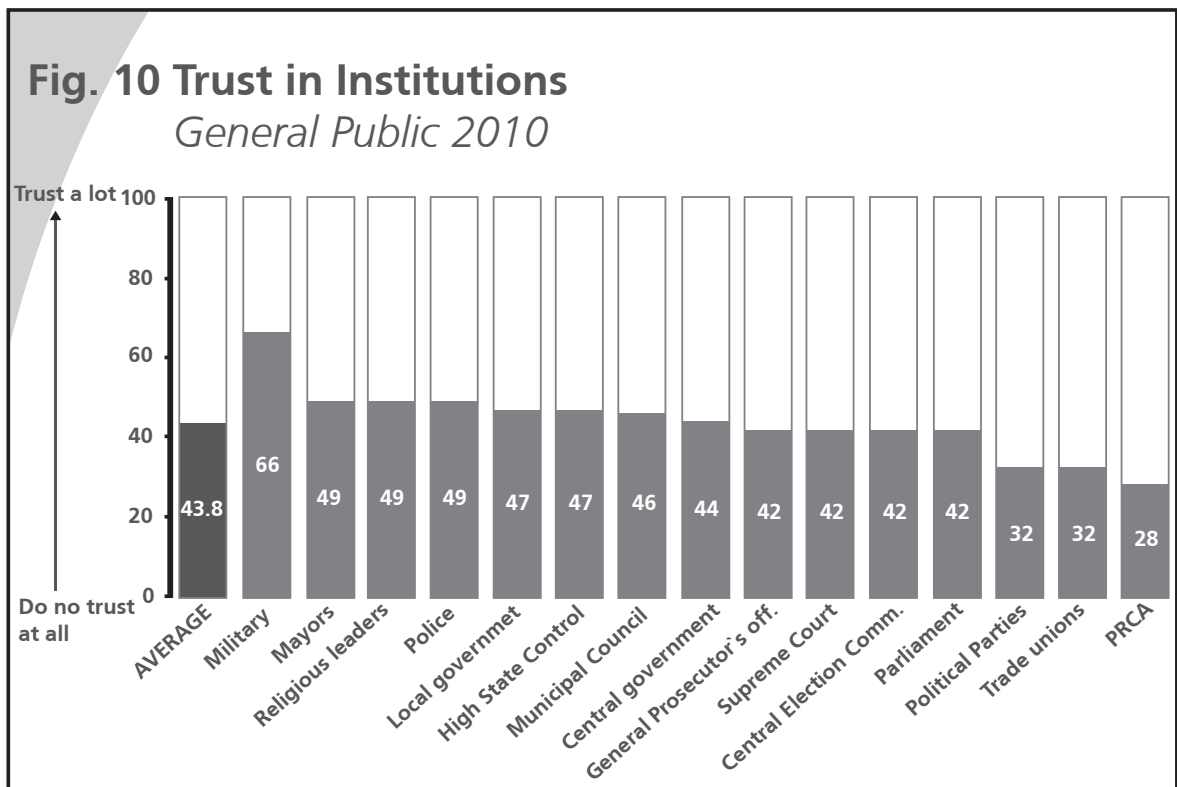
Despite certain improvements noted in recent years in view of enhancing the transparency of Parliament, various civil society groups have raised serious concerns regard-

ing the overseeing role of the legislative body and its weakening position *vis-a-vis* an increasingly strong Executive; public access to plenary sessions and standing committees' hearings along with the lack of consultations with civic and other interest groups. Furthermore, cases of disrespect for Rules of Procedures in force and a lack of transparency in Parliament's budget spending have often been highlighted in the media and reports of civil society groups. The above-presented and other challenges and concerns elaborated in subsequent sections cast serious doubts over

the independence, accountability and openness of the Albanian legislative.

2. Legislative Framework

The Albanian Parliament is not among the most trusted nor most transparent institutions in the eyes of the general public. Various surveys in fact confirm the opposite. Namely the 2010 "Corruption in Albania: Perception & Experience" Report (IDRA) shows that the Parliament takes fourth place among the top five least trusted institutions. See figure below (Source: IDRA Report, pp 13).¹



The same report reveals that, in terms of transparency, the Albanian Parliament has improved its image from the second (out of nine) least transparent institution in 2009²

to the fourth least transparent one a year later. Another civic monitoring instrument, CIMAP – Comparative Indicator based Monitoring of Anticorruption Progress (2011)³

¹ Report available at <http://albania.usaid.gov/spaw2/uploads/files/Corruption%20in%20Albania%202010%20-%20Summary%20of%20Findings.pdf>. Accessed May 2012.

² "Corruption in Albania: Perception & Experience" 2009 Report available at <http://www.idra-al.org/cs2009/Corruption%20in%20Albania%202009%20-%20Summary%20of%20Findings.pdf>. Accessed May 2012.

³ The CIMAP initiative (Comparative Indicator-based Monitoring of Anti-Corruption Progress) is designed by Transparency International to monitor the progress of accession and potential accession governments on governance and anti-corruption related issues in the judiciary, legislature and public administration. The full report "EU Anti-Corruption Requirements: Measuring progress in Albania" (2011) is available at <http://tia.al/docs/EU-report-eng.pdf>. Accessed June 2012.

– suggests that the practical enforcement of transparency-related rules for the Parliament appears to be also problematic (scoring only a moderate level of 3.3 according to CIMAP).⁴

Particularly in the past two years, the above-mentioned and other civil society reports have increased pressure on key political actors to improve transparency and accountability of institutions. These calls have also been echoed by the European Commission's progress reports on Albania (2010 and 2011), while the EC's opinion on the country's EU membership application (2010) points to Parliamentary Reform as one of the 12 key priorities conditioning further progress towards membership. However, in the past two years no major reforms or substantial improvements have taken place in relation to the legal framework for an open, accountable and transparent Parliament. Accordingly, as the parliamentary reform's committee is yet to deliver before the upcoming EC Progress its report on Albania (October 2012), the legislative framework on this matter remains almost identical to the pre-2010 situation. Generally, the same is also reported in relation to the practice of implementation of the legal framework.

The following subsections elaborate in detail the legal foundations, primary and secondary legislation in force regulating transparency and accountability of parliamentary dealings, and further develop a critical analysis of the legal framework in view of its improvement and smooth implementation.

2.1 Albanian Constitution and SIGNED International Treaties

The Albanian constitution lays out the legal foundations that guarantee transparency and openness of Parliamentary dealings and the right of citizens to have informed and guaranteed access to this information. According to **Article 79** "*meetings of the Assembly are open*" and only "*at the request of the President of the Republic, the Prime Minister or one-fifth of the MPs, meetings of the Assembly may be closed when a majority of all its members have voted in favor of it*". Furthermore, **Article 23** of the Albanian Constitution lays out constitutional guarantees for the citizens to be informed:

"The right to information is guaranteed. Everyone has the right, in compliance with the law, to obtain information about the activity of state bodies, and of persons who exercise state functions. Everyone is given the possibility to attend meetings of collectively elected bodies".

The Albanian Constitution makes a direct reference to the role of the Parliament's administration (**Art. 76** reads that the Secretary General is "the highest civil servant of the Parliament") which has an essential role in facilitating citizens' access to the work and documents of this institution. Yet, despite the importance that derives from such constitutional reference, Albanian Parliament's administration and related hiring procedures remain highly politicized, thus casting serious doubts over its ability to act free of political pressure and in the interest of the public.⁵

⁴ Under CIMAP methodology "transparency" is one of the three indicators for the "Governance" dimension of the Parliament. Transparency is defined as "the easiness with which people are able to obtain information and access to it" (concrete examples in this sense include frequent publications on the activity of the institution, physical access to institutions as well as measures relating to the declaration of assets).

⁵ Civil society has often raised this issue and urged political parties to consider alternatives strengthening the role and capacities of the Parliament's administration. In the spirit of the Constitution, which makes no other reference to any other state institution's highest administrative position (Secretary General), one of such alternatives suggested by civil society is a special regulation that is adopted with a qualified majority by the Parliament.

In addition to the constitutional guarantees, Albania has signed a number of International and European Conventions that complete the core foundations for open and transparent institutions (Parliament included). Any primary and secondary legal act regulating this specific issue and accompanying procedure must comply with both, Albanian constitution and signed / adopted international treaties. The Constitution of the Republic of Albania guarantees supremacy of ratified international acts by stating clearly that “ratified international treaties take precedence over national laws that are incompatible with them” (Article 122, paragraph 2). In this context, Albania is a signatory party of three central international and European documents, as follows:

❖ **The Universal Declaration of Human Rights** – in which **Article 19** stipulates

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”

❖ **The International Covenant on Civil and Political Rights** – in which **Article 19** reads:

“Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”

❖ **European Convention on Human Rights**

(ratified in 1996) in its article 10 states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

The above referred legal foundations offer a sound basis to upgrade different laws and secondary legislation regulating transparency and accountability of the Parliament not only in view of addressing concerns related to the implementation of the framework in force, but also to expand standards that respond to contemporary developments improving means of information of and communication with interest groups and broader constituencies. Ultimately, this will lead to more active constituencies and to a legislative body that is more sensitive to transparency and accountability principles. It is quite symptomatic that in the past two decades of “democracy in the making” Albanian constituents have voted in referenda initiated by political actors but never by citizens themselves. Hence the practice of ensuring compliance with transparency and accountability principles has been limited to the traditional “check & balance” instruments.⁶

⁶ In October 2011, the Constitutional Court of the Republic of Albania ruled in favor of the request of the Albanian Parliament, finding incompatible the MP's mandate of one Member of Parliament from the opposition Socialist Party. The legal basis of the Parliament's request referred to Article 70, 3rd and 4th paragraph of the Constitution, which prohibits MPs from conducting profit-making activities and gaining profit from state capital. See Decision of the Constitutional Court No. 44, date 07.10.2011.

2.2 Parliamentary Standing Orders

Existing Parliamentary Standing Orders (Assembly's Regulation) were adopted on December 16th 2004 (Decision No. 166) and ever since, amended five times – Decision No. 15 date 27.12.2005; Decision No. 193 date 07.07.2008; Decision No. 21 date 04.03.2010; Decision No. 41 date 24.06.2010 and the last amendment, Decision No. 88 date 24.02.2011. The last three amendments (2010 – 2011) introduce and specify details about rules related to issues such as the composition of Assembly's Bureau, MPs' participation (as members and non-members) in standing parliamentary committees, voting at plenary sessions, procedure on Assembly's approval of candidates for various constitutional institutions, MPs' debate on issues that are not included in a plenary session's agenda, and disciplinary measures against MPs.

Decision No. 88 date 25.02.2011 amending the Standing Orders introduces a novelty in the fight against corruption by limiting or removing MPs' immunity when corruption charges are pressed against them. In the past two years, Parliament has approved all requests coming from the General Prosecutor in cases of corruption. Yet, it is essential to note that so far none of the MPs and members of Government has been sentenced by the Supreme Court.

Article 105 of the Regulation reads that transparency of parliamentary work is realized through various means and included public participation in the legislative process, written and electronic media broadcasting, publication of the Assembly's documents, web-site and internal audiovisual network of the Parliament. While the Assembly's Regulation, as a rule, provides for the media and the public to attend plenary sessions and standing committees' meetings, various civil society orga-

nizations have denounced practices of the Parliament's administration deviating from these rules. Namely, in September 2011 the Institute for Democracy and Mediation (IDM) presented concerns of its monitoring experts regarding access to public hearings of the National Security Parliamentary Committee.⁷ MJAFT! Movement – a watchdog civil society group – reported in 2011 that the Parliament denied access to its activists who are involved in a Parliamentary monitoring initiative. In April 2012 Mjaft! Movement registered legal charges against the Legislative body for refusing to provide information in accordance with the Law on the right to Information.⁸

In general, the practical implementation of the Assembly's Regulation appears rather problematic and so has been the enforcement of its Article 35 – on Publicity of Standing Committee's meetings. The Parliamentary Monitoring Initiative "*Une Votoj!*" (English: "I Vote") has often reported parliamentary practices conflicting with the Regulation.⁹ The regulation does not lay down detailed rules and clear procedure on how citizens can actually access parliamentary work – plenary sessions or committees' hearings.

Parliament's administrative rules mandate that permission is issued to any citizen that has filed a request at least an hour before the plenary session begins. However, the agenda of the standing committees' meetings is not regularly and promptly updated on the Parliament's website (or any other place that is

⁷ See IDM Monitoring Brief No. 1 / 2011 "On the work of the Parliamentary Committee on National Security" available at <http://idmalbania.org/sites/default/files/publications/KPS%20EN.pdf>. Accessed May 2012.

⁸ USAID CSO Sustainability Index 2011 for Albania reports political pressure against Mjaft! Movement. Namely, this organization was fined on unclear grounds by tax authorities. More information is available in Albania Section Report at http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/. Accessed July 2012.

⁹ Reports available at http://www.unevotoj.org/zgjedhjet09/subindex.php?faqe=pagecontent/show_all_raportet. Accessed July 2012.

easily accessible by citizens), thus making it difficult for civic organizations or other interest groups to plan and file a request to access these meetings on time.

The adoption of a detailed administrative act regulating this procedure is therefore essential. Furthermore, civil society organizations engaged in parliamentary monitoring initiatives (e.g. IDM, MJAFT Movement, Albanian Helsinki Committee, etc.) have urged Parliament to leave the practice of daily permissions for access to plenary sessions and to committees' meetings by issuing periodic (6 months to a year) permissions for civic groups.

Some positive developments are to be noted in 2011 in relation to openness and transparency of the Assembly. Namely, an Order (No. 3/2011) of January 18, 2011 of the Speaker of Parliament dictates the full transcription of meetings of the committees, even though the Regulation requires a summarized report of the minutes. The transcripts of the meetings of the Committees are published immediately upon consent and approval of the Committee. Further, in an attempt to enhance consultation processes with civil society and interest groups, in 2011 an administrative act of the Assembly's General Secretary initiated efforts to establish a database for civil society actors who may be invited by the parliamentary standing committees for the review of draft laws.

While the above measures are a welcome development, further improvements must focus more substantially on concrete steps that lead to sustained and tangible impact in relation to transparency and openness of the Parliament. Eventual improvements in this context must go beyond limits of addressing "information-related shortcomings" and move instead towards a cornerstone for "communication with" broader constituencies.

2.3 Right to Information and Media Legislation

The **LAW ON THE RIGHT OF INFORMATION** was adopted on June 30th 1999 (Law No. 8503) and has not been amended ever since. The law sets out the rules and procedures for public access to official documents, which represents a significant limitation to the concept of "information". After more than a decade of this law's implementation the need to embark on a redefinition of this act has become a necessity in order to respond to the changing legal and developmental reality in the country, contemporary trends of information society and open governance and lastly, to address shortcomings as evidenced in the past decade or so.

Various civil society groups have reported a variety of problems and concerns over the implementation of this act. According to a monitoring exercise by the Albanian Media Institute, published in February 2012, in 39% of cases there was no response provided by the public institutions monitored. In the 61% of cases of returned answers, only 35% of them contained complete information, 12% of them contained only partial information, 39% were negative answers and in 14% of cases the answer was to either divert the request to another institution or give references to a piece of legislation, web site or other documents.¹⁰ The Center for Public Information Issues (CPII) 2010 monitoring reveals that 259 Council of Ministers Decisions (24% of the total approved in 2010) have not been published in the Official Journal.¹¹

Accordingly, in a second attempt to adjust this law so as to better respond to the context and foreseeable dynamics in the country, earlier in 2012 Albanian civil soci-

¹⁰ Monitoring the Access to Public Institutions, Albanian Media Institute, Tirana 2012, pp. 19-22.

¹¹ See http://www.infocip.org/raporti_web2010.pdf. Accessed June 2010.

ety actors requested the adoption of a new law. Some of the changes that the new bill should reflect include:

- a) Clear definition of the right of information in accordance with the Constitution, which will avoid artificial limitations as imposed by the ill-defined term – official documents;
- b) Expansion of the law's subjects by including not only state institutions but also legal actors that are funded by public funds (e.g. various companies that provide services to state agencies);
- c) Allowing up to 10 working days instead of currently 40 for institutions to respond to requests of information
- d) Defining clear and exhaustive criteria on which basis a legal subject can refuse to disclose information.

MEDIA – often referred to as the fourth branch of power – is certainly a sensitive and essential sphere in all modern democracies and therefore the legal and broader socio-economic and political environment conditioning its role in the public interest needs to be carefully approached by decision makers. The latest (2011) EC Progress report on Albania concludes that “progress on improving the legal framework on the media in Albania remains limited” and that “key legislation fostering media freedom has not been adopted and editorial independence continues to be hampered by political and business interests”.¹² In the past two years no significant improvements have been noted in relation to media laws, which still fail to meet some of the main EU standards on media regulation. Accordingly, the conclusion of the detailed EC assess-

ment (Albania Progress Report 2010) appears to be still relevant even two years later.¹³

2.4 Anti-Corruption Legislation

Overall, the anticorruption legal framework relevant for the Parliament and parliamentary work remains the same with only minor improvements in 2012. The High Inspectorate of the Declaration and Audit of Assets (HIDAA) is the responsible state authority acting on the following basic laws:

- Law No. 9049 “On the Declaration and Audit of Assets, Financial Obligations of the Elected and certain Public Officials” (published in the Official Gazette No. 31, May 2003); Amended with law No. 9367 dated 7 April 2005 (published in the Official Journal No. 31 dated 11 May 2005), with law No. 9475 dated 9 February 2006 (published in the Official Journal No. 19 dated 9 March 2006) and with law No. 9529 dated 11 May 2006 (published in the Official Journal No. 56 dated 8 June 2006)
- Law No. 9367 “On the Prevention of Conflict of Interest in the Exercise of Public Functions” (published in the Official Gazette No. 31, May 2005); amended with law No. 9475 dated 9 February 2006 published in the Official Journal No. 19 dated 9 March 2006) and with law No. 9529 dated 11 May 2006 (Published in the Official Journal No. 56 dated 8 June 2006)

Earlier in 2012, Parliament adopted some amendments (Law No. 66/2012) to Law No. 9917, date 19.05.2008 “On the prevention of money laundering and financing of terrorism” (amended), which allow HIDAA to ex-

¹² See Albanian 2011 Progress Report SEC(2011) 1205 final, available online at EC webpage: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/al_rapport_2011_en.pdf. Accessed May 2012.

¹³ “The overall climate for the media needs to be improved by adopting the draft law on audiovisual media services, decriminalising libel and defamation, adopting the digitalisation strategy and increasing transparency of media ownership” [EC Analytical Report SEC(2010) 1335 page 67].

pand their investigation to a broader list of politicians' relatives. However this is considered a modest improvement not least due to the fact that the High Inspectorate is faced also with limited budget as compared to the needs of their investigations.

In addition to the often-repeated calls for improving the legal framework – including the removal of MPs' immunity – inter-institutional cooperation, involving particularly the General Prosecutor, represents another issue of concern. The two institutions have been often involved in reciprocal "finger-pointing" on specific cases brought by the Inspectorate and dismissed by the Prosecution.

The High Inspectorate of the Declaration and Audit of Assets has yet to prove a solid track record of achievements particularly in relation to the control of assets at higher political levels (MPs included). The Supreme Court of the Republic of Albania dismissed the case brought by the General Prosecutor against the former deputy PM and leader of the Socialist Movement for Integration (SMI) Ilir Meta in January 2012.¹⁴ Meanwhile, another case of corruption charges involving another Member of Parliament (Dritan Prifti) is still under trial at this Court.

2.5 Political Party Financing Legislation

Political party financing is regulated with the Electoral Code of Albania (Law No. 10019, date 29.12.2008) and Law No. 8580, date 17.2.2000 "On political parties" as amended. The Electoral Code regulates the financing of the electoral campaign of political parties and other "competing subjects" (e.g. individual independent candidates), by establishing the rules of financing from state and private funds, and by regulating the role of the Central Elec-

tion Committee (CEC) also in relation to management and oversight.¹⁵ On the other hand, Law No. 8580 on Political Parties, refers to the financial and other material means of political parties, by setting the rules regarding the financial and other material sources that facilitate the functioning of various political parties.

Until February 2011, these laws involved different state bodies in charge of the financial auditing. Namely, the Electoral Code entrusted the financial auditing of political parties' electoral campaigns to licensed auditors selected by CEC, while the Law on political parties recognized the authority of the Supreme State Audit. This authority (financial auditing) was unified with the amendments to the Law on Political Parties (Law No. 10374 Date 10.02.2011) by empowering the Central Elections Committee to administer the financial auditing procedure through licensed auditors. In both cases, the subject to auditing procedures involves not only public funds, but also private ones.

The current model of political parties' financial supervision, despite the improvements in terms of transparency of auditing reports,¹⁶ is still considered inefficient. The last OSCE/ODIHR Election Observation report (2011) suggests that "CEC should be given sufficient resources and staff to carry out its responsibilities to oversee implementation of the rules on campaign and party financing."¹⁷ Further efforts are essential in order to improve transparency and overseeing. One such measure was suggested in the OSCE/ODIHR Election Observation Mission Final Report three years ago (Parliamentary Elections 2009): "Con-

¹⁵ These issues are regulated under this Law's Part VII, Financing of elections and electoral campaign (Art. 86 - 92).

¹⁶ Auditing reports of political subjects competing in the May 8th 2011 local elections are available at CEC website. See http://www.cec.org.al/index.php?option=com_content&view=article&id=304:raportet-audit&catid=126&Itemid=313&lang=en. Accessed, June 2012.

¹⁷ See OSCE/ODIHR Election Observation Mission Final Report on Local Government Elections in Albania 2011 available online at <http://www.osce.org/odihr/81649>. Accessed July 2012.

¹⁴ Decision of the Supreme Court of the Republic of Albania date 16 January 2012.

sideration could be given to amending provisions in the Electoral Code related to campaign financing, to provide for declarations of political parties' income and expenditure during the campaign itself and to specify criteria under which the CEC can itself carry out verifications of the financial reports of electoral subjects."¹⁸ The importance of this action was more strongly reiterated in a recent joint Venice Commission and OSCE/ODIHR report: "The Venice Commission and OSCE/ODIHR recommend including in the Code provisions obliging electoral contestants to publish (for example, on their website or through the CEC) their expenses weekly in the campaign period. This would lead to public and media control over the expenditures."¹⁹

The media and various civil society groups' reports argue that political parties are not transparent as regards their financial resources, particularly in relation to the costs and resources of their electoral campaigns. A civil society report monitoring the financial costs of the electoral campaigns of five main political parties during the 2009 General elections reveals significant concerns. Civil society actors have urged for a special law regulating the finances of political parties, their transparency and overseeing them.²⁰ Calls for more transparent electoral campaigns have been addressed by civic watchdog groups also in the last 2011 local elections and further, in the context of electoral reform, but given progress so far, it seems that the general public will still rely on fragmented information revealed by

the media and civil society. A US "open data" initiative recently revealed quite indicative evidence (unknown for the Albanian public) regarding Albanian political parties' expenses. Namely "Foreign Lobbying Influence Tracker" reports that during the period 2009 – 2010 three main Albanian political parties spent approximately US\$357,000 on US lobbyist payments, which is almost half of what the Government of Albania has paid to US lobbyists (US\$825.000) during the same period.²¹

Despite these concerns and calls from civil society actors repeatedly urging for further improvements in this regard, the undergoing Electoral Reform (amending Law No. 10019, date 29.12.2008) seems that will not bring significant results and political party finances are likely to remain only partially transparent.

3. Changes in Parliamentary Practice

The need to ensure "proper functioning" of Parliament has been pointed out by the European Commission as one of the twelve priorities for Albania conditioning further progress in relation to the country's EU bid. Well before the EC's clearly and directly expressed concern (2010) regarding the country's supposedly most important institution, Albanian civil society actors urged political actors to radically change their attitude and to give to Parliament the position it deserves according to the spirit of the Constitution and democratic principles. In the past two decades of transition, the Albanian Parliament has been dominated by the Executive and has almost never proved to materialize Constitution's Article 1/1 declaring Albania a parliamentary democracy.

¹⁸ See OSCE/ODIHR Election Observation Mission Final Report on Parliamentary Elections in Albania 2009 available online at <http://www.osce.org/odihr/elections/albania/38598>. Accessed July 2012.

¹⁹ See page 15 of Joint Opinion No. 641/ 2011 [CDL(2011)093] of Venice Commission and OSCE / ODIHR – Strasbourg, 28 November 2011, available at [http://www.venice.coe.int/docs/2011/CDL\(2011\)093-e.pdf](http://www.venice.coe.int/docs/2011/CDL(2011)093-e.pdf). Accessed July 2012.

²⁰ This monitoring report has been prepared by "Free Thinking Forum" and IDRA with the support of National Endowment for Democracy and OSFA. See "Civil society initiates a new law on political parties financing". Activity report available at http://www.soros.al/Shoqeria_civile_financimin_partive_politike.htm. Accessed July 2012.

²¹ "Foreign Lobbying Influence Tracker" is a joint project of ProPublica and the Sunlight Foundation (USA) which digitizes information that representatives of foreign governments, political parties and government-controlled entities must disclose to the U.S. Justice Department when they seek to influence U.S. policy. The information referred to in this report is available at <http://foreignlobbying.org/country/Albania/>. Accessed July 2012.

As a result of almost five years of continuous pressure by various civil society actors and the media, the country's Assembly has in recent years embarked upon a set of actions responding to civic calls for openness, although still at a snail's pace. The EC's recommendation in 2010, and pressure that has followed accordingly, has certainly played a role as well. Parliamentary political parties established a Parliamentary reform Committee in late 2011, which was aimed at ensuring, among other things, also greater openness and transparency of parliamentary dealings.²²

A number of periodic monitoring initiatives conducted by various Albanian think tanks and civic organizations – MJAFT! Movement, Institute for Democracy and Mediation, Center for Parliamentary Studies, etc. – have brought greater sensitivity among key stakeholders on issues such as access to information, transparency and openness of parliamentary work. Certain positive steps were noted in the past two years, such as the Parliament administration's initiative to establish a database of civil society and other interest groups available for parliamentary standing committees' staff and members. This step – which is still pending finalization – is expected to improve the consultation process within Parliament, the quality of legislation and other important acts being adopted by the Assembly, and contribute to informed parliamentary debate. The publishing of minutes of the standing committees' public meetings represents another positive development that has improved transparency of Parliament and access to information for civic groups, media and the public at large.²³

²² In addition, the Albanian Assembly is being assisted in taking further steps on these issues also by the expertise of a Twinning Project of the Hungarian and French Parliaments.

²³ Although the Rules of Procedure only require summaries of committee sessions (Art. 39.), by order of the Speaker of Parliament no. 3/2011, the minutes are kept verbatim, and are available to the public.

Nevertheless, significant challenges are yet to be addressed particularly as regards the practical implementation of the right of every citizen to participate in plenary sessions or standing committee's meetings. A number of monitoring initiatives have recently reported serious barriers by the Parliament's administration.²⁴ Furthermore, experts at the Albanian Helsinki Committee have urged the Albanian Parliament to lay down detailed rules that prevent abuse by this body's administration and facilitate civil society's access to the Parliamentary sessions and meetings. In addition, experts of the Center for Parliamentary Studies and Open Society Foundation Albania (OSFA) have emphasized the need for regular update and publishing of the agenda of Parliament's plenary sessions and (especially) the agenda of parliamentary standing committees. While this measure will only mark a first step towards greater involvement and improved process of information for interest groups in the work of the Parliament, its impact will be only partial if not coupled with the next measure as proposed by these organizations. Namely, the Parliament must publish the draft laws and other acts under the parliamentary procedure, in order to allow interested parties to be informed on time and, if so desired, to participate in the standing committee's debate.

Addressing the above-presented and also other concerns raised by civil society, the media and even MPs themselves²⁵ will not only lead to the improvement of parliamentary openness but also towards improved perfor-

²⁴ See for instance IDM Monitoring Brief no 1 / 2011 "On the work of the Parliamentary Committee on National Security" available at <http://idmalbania.org/sites/default/files/publications/KPS%20EN.pdf>. Accessed May 2012. Similar concerns are raised also by other civic groups such as MJAFT Movement and the Albanian Helsinki Committee.

²⁵ For instance, speaking at IDM Panel Debate "Challenges to Improve Parliamentary Review" (launching the findings of the Annual Monitoring Report 2011), various MPs stated that "not only interest groups, but often even MPs are informed only one day in advance about the agenda of the National Security Parliamentary Committee meetings, which raises serious concerns about the quality of parliamentary scrutiny".

mance of this important institution in carrying out essential competences such as control and supervision. Given the large number of legislative acts adopted annually by the Parliament, the task of monitoring their implementation and engaging in other supervisory initiatives is particularly difficult. The use of other supervisory instruments, such as written questions or interpellations in the current legislature (2009 – 2013) has only recently improved, which is due particularly to the two-year parliamentary boycott by opposition parties.²⁶

Various civil society monitoring initiatives have reported that the quality of work of standing committees was seriously affected during the two-year parliamentary boycott (2009 – 2011). Looking at the data on the work of an important parliamentary standing committee – that of European Integration (PCEI), an IDM policy brief (2010) reported an average of 1.8 meetings a month (reviewing 1.1 draft legislation) of this committee, where the presence of was limited to 69%, interest groups consulted on one occasion and only one minister (of Justice) appearing at a PCEI hearing.²⁷ Two other monitoring reports of the same Institute a year later reveal that Parliament's performance regarding these indicators remains more or less at same level. Namely, "out of a total of 31 meetings (reviewing 27 draft laws) with an average duration of 60 minutes per meeting, nine meetings of PCEI have been held without the attendance of opposition MPs (February – July 2011 period), where the attendance of two MPs is rather problematic (absent in roughly 40% of PCI meetings).²⁸ The second

IDM monitoring report focusing on the 2011 performance of the Parliamentary Committee of National Security (PCNS) suggests that "engagement of individual PCNS members in discussions was limited during the first half of the year. This situation changed considerably during September – December 2011 at the time the opposition returned to Parliament and attended PCNS proceedings regularly."²⁹ Analyzing the minutes of the meetings during 2010 of two most active Standing Parliamentary Committees – on legal affairs and on economy and finance – it becomes clear that Parliament has still a long way to go in terms of public consultations with interest groups.³⁰

Financial transparency of the Parliament represents another serious issue that has not been addressed and has followed for years a relatively closed practice for the public and interested stakeholders. While a number of non-state actors have attempted to engage more actively in monitoring of financial / budget transparency of state institutions (Parliament and line ministries) the latter have often refused to disclose information. Quite symptomatically, the "Monitoring of the process of adoption of the state budget" report of the Open Society Foundation for Albania (OSFA, 2012) underlines that "non-state actors have on no occasion been involved in any of the standing committees' meetings that have reviewed the state 2012 budget".³¹

²⁶ The use of written questions by MPs is limited to an approximate average of 140 per year, which corresponds to an average of one question per MP per year.

²⁷ See IDM Policy Brief no 5/2010 "Three steps to improve parliamentary dealings on EU accession", available at http://idmalbania.org/sites/default/files/publications/IDM%20Policy%20brief%20no5_2010_CESA_ENG.pdf. Accessed May 2012.

²⁸ See "IDM 2011 Monitoring report on the Activity of the Parliamentary Committee of European Integration" at http://idmalbania.org/sites/default/files/publications/PCNS%20Monitoring%202011%20FINAL_ENG_1.pdf. Accessed May 2012.

²⁹ See "IDM 2011 Monitoring report on the Activity of the Parliamentary Committee on National Security" available at http://idmalbania.org/sites/default/files/publications/PCNS%20Monitoring%202011%20FINAL_ENG_1.pdf. Accessed May 2012.

³⁰ Namely, these two committees have held approximately 160 meetings, and no interest group was ever involved in the discussions on over 100 draft laws reviewed in these meetings. Civil society actors were involved in only two meetings of the Standing committee on legal affairs. For additional details, see minutes of Parliamentary committee of economy and finance available at http://www.parlament.al/web/Procesverbalet_10056_1.php and minutes of Parliamentary committee on legal affairs, available at http://www.parlament.al/web/Procesverbalet_10044_1.php. Accessed June 2012.

³¹ See "Monitoring of the process of adoption of the state budget" (OSFA 2012) available online at <http://www.soros.al/2010/foto/uploads/File/FINAL%20ProjektBuxheti%202012%20-%20Roli%20i%20Kuvendit%20OSFA.pdf>. Accessed July 2012.

Hence, the Albanian Parliament's transparency has not gone further than "information regarding MPs' salaries or lack of resources for standing committees' supervisory functions and outsourcing of expertise".

4. Conclusions and Recommendations

The Parliament of Albania is still edging towards the design and adoption of a comprehensive reform that will substantially and irreversibly improve transparency, accountability and openness of this institution's work towards the electorate and the broader public. Looking retrospectively at the various reforming attempts, current and past adjustments of the legal framework and overall performance with regard to these benchmarks, it becomes clear that **the "missing value" and change is not due to circumstantial factors such as (lack of) expertise and know-how**. Rather, the straightforward message that citizens, civil society, media and other stakeholders were delivered after each of such attempts is that, beyond any doubt, it is **a matter of political will** that the main political parties (socialists and democrats) must demonstrate. The lack of such political will has actually led to a quite controversial truth – on one hand, Parliamentary work is transparent enough to give the message that it cannot fully assume its role and competencies *vis a vis* the Executive, as recognized in the constitution; and yet by the same lack of political will, the Parliament is an institution where transparency, accountability and openness are still "in the making".

As the ruling democrats and opposition socialist party launched in late 2011 a Parliamentary reform that would "ensure the proper functioning of Parliament" with quite high expectations among the general public regarding the possibility of restoring a minimum standard of Parliament's accountability and its supervisory role, six months later, progress is hostage to the lack of consensus. Most significantly, expectations have been reduced to the minimum as shortsighted "political interests" prevail over the EU accession agenda and **substantive democracy-building** reforms.

Acting on accountability and openness is only one, and yet, the most vital set of reforms which will transform Parliament's profile and performance into one that fully reflects the constitutional concept of "parliamentary democracy". The critical analysis elaborated in the previous sections on the legal framework and practice of parliamentary dealings in view of transparency, public access, accountability and ultimately in relation to improving the performance of the Parliament's core functions and duties suggests additionally the possible alternatives supported with concrete evidence (generated by various civic and other actors) and best practices that are compliant with the Albanian legal and political context.

As the Albanian civil society actors are decisively reluctant to "tick" the box of the EC's 12 priorities for Albania as long as political actors continue to ignore substantial concerns over Parliament's openness and accountability, it is high time for political actors to embark on a meaningful consultation process driven by a substantive democracy building vision, rather than shortsighted political interests.

Bosnia and Herzegovina: 'Closed' Politics in 'Open' Parliamentarism

Adis ARAPOVIC

Government never gives in without request.

Frederic Douglass (1849)

Introduction: Powerless Parliamentarism

This work represents an analytical and critical review of the condition and changes in legislative and practical context of parliamentary responsibility and transparency in Bosnia and Herzegovina, in the period from the 2010 General Elections until mid-2012.

In a political-legal sense Bosnia and Herzegovina (B&H) is *sui generis*, unique in the world. The current political system of B&H has stemmed from the so called 'Dayton Peace Agreement' (together with the Constitution of B&H as its addendum), which was signed in 1995, as a package of political agreements of conflicting parties in B&H, with the aim of stopping war, reconstruction of constitutional order and consolidation of parliamentary democracy.

Key features of the political-legal framework in B&H are that it is an extremely complex, decentralized, hybrid regime³² which combines elements of a federalist and republican system of governance (with a key role of the parliament), that it has asymmetrically integrated both a consociative and liberal-democratic mechanism of rule, that it is asymmetric also at the lower level of governance [besides the two entities from which B&H is made up, one of them (Federation of B&H) is made up of 10 cantons (as separate political-legal entities) and municipalities as local self-governance, and the other (Republic

of Srpska) is only made up of municipalities, without cantons]. State, entity and cantonal level have their own legislative (parliamentary), executive (governmental) and judicial powers. Dominant features of the political election system of B&H are sovereignty of ethnic collectivities, ethnic parities and ethnic proportionality, as its consociative attributes, and sporadically represented elements of civic-liberal order.

Out of the four of Lijphart's key elements of consociational democracy, in B&H, to a larger or smaller extent, are all present: large coalition, proportionality, mutual veto and segmented autonomy.

It is precisely the Parliamentary Assembly of B&H (Parliament), as the highest legislative body in the country, which demonstrates the first three elements. The parliament is bicameral and made up of two houses, the lower, House of Representatives, which has 42 places (28 reserved for representatives of one, and 14 from the other entity), and - higher, House of People, which is made up of 15 places [5 reserved for every 'constitutive' nation (Bosniak, Serbs, and Croats) but not for representatives of other nations, national minorities and neuter (or non-aligned)]. All decisions must be confirmed in both houses of Parliament.

Parliamentary (or jurisdiction) defined by the Constitution, is to enact and interpret the laws, approve the state budget, confirm appointments of the Council of Ministers (state

³² *Nations in Transit*, Freedom House Report, <http://www.freedomhouse.org/reports>

quasi-Government), give conformity for ratification of international agreements, etc. Formally, Parliament is the highest political body in the country.

Decisions can be made only if concurrently simple majority is ensured and so called 'entity third' in the House of Representatives (in which parliamentarians are chosen directly in elections according to the entity formula of distribution of mandates), or third of votes from every entity, which in the last few years has metastasized into an entity-ethnic veto-instrument in the House of Representatives, nominally civic house of Parliament. Also, in the House of People, in which delegates are elected from entity parliaments and represent primarily national/ethnic groups (Bosnjak, Serbs, and Croats), where 5 Bosnjak and 5 Croats are elected from Federation of B&H, and 5 Serbs from Republic of Srpska, a simple overall majority as well as a simple majority in each entity club has to be ensured. An ethnic club, by majority of its votes, can pronounce any decision as harmful to the 'vital national interest' and, by this kind of veto of higher rank, block every decision until the ruling of the Constitutional Court, which can overrule or legitimize it.

Even without the insight into the complexity of the election system, which is based on the segmented election units, with the aim of guaranteeing proportionality and protection from majorization, it is obvious that broader coalition is required for the effective functioning of the Parliament, which would ensure all a necessary qualifying majority for decision making. Besides this, intention towards ethnic proportionality is pronounced and double ethnic veto is ensured, which, due to the ethnic structure of the population in entities, transforms entity veto in the House of Representatives into uni-ethnic veto (mainly from the Republic of Srpska), besides the ethnic veto that exists in the House of People. Due

to this, only on the example of parliamentary practice, three out of four Lijphart's congruence instruments are exhibited: large coalition, proportionality and mutual veto, while the remaining instrument – autonomy of segments, is most pronounced through a great degree of decentralization, and pronounced autonomy of the entities and the canton, and to the disadvantage of the state power and local self-governance.

The above-mentioned consociational instruments have determined a relatively low level of real political power of the Parliament, enabling a party-dominated model of governance with an ethnic ideological signature, in which Parliament is the place of legitimization of the previously made decisions in the parties or between them. Instrumentalization of the Parliament as a place of blocking of decisions which are incompatible with the unilateral interest of the ruling political parties (or less often, as voting machinery for interests previously agreed upon at the inter-party level) has resulted in extremely low effectiveness of the Parliament. This is especially proven through independent civic monitoring of the working of the governments and parliaments carried out by the Centers for Civic Initiatives (CCI)³³, which has for its outcome a negative perception of the public about the role and the power of the Parliament in overall political discourse. For example, during the year of 2011, Parliament enacted only 12 laws, while concurrently rejecting 15 laws.³⁴ Dramatically low effectiveness and, through this, low responsibility of the Parliament, is a constant state in the long term, due to which, Parliament is branded in the public and media reporting as well as through judgments of analysts much more often as a cause of a problem, and not as part of the solution in the context of po-

³³ <http://www.cci.ba>

³⁴ Ibid: Annual Report on Parliament of B&H, 2011, pg. 5.

litical responsibility and transparency. Laws and decisions which are nevertheless made in Parliament, are often a reflection of strong pressure from the EU convergence process, and the same have often not taken into account all the specifics of B&H, and often do not have the support of user groups or mass participation in their making.

The sole engagement of political elites by generation of conflicts, insisting on nationalistic and similar meta-questions, the lack of constructive dialog and cooperation between position and opposition, as well as the interference of political parties in controlled chaos, has for an aim the reduction of responsibility of state bodies and also Parliament, while certain extremely important decisions are made without insight by the public, in cases of complementary interests of political elites. In this way question of transparency of Parliament in the sphere of legislative and regulative, spills into the sphere of media manipulation and spinning, with the aim of using abstract conflict and maximalist political interests to cover for the absence of expected results, responsibility and transparency.

In addition, the number of 42 members in the House of Representatives is insufficient to fulfill all of the tasks of the Parliament in the domestic and international arenas, so that one of the serious problems in the context of responsibility is real capacity, and through it, the influence of Parliament on political dynamics. Also, even though the ownership of the mandate is entrusted to the elected parliamentarian, and not to the political party which nominates him/her, absence of democracy and strict party discipline do not leave much space for independence in the work, voting or public appearances of parliamentarians.

Finally, even though equally important, the role of the 'international community', formalized through the Office of High Repre-

sentative (OHR) is the biggest anomaly of the political system of B&H. OHR has instruments of legislative, executive and judicial powers, which can overturn any decision of the domestic governance, can replace any political official, and on top of everything else has sovereignty in interpreting the Constitution, which places B&H in countries of embryonic democracy or even political protectorates, which directly degrades political responsibility of domestic legislative bodies, primarily of the Parliament of B&H. Presence of OHR as a quasi-institutionalized political subject, with the existing capacity and jurisdiction which, in (oran evident way,) minimizes state sovereignty, is directly opposed to expectations or requests for political responsibility, transparency and openness of the Parliament.

Legislative Framework: Potemkin's Parliamentary Democracy

Phenomenology of political responsibility stems partly from the very theory of the governance, which is simultaneously understood as the basic category of social theory, a central concept in sociology of politics and one of the important, and maybe even most important subjects of political science. Generally, under the governance we assume an asymmetric, socially mutual relationship between giving of orders and obedience.

The concept of responsibility is most often interpreted in two ways, as responsibility in narrow terms (Accountability) and as responsibility in broader terms, which assumes behavior in a rational, astute and morally justified way, in cases when the person is under pressure or in a position to behave differently (Heywood, 2002:590). For example, a government can call itself as 'responsible' if it withstands the election pressures and risks unpopularity, by carrying out politics which is created in a manner which responds to the long term public interests. In the narrower

sense, responsibility also means 'being accountable' to some higher instance to which an individual or institution is subordinated. For example, a government is 'responsible' if it asks questions of and criticizes parliament, which has power to change it or replace it. This meaning of responsibility contains an important moral component, which assumes that the government is willing to accept the guilt for the outcomes of its acts.

Responsibility assumes that obligations, (or jurisdiction) and functions of institutions and bodies are defined so that their work can be successfully overseen and assessed. This is why responsibility can only function in the framework of constitutionalism and respecting of the rules (Heywood, 2002:725).

In democratic, constitutional, pluralistic social orders, government and responsibility are inseparable concepts, where various forms of responsibility are assumed: constitutional and legislative, institutional and professional, political and individual. The legal-political order of every state is based on loyalty to the constitution and positive legal norms, so that constitutional and legal responsibility are hierarchically the greatest instance of responsibility, which is expected from all members of a state, without regard to their political or social function. Institutional and professional responsibility assumes loyalty to all acts and hierarchy of organization in whose framework one acts, and which at the same time contains both constitutional and legal responsibility (unless an organization is formed and/or acts illegally), as well as responsibility towards an institution, its legal norms and hierarchy of subordination. Finally, political responsibility stems from political delegation into positions of political representation in parliaments, governments, state agencies and companies. Political responsibility is a heterogeneous and complex combination of the

above-mentioned types of responsibility with a pronounced characteristic of responsibility to one's own political party or electorate, and the public, especially if the mandate is obtained through direct elections.

In its well known formulation from Gettysburg, that democracy is 'government of the people, by the people, for the people', Abraham Lincoln gave a contemporary meaning to democracy and political responsibility, from his political position. Nominally, the majority of parliamentary democracies govern themselves by this axiom, so that their constitutions and laws integrate the norms which will ensure and protect the governance in the interest of the citizens.

The constitution of B&H only descriptively and declaratively treats the role and 'openness' of the Parliament in a legal-political order. In the last few years there have been no constitutional or legislative corrections, court judgments or referendums which would have ensured a higher level of transparency or openness of the Parliament. Questions of access, openness and transparency in the working of Parliament are governed by the Standing Orders which also have not gone through content corrections in the recent past, even though for the last four years discussions on the final format of the Corrections and Additions to the Standing Orders have been taking place.

The constitution of B&H, rigidly conominated from corrections by complicated procedures and political instability in the last 16 years have undergone only one amendment and with the aim of ending international supervision over one district-territory (which does not belong to either of the entities) and that is the city of Brcko. Even though the judgment by the European Court for Human Rights, in the case of 'Sejdic & Finci vs. Bosnia and Herzegovina' in the year of 2009, established that certain provisions of the constitu-

tion (and indirectly of the election system) are discriminatory and opposed to the European Conventions on Protection of Human Rights, even this court judgment ensured neither cosmetic nor fundamental reforms of the constitution of B&H.

Nevertheless, positive advancements have been made in a few segments. First, all assemblies of parliamentary houses have been opened to the public, so that all interested addresses, with accreditation can attend the sessions. Accreditation for the media is simplified so that media following of the work of Parliament is at an enviable level. Even though there are no live TV airings of the sessions, the web page of Parliament offers live-streaming of sessions, and state television and radio have special weekly programs on the work of the Parliament. The web page of Parliament offers the majority of relevant information including all important information on the work of Parliament, parliamentarians, the content of a session, overall results of voting, transcripts of the sessions, audio recordings, stenograph, etc., while an update of the webpage is performed daily and is of enviable quality. On the other hand, the public does not have insight into the individual voting of parliamentarians. Also, in the last few years over 10,000 guests have visited the Parliament building (mostly students and pupils) through the program of 'Open Parliament' and got introduced to its basic functions, and more than half of the guests have met and talked to members of both houses of Parliament. Despite this, an average citizen does not see Parliament as an accessible place of realization or protection of his/her own interests, but as an arena of fabricated political competition of representatives who are renegades of people.

Secondly, a few organizations of civic society have been granted continuous presence to all sessions of the Parliament with broad

monitoring of their work, results, effectiveness, efficiency, openness and responsibility, with periodic analysis and reporting on the progress, which has mainly received positive comments by parliamentarians and the broader support of the public and media.

Thirdly, access to information is mainly protected by a relatively favorable Law on Free Access to Information, even though its application in the full capacity is sporadically obtruded, less often from a political or corruptive source but more often due to bureaucratic reasons of under capacity, slow and often irresponsible administration. This Law was innovated in 2011 with the aim of improving existing procedures, and overcoming certain deficiencies in existing provisions, which have been identified in the process of current law implementations, and which would enable its consistent implementation.

Some other legal mechanisms, such as the Law on Conflict of Interest, represent a relatively positive legislative instrument for increasing of the level of responsibility and transparency of Parliament, even though Central Election Commission (CEC), as direct supervisor, does not check the so-called 'personal cards' of the parliamentarians but only acts upon receipt of notifications with justified suspicion of conflict of interest. There exists an unproportional number of argumented media publications or findings of NGOs on cases of conflict of interest, in contrast to sanctions given out by authorized bodies, which points to the lack of capacity of the CEC for consistent Law implementation, and yet again of absence of the political responsibility, even in certain situations when conflict of interest has obviously been realized. This Law has also undergone smaller changes in the beginning of 2012 in the aspect of liberalization of participation in company ownership for candidates and elected members of the Parliament. By mid-2012

two additional suggestions (by two different proposers) of changes and additions to the Law on conflict of interest have started parliamentary procedure, and have been evaluated negatively and been seen to be in the interest of political elites. Around these propositions serious public debate has ensued.

Generally, the fight against corruption is one of the biggest challenges of Bosnian society and tasks of political establishment. For a period of a few years B&H has not recorded any positive advancement in international ratings on the fight against corruption.³⁵ Besides the adoption of a Strategy on the Fight Against Corruption in 2009, and the forming of an anti-corruption Agency (which still does not work in its full capacity), there have been no credible advancements in anti-corruption action, either in a legislative or in a practical sense. In Parliament, in the last few years, on a few occasions, there was not enough political will for the adoption of Laws on the Disappropriation of Illegally Obtained Assets, primarily due to question of (or jurisdiction) of state agencies in this area. However, entities have made advancements in the adoption of (or entity level) laws in this area. In this context, it is not rare that members of the Parliament are brought into connection with certain affairs of corruption, even though this is less often than individuals from executive branches of the government.

Financing of political parties is governed by a special law, and its users in Parliament are party clubs, or individual members of parliament, while the general principle is to proportionally finance only those parties/coalitions/independent candidates which have their representatives in bodies with legislative powers across state and municipal levels. By mid-2012

Parliament had refused changes and additions to the Law on Financing of Political Parties, suggested by the ad-hoc parliamentary committee for reform of election legislation, as there was no support from smaller parties from the ruling coalition, but the atmosphere in the public toward these suggestions was negative, as these reforms were in the interest of political elites, and not a move towards more transparent, rational or responsible system.

In principle, CEC is the main supervisor of the actions of political parties, including their financial management. However, sanctions meant for cases of law breaking which deal with financial actions of parties are very weak and rarely imposed, which encourages unlawful acting and harms the credibility of the legal order and election system. The existing model of budget financing of political parties, with the clear intention of reduction of corruptive financing of political parties, (or in an environment) of endemic political responsibility and pronounced corruption, has not given the expected results. Despite significant budget (or grants), disproportional budget capacities and economic power of the country (around 0.5% of the budget at all levels, or 15 million EUR per year) cases of illegal actions of political parties are not rare, such as donations from abroad above the allowed limit, misuse of public companies and budget funds for financing of party activities and grounded suspicions of the existence of so called 'black funds' of ruling parties which are filled through malversations in budget allocations, public companies, public purchases, etc. For example, in the year 2009, at the level of municipalities there were transfers to political parties 232% larger than the amount planned by the budget.³⁶ Especially worrying, in the context of the amounts which parties have at their disposal during the

³⁵ *Corruption Perceptions Index 2011*, Transparency International: http://www.transparency.org/whatwedo/pub/corruption_perceptions_index_2011,

³⁶ <http://ti-bih.org/4137/koliko-kostaju-politicke-partije>, Transparency international.

year, is that audit of financing of political parties does not include their expenditure side, so that the public does not have an insight into the spending of public money entrusted to political parties.

Political influences on CEC are pronounced, and in the last two years opened politization of appointments into membership of this crown election body has been demonstrated. Bearing in mind that these appointments are made by the highest legislative organ - the Parliament of B&H, and after politization and party monopolizing has overtaken almost all sectors, from public companies, healthcare, education, media, etc., attempts at political control over CEC are the peak of party dominated manner of the leading political parties in B&H. Political control over CEC would mean suspension of independence of the highest election body, as politicized CEC means less control over political parties, through which the manner of election of CEC members, its budget, (or jurisdiction) and capacities become one of the crucial questions in the process of democratic consolidation.

The Election Law of B&H is one of the key legislative mechanisms which gives even a bare framework for political responsibility and transparencies of elected and appointed officials. Analysis which was conducted at the beginning of 2012 found that the election system of B&H, and primarily the Election Law of B&H, contains over 100 fundamental, conceptual or smaller technical and operational anomalies.³⁷ Some of these fundamental anomalies are their discriminatory provisions favoring majority ethnic groups so called 'constitutive nations' and to the detriment of human and political rights of national minorities and neutral citizens. In other words, political rights are reduced to ethnic

rights. According to existing solutions, it is not citizens that vote in elections, but nations, and those chosen in elections are not citizens but members of national congregations or representatives of the territory, often ethnically predisposed. Such a conceptual matrix, conserves the condition of war divisions, constitutes geographic-ethnic paradigms, stimulates apartheid and regresses the democratic consolidation of state and society.

In spite of the imperative of the decision of the European Court for Human Rights in the case of 'Sejdic & Finci vs. Bosnia and Herzegovina' which indirectly treats the Election law, and in spite of an array of serious political crises generated by loopholes in election legislation, since the last parliamentary election in 2010, necessary interventions in Election Law have not taken place, nor have any steps forward been made towards more transparent and responsible politics or parliamentarism. After more than half a year since the forming of two ad-hoc parliamentary commissions, one for the implementation of the court ruling in the case of 'Sejdic & Finci' and the other one for reform of election legislation, the same has neither harmonized nor suggested to the Parliament acceptable corrections to election legislation. Because of this, the Election Law of B&H has stayed in the position of a catalyst of political tensions and the maintaining of a discriminatory status quo.

Finally, the role of public Radio and TV broadcasters is a very sensitive political question in B&H. The country has one state and two entity public broadcasters, whose supervisors are precisely state and entity Parliaments, respectively. In the last two years there have been no corrections of legislation which treat the role of media in the context of transparency and responsibility of Parliament. Even though direct airing of plenary sessions of both houses of the Parliament was ordered 5

³⁷ Arapović, A. (2012): *Izborni sistem BiH: kritička analiza i kompilacija izbornog zakonodavstva*, CCI, Tuzla.

years ago by a parliamentary decision, it has not materialized, due to various reasons, so that the Parliament of B&H is the only one in the region, whose plenary sessions are not aired directly through the public TV service. Political influence on public media is very pronounced, and appointments of the board of directors in parliaments indirectly influence the appointments of management, program directors, and editorial politics. In the last few years, there has been an increase of political influence or even control of public broadcasters, by political parties or the ruling regime, especially at entity level, which has been diagnosed and negatively connoted in the Progress Reports of the European Commission for B&H in the years 2010 and 2011.³⁸

In conclusion, B&H in a normative sense on the whole does not lag behind the countries of the region and in certain segments relevant laws are completely harmonized with the highest norms of the EU. The role, jurisdiction and responsibility of the Parliament of B&H is primarily defined by the Constitution, election legislation and parliamentary Standing Orders, where, even though certain anomalies, loopholes and deficiencies exist, there is sufficient room for search and demonstration of political responsibility and transparency. However, in practice, axioms of political responsibility and transparency are subjected to obstructions and attacks by political elites in their everyday practices. Certain specific instruments of political openness, transparency and responsibility, such as public discussions, offices for public access, continuous field work in the election base, internet tools of communication with citizens, etc., are neglected in a significant manner. Public hearings are often conducted for formal reasons, without broad citizen participation, and re-

sponsibility sessions or public meetings in the Parliament are a true rarity. Parliament is passivized to a great extent, so that for days there are no sessions of houses or commissions, and one can find only a few parliamentarians in their offices. The control and legislative role of the Parliament is in reality formalized, as all decisions which have prior agreement at inter-party level pass in express fashion through Parliament without meaningful debate, dispute or conflicting of arguments, while those decisions that do not have this prior agreement rarely enter parliamentary procedure or become refused in Parliament.

The divide between relatively favorable contemporary legislation and practice of pre-political society is obvious, in which acting for the common good, political, institution and individual responsibility and openness and transparency in work are exceptions rather than rules of acting of Parliament and parliamentarians. This 'Potemkin's Parliamentarism' of sorts is a common characteristic of post-socialist regimes, burdened by transitional narratives, and when we add to this post-conflict paradigm dominant in B&H, together with incomplete legal-political order, then slow consolidation of parliamentary democracy in B&H is quite understandable, even though not justified.

What has been said up to now would lead one to believe that participacy is the main feature of the governance in B&H. Participacy is actually a dominant form of governance in the countries of the so-called post-socialist transition, but the same is also the form of perverting the democratic ethos. In this (or environment) democratic institutions exist, but they are only a legal framework, decor and (or environment) for the practice of party dominated politics (Zgodic, 2009:383). Once we add the dominant political role of the OHR to this, only then is the semblance of democratic order and parliamentarism in B&H complete.

³⁸ <http://europa.ba/Default.aspx?id=13&lang=BS>, European Union Delegation in B&H.

Changes in Practice: Stable Stagnation

Regarding the position of international non-governmental organizations, B&H is seen as one of the weakest in their rankings in the region in the context of democratic improve-

ment. In the chart below we can see the positive trend of developments in the period of 2002-2006, after which comes the period of stagnation and regression in democratic developments. A lower grade assumes a lower degree of democratic developments.

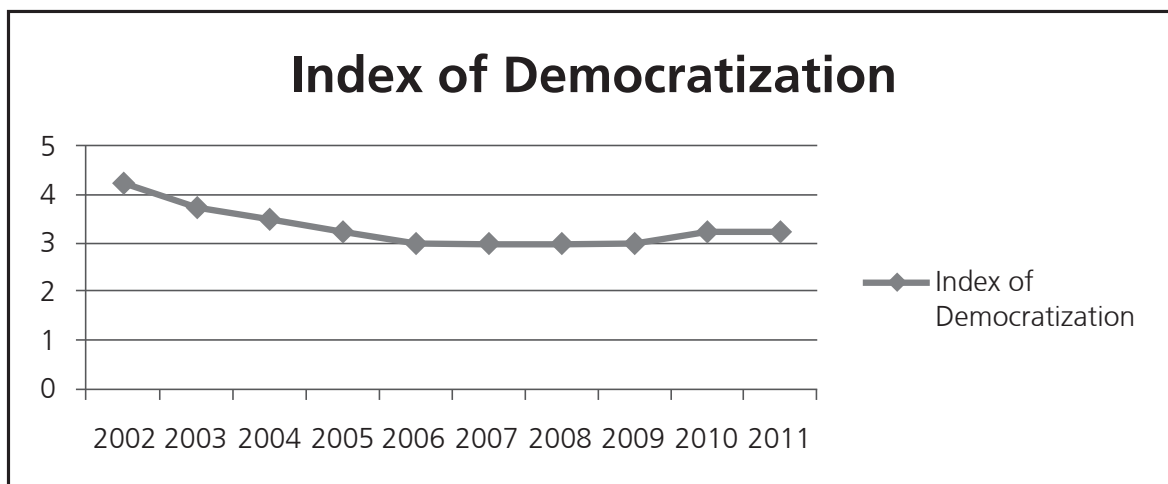


Chart 1: Index of democratic progress of Bosnia and Herzegovina³⁹

Also, reports of relevant research show that 'B&H has gone through a period of stagnation, that existing mechanisms for fighting against corruption are inadequately used, corruption at the highest levels of government and politics is not processed, inquiries neither result in charges nor court rulings, and law implementation on conflict of interest as well as in public purchases is inadequate at all levels of the government.⁴⁰

The serious political crisis which has ensued after the General Elections of 2010, when Parliament was constituted only after nine months, and state government only after 16 months of holding of elections, has broadened the horizons of political irresponsibility and 'closeness' of political centers of power. Anomalies of the election system, lack of political culture, provisorium of parliamentarism,

the dominant role of the OHR as well as an array of other reasons, have contributed towards years of stagnation and an inability to achieve political stabilization of Bosnia and Herzegovina. The causes and consequences of the current 'stable stagnation' are complex.

Firstly, political elites, that is, political parties in position and opposition, have contaminated public discourse through the politicizing of all public spheres, so that even honest attempts at demonstration of political responsibility on behalf of individuals or parties from a position of power or searching for the same on behalf of opposition, become criticized as new tactical politicization, demagoguery and populism. Secondly, due to the politicization of media space, insisting on political responsibility on behalf of the media is often reduced to selected political opponents or opposed ideologies, or is interpreted in such a manner by competitors or some of the public. Consumerism and political bias has passivized the majority of the academic elite, which al-

³⁹ <http://www.freedomhouse.org/report/nations-transit/nations-transit-2012>, Freedom House.

⁴⁰ *Monitoring ispunjenosti međunarodnih i evropskih obaveza Bosne i Hercegovine u oblasti borbe protiv korupcije*, Transparency International – Open Society Fund, 2012.

ready for two decades has not found a way to impose itself as a political factor and significantly contribute towards the correction of public policies and practices. Major political processes and important political decisions are being made without credible participation of intelligence, which results in twofold damage: both to academic elites and to the society at large. Thirdly, syndicates and similar mass interest groups have been demolished or have stopped being an empowering social force due to transition trends and their place has partly been filled by the interest groups of war veterans and other categories stemming from war, which are considered the most powerful non-party interest groups, and which are often focused solely on particular self-interest: maintaining or broadening of secured privileges for this category, and enlarged participation in overall social transfers and budget (or grants), with which political elites manipulate skillfully.

The character of political reality in B&H is that of fabricated permanent political crisis and inter-party tension, which is then transferred into the media and entire public discourse. In such an (or environment), positive changes in parliamentary practices are entirely missing, especially in the context of transparency and responsibility. Except a few organizations of civic society and rare media, advocacy towards an increased level of political culture is still in its pioneer stages. Even though, after last General Elections, parliamentary majority has been slightly changed, and the relationship of party powers has significantly changed, everyday practices prove that a negative matrix of irresponsibility and only formal 'openness' continues.

Concurrently (or At the same time), overall income of parliamentarians ranges from 2,500 to 3,000 EUR per month, which means that they can earn over 150,000 EUR in one

four year mandate, which a large portion of B&H citizens can not achieve in their entire working lives (in comparison with an average B&H monthly salary of 400 EUR, an average B&H citizen would have to work over 30 years in order to achieve the amount mentioned).

When we take all of the above into account, an utmost negative stand in the public about the function, work, results, effectiveness, responsibility and transparency of the Parliament are a dominant characteristic of the media and public discourse overall. Reporting on the monitoring of Parliament which is done by organizations of civic society receives significant media space, and the media themselves dedicate significant attention towards critical examinations of the working of Parliament. However, due to previously described reasons, the proportionally positive reaction of the Parliament and parliamentarians is missing, primarily due to the fact that their position cannot be significantly endangered by public criticism, due to the character of political discourse and the election system.

Even though there were no specialized surveys of public opinion which would have tested the perception of the public about Parliament in the last two years, or research on media treatment of the Parliament, general opinions of public discourse, civic society and media about the Parliament are not positive, and with government change after the general elections in 2010, positive changes in practices have not occurred, which would have contributed towards optimization of these stands.

Conclusions and Recommendations: Credible Democratization

In conclusion, viewed cumulatively, we can synthesize the framework according to which level of political responsibility and transparency of parliament is in direct, causal relationship

with the overall level of the political culture of society, conceptual characteristics of the political and election system, the degree of democratization of political parties, rule of law, freedom of speech, independence of media, corrective capacity of civic society, and normative framework of acting of parliament itself.

In the fashion that political theory understands conjuncture politics as 'that politics which is directed towards the continuous increase of overall social development' (Nohlen, 1996:170), in that same fashion we should expect and search for a continuous increase of overall (political) responsibility and transparency.

Political responsibility, due to this, implies overall sovereignty of state and citizens, so that free individuals and institutions could, by their free will and legal independence, expose their own responsibility. Also, political responsibility assumes concurrent and complementary democratization of political parties, institutions and the normative-legal sphere of the state, since without concurrent and mutual democratization of these three pillars of democratic order, political responsibility would be reduced or partial. Finally, political responsibility asks for an active role of civic society as supervisor of public policy and practice, as in accordance with well the known observation of Frederic Douglass that 'government never gives in without request', political responsibility should not be expected but requested.

For correct understanding and adequate treatment of political responsibility in Bosnia and Herzegovina, we would take into account following political axioms:

- unsolved national questions, and almost permanent political crisis, in interference with post-conflict and transitional models, and unfinished legal-political architecture of state, enable and/or slow down the typical process of development of political responsibility in B&H;
- politically passivized, ideologically (or unprofiled), ethnically tripartite public opinion is ambivalent towards the absence of social progress and political responsibility due to political and mass media manipulation;
- the political and election system is structurally such that promotes ethnic, militarized and collective political discourse homogenizing ethnic groups and leaving unlimited space for party dominated politics, corruption, social stratification, and political irresponsibility of political elites and elected representatives;
- a quasi-institutionalized protectorate in the form of the OHR, reduces the sovereignty of state and institutions, which determines relativization of institutional, political, and individual responsibility on behalf of political elites;
- the role of the Parliament of B&H in this (or environment) is minimized and passivized, and a consequence of this is escalation of political irresponsibility at the highest level, absence of civic participation, and closeness of political elites in the creation and execution of public policy despite a relatively favorable legislative environment.

Finally, in order to achieve a satisfactory level of political responsibility and transparency of Parliament and parliaments in B&H, it is necessary to fulfill some preconditions:

- Domestic institutions of legislative, executive and judicial powers have to have full sovereignty in fulfilling their socio-political functions, where the current (or jurisdiction) of the OHR has to be transferred to adequate instances of domestic government bodies, by which political power will be returned to institutions of the system, and party dominated politics, will slowly

- be replaced by consolidated representative democracy and rule of law.
- The constitutional framework and election system have to be redefined in a significant fashion in order to ensure normative preconditions for individual sovereignty of citizens (as opposed to current sovereignty of ethnic groups) and individual responsibility of political functionaries (as opposed to current collective, most often nationally predisposed, (ir)responsibility).
 - Through reform of the election system a normative framework for reduction of ethnicizing, militizing and collectivizing of political public discourse must be ensured, in such a way that entity and ethnic divisions do not become a basis of political contest, with the aim of covering political irresponsibility and lack of transparency.
 - A legal framework which treats imperatives of responsibility and transparency of government and public politics, even though relatively favorable, can and should be improved primarily with the aim of more successful implementation, which has shown itself as a key precondition in achievement of these imperatives.
 - Standing Orders of Parliament of B&H should be redefined, innovated and modernized, in order to ensure a much higher level of institutional and individual responsibility of Parliament and parliamentarians, a significantly higher level of participation of opposition and non-parliamentary actors, a higher level of transparency of plenary and, especially, committee work, and insight of the public into all segments of the policy making process, including insight into the individual voting of parliamentarians.
 - Ultimately, a full legislative and control function of Parliament should be ensured, especially in the process of EU integration, and the image of the Parliament should be optimized in the public as that of a responsible, open and transparent institution.
- Therefore, we confirm the hypothesis that the political responsibility and transparency of parliaments in B&H is in the function of democratization, and *vice versa*, as in the absence of political responsibility, civic participation and transparency, democratization can be significantly slowed, reduced or even blocked. Due to this, interaction and dissemination of engaged research, informative and advocacy campaigns is of utmost importance and they should all have one unique imperative: individualization and an increase in level of responsibility, effectiveness and transparency of the legislative apparatus. Their primary direction of acting should be advocacy of 'good governance': responsible, transparent and participatory governance.

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Transparency and Accountability of Parliament in post-transition Bulgaria

Daniel Smilov

Ruzha Smilova

The National Assembly in the Bulgarian Constitutional Model

The role of Parliament is determined by the new Bulgarian Constitution, adopted on July 12, 1991, after heated debates in the Grand National Assembly - the constituent representative organ, supposed to establish the legal basis of the transition from authoritarian rule to a democratic system of government. According to article 1.1 of the Constitution, Bulgaria is a republic with a parliamentary form of government. The meaning of this provision is to underline the outstanding role of the assembly in the political process and to suggest that it will be the main instrument for expressing the general will of the people, the only holder of sovereignty in the State: "All State power derives from the people. It is exercised by them directly or through the bodies set by this Constitution." (Art. 1.2). To ensure the most legitimate "delegation" of the sovereign powers from the people to the assembly, after an experiment with a mixed system, the Bulgarian electoral law settled firmly on a purely proportional model with a four per cent rationalizing threshold.⁴¹

Public Attitudes vis-a-vis Parliament

Bulgaria joined the European Union with one of the lowest levels of popular trust in its representative institutions. It is true that there was not a single significant time period during the transition when the main State institutions enjoyed stable public support. Somewhat par-

adoxically, however, falling confidence in the representative institutions became even more pronounced after the consolidation of the Bulgarian democracy. Especially since 2000, the most repetitive pattern registered in the surveys is the following: an outburst of expectations during the first months after the forming of a new Parliament and government, followed by a collapse in popularity and low levels of trust that persist until the end of the office term. It is important to stress, in this connection, that the attitude towards Parliament is not just negative, but persistently critical. In April 2007 Parliament scored 76% distrust.⁴²

There is also a clear tendency towards a downfall in the voters' turnout, compared with the beginning of the transition - from 90.6% at the first parliamentary elections of the post-totalitarian time in 1990 to 55.76% at the parliamentary elections in 2005. The first elections for Bulgarian representatives in the European Parliament scored the lowest turnout in general elections up to the present - 28%. These are disquieting facts. Disillusionment with democratic politics may have many sources. Parliament being 'closed' and unaccountable to society and citizens is certainly one of them.

In a comparative perspective, Bulgaria stands out as a country characterized by very low levels of trust in parliament and the political parties, although this is a general trend for Central Eastern Europe as a whole:

⁴¹ For a detailed description of the electoral systems applied in Bulgaria since 1990, see Kolarova Romyana, Dimitrov Dimitr, *Electoral Law of Bulgaria*, EECR 1994 2/3.

⁴² Attitude towards Parliament, *Source*: Alpha Research Ltd., Nation-wide representative survey, N=1000, St. error: +/-3.2%

Table 1. Trust in Political Parties/Parliaments (Eurobarometer 76, December 2011)

Country	Trust	Distrust	DK
EU	14/27	81/66	5/7
Bulgaria	14/25	76/66	10/9
Estonia	20/40	75/57	5/3
Romania	8/9	86/83	6/8
Poland	18/25	78/68	6/7
Czech Republic	9/11	88/87	3/2
Slovakia	16/25	81/71	³ /4
Hungary	15/28	80/66	5/6
Greece	5/12	94/86	¹ /2
Austria	30/46	64/47	6/7
Germany	15/42	78/51	7/7
UK	11/24	86/70	3/6

In the following text we will first look for an answer at the constitutional and legal framework level - does it provide sufficient guarantees for an 'open' Parliament, and does it provide sufficient tools for holding our representatives accountable?

Legislative and Institutional Framework for an Open Parliament in Bulgaria

Constitutional Right to Information

The Constitution guarantees the right to opinion as a fundamental human and civil right, which is present in all forms of political liberty and is a precondition for its existence. This right is guaranteed by three articles in the fundamental law (Art. 39, 40 and 41), of

which the right to information and the freedom of the press are of particular interest for the purposes of this report.

The freedom of the press and other mass media is guaranteed in Art. 40, (1): "The press and other mass information media shall be free and shall not be subjected to censorship".

The right to information is protected by Art. 41, which stipulates: "(1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality". (2) "Everyone shall be entitled to obtain information from State bodies and agencies on any matter of legitimate interest to them

which is not a State or official secret and does not affect the rights of others”.

Right to Address Institutions

A further fundamental human and civil right, characterizing the relation of the individual to the state, is guaranteed by Art. 45 of the Bulgarian Constitution. “All citizens shall have the right to lodge complaints, proposals and petitions with State authorities.” This right is crucially important for guaranteeing open and accountable representative institutions. Interestingly, after the adoption of the new Constitution, no new law has been adopted to provide the necessary regulation for the exercise of this right. Rather, the socialist Law on Proposals, Signals, Complaints and Requests from 1980 served this purpose, with just one amendment to fit the post-communist Bulgarian Constitution, introduced in 2000. This old law was repealed altogether in 2006 by the new Administrative Process Code. Its promulgation is an important step forward in developing a more transparent and accountable administration, guided in its work by the democratic principles of accessibility, publicity and transparency. Quite naturally, the right to lodge complaints, constitutionally protected by Art.45, is included in this Code, since this right can be characterized as a procedural precondition for the realization of other fundamental rights and lawful interests of individuals.

The Law on Access to Information

To remedy this, in 1997 several NGOs in the country - the Bulgarian Helsinki Committee, the Program Access to Information (AIP), the Bulgarian media coalition⁴³, and other organizations of journalists, lawyers and others,

started a strong advocacy campaign for the drafting and adopting of a Law on Freedom of Information. As a result of the pressure exerted by civil society, the Law on Access to Public Information was adopted in mid-2000. Yet, in it, very few of the recommendations and critiques resulting from numerous public discussions, round tables, and conferences in the civil society⁴⁴ were taken into account. Nevertheless, although not perfect, the law provided a procedure to be followed by citizens in exercising their constitutionally guaranteed rights.

Most importantly, public information is defined as “all information related to public life in the Republic of Bulgaria which allows citizens to form their own opinion on the activity of the bodies obligated by this law” (Art. 2.1). Access to personal data and information is excluded from the scope of application of this law – though protection of personal information is mentioned among the fundamental principles in exercising the right to freedom of public information (Art. 6.1). The Law does not provide a definition of personal information, however, an issue that is separately regulated by the Law on Personal Data Protection, in force from January 2002⁴⁵. In agreement with the decision of BCC from 1996, the Law on access to public information did not demand from citizens to prove they have a lawful interest in obtaining this information. The other fundamental principles in realizing the right of access to public information are: “openness, reliability and comprehensiveness of the information, guaranteeing equal conditions of access, protection of the right, guaranteeing legality in searching for and obtaining it, defense of personal information and guaranteeing the security of the State and society” (Art. 6.1 of the Law) . Access to

⁴³ CLS sent to all of them the standardized questionnaire, developed within the framework of this project, and they filled it in, providing valuable information for the purposes of this report.

⁴⁴ For a detailed account of the thorny path leading to the adoption of the Law on Access to Public Information, see the report of AIP at http://www.aip-bg.org/pdf/aip_10years.pdf.

⁴⁵ *State Gazette*, № 1, January 4, 2002.

public information can only be limited when the requested information is classified (access to classified information is separately defined and regulated by the Law on the Protection of Classified Information from April 2002⁴⁶) or in case of a State or other official secret, as defined by law (Art. 7.1). This last provision of the law on the limits of access to information has been a constant source of contention, with the grounds for limiting it being constantly challenged by civil society's organizations in the country. Thus a series of recent amendments of the Law introducing further limits to this right were challenged by a wide coalition of NGOs, led by AIP, which has filed a series of opinions and has supported a draft amendment to the Law, better protecting the right of access to information by providing a wider definition of the duties of the State bodies to actively provide information to the public, by widening the list of the duty-bound institutions to include the local branches of the institutions of the central administration and by excluding certain grounds (ex. confidentiality of commercial information used in procurement procedures) for limiting access to information, etc.⁴⁷

Generally, the legislation on the access to public information has improved (despite constant attempts by different majorities to slide back) in the decade after the initial adoption of the Law in 2000. Yet the application of the Law leaves much to be desired, especially concerning electronic access to public information, the adequate application of the law by state bodies at different levels, etc.

Parliamentary Rules on Transparency and Openness

Concerning the transparency and the openness of the Parliament, the Constitution says that "Sessions of the National Assembly shall be public. The National Assembly may, by exception, resolve to hold some sessions behind closed doors,"⁴⁸ and that "Voting shall be personal and open, except when the Constitution requires or the National Assembly resolves on a secret ballot."⁴⁹ The Constitution mandates that "The National Assembly shall be organized and shall act in accordance with the Constitution and its own internal rules."⁵⁰

The *Rules of organization and procedure of the national assembly* (of the 40th National Assembly) detail these provisions. Thus Art. 37 enumerates when the plenary sittings of the Parliament are behind closed doors: when important State interests demand it, when documents containing classified information are discussed, and the decision to hold closed sessions could be taken on an initiative of the Speaker of the National Assembly, by the Cabinet, or by 1/10 of the MPs. The records from closed sittings are classified information, yet the decisions are announced publicly.⁵¹

The open sittings are broadcast live by the Bulgarian national radio on a special frequency, covering the entire territory of the country and are also covered by summary reports on Bulgarian national television. In the Rules of the new 41st National Assembly, this provision of access to information on the work of the Bulgarian Parliament is extended to include *live broadcasts* of the plenary sitting on the website.⁵² Yet to this moment, no such live broad-

⁴⁶ State Gazette № 45, April 30, 2002.

⁴⁷ The most recent opinion of AIP in support of the new draft amendments was filed with the Standing Parliamentary Committee on State Administration in June 2008 (available at http://www.aip-bg.org/pdf/stanovishte_pdi_180608.pdf).

⁴⁸ *Ibidem*, Art. 82.

⁴⁹ Art. 81, 3.

⁵⁰ Bulgarian Constitution, Art. 73.

⁵¹ Rules of Organization and Procedure of the National Assembly, State Gazette No 69/23. 08. 2005, Art. 37, 1, 2, 4, 5.

⁵² Art 41 (1), Rules of Organization and Procedure of the National Assembly, State Gazette 58/July 27, 2009

casts have taken place. A live broadcast of the sittings of the Parliament on national radio and national television may also be decided by Parliament, and such decisions are indeed taken.

Journalists have access to the open meetings of the standing committees and to the plenary sittings, though a special procedure is followed for allowing access of journalists for a full coverage of Parliamentary life. On the site one finds information concerning the number of licenses (a very limited, fixed number) and the procedures to be followed for obtaining them by the media representatives. Though by itself the restriction of the access of journalists to Parliament (especially the very limited number of such accreditations issued) is difficult to justify, there are at least official Rules for granting such accreditation, which are adopted and followed. They are available on the site.⁵³

Shorthand (verbatim) minutes from the plenary sittings are drawn up, and they ought to be published within 7 days on the Parliament's website.⁵⁴ This last requirement was included in the Rules only by the 40th National Assembly (and it was initially opposed by the Standing Reporting Committee but, after a debate in the plenary sitting, it was almost unanimously approved by the MPs). However, it is still rarely the case that these minutes are published within 7 days on the site, though in the last session of Parliament there were some improvements in this regard. The Rules also determine that the sessions of the meetings of the standing committees are open and members of the public may attend them in compliance with the admission arrangements to the Parliament building.⁵⁵ The committees themselves may decide that some of their sessions are held behind closed doors⁵⁶. Three (in

the current Parliament – two)⁵⁷ of them - those of the Foreign Policy Committee, the Defense Committee and the Security and Public Order (and their respective sub-committees) - hold closed sessions for the public - though those committees may decide for some of their sessions to be public.⁵⁸ MPs have also decided that the standing committees, by exception, may hold their open meetings outside the capital.

The standing committees prepare reports on their activity, where the decisions taken are presented, together with the pro and con opinions expressed. The majority with which the decisions are taken is indicated. The reports on the public meetings of the Standing committees are public and accessible according to the procedures and available on the website of the National Assembly.⁵⁹ For the meetings of the standing committees, the requirement is to take summary (instead of verbatim) minutes, and only for the meetings of a Standing Reporting committee (i.e. one that reports a draft law to the plenary sessions of the Parliament) shorthand (verbatim) minutes are drawn up, signed by the Chairperson of the committee and the stenographer. They ought to be posted on the National Assembly website within 10 days of the committee's session.

Interestingly, the text in the Rules on posting this information on the website was only included in 2007, and the proposal by MPs to include this text (which was triggered by an advocacy campaign by NGOs) as early as in the beginning of the work of the 40th National Assembly in 2005 was voted negatively.⁶⁰ The records of the closed meetings of the committees are archived and access to them is

⁵³ <http://parliament.bg/?page=press&lng=bg&id=3>

⁵⁴ *Ibidem*, Art. 38, 1,2,3, 4,5.

⁵⁵ Rules of Organization and Procedure of the National Assembly, Art. 25, 1. State Gazette No 69/23. 08. 2005.

⁵⁶ *Ibidem* Art. 25, 3.

⁵⁷ In the 41st National Assembly these are two, since there is just one standing committee on Foreign policy and Defense, not two separate ones, as in the former Parliament.

⁵⁸ *Ibidem* Art. 25, 4

⁵⁹ Art. 29, 2,3

⁶⁰ One learns this by reading the shorthand minutes of the debates prior to adopting the Rules in 2005, available on the Parliament's site at <http://www.Parliament.bg/?page=plSt&lng=bg&SType=show&id=24>

regulated in compliance with the procedures of the Classified Information Protection Act.⁶¹

Surprisingly, nowhere in the Rules is it explained how one can access the records of the open plenary sittings with all the accompanying documents, including the printouts from the electronically performed nominal vote of the MPs. Nor is there any explanation on that matter to be found on the website of the Parliament. It only says that the public has such access, according to the set procedures, but what precisely these procedures are, one should obviously find out for oneself. One finds some information about the procedure for visiting the two libraries of Parliament (there are two buildings of the National Assembly, with two libraries), but nowhere is it written that all these documents, including the printouts of the electronic nominal vote of the MPs, are accessible for the public there. Yet it is indeed possible to read the documents on paper in the library of Parliament.⁶²

The procedures for access to the open plenary sittings and open meetings of the standing committees are also vaguely formulated in the Rules: “the citizens may be present at the meetings of the committees in compliance with the general procedures for access to the National Assembly”, Art. 25.1. There is no change in this article in the new Rules of Organization and Procedure of the 41st National Assembly adopted in July 2009. One used to find information on Parliament’s web-site concerning citizens’ access to plenary sittings. However, this information is not available on the site of the current National Assembly. The procedure, however, has not been changed,

although information about it can be obtained only by sending a mail or calling the PR office of the Parliament. The procedure is as follows: sending a written request to the Secretary General 7 days in advance of the planned visit (by fax or electronically) is required. Interestingly, there is a requirement that upon entering the Parliament building, one not only shows his ID, but also has to have sent in advance his Unified Citizen’s Number - this obviously limits the access to the sessions for any foreign nationals (who have no such number), without there being in the Constitution or the Rules any such requirement of having Bulgarian citizenship in order to attend the open sittings. Concerning visits to the open standing committees’ meetings, on the website such an opportunity is again not mentioned, although the Rules, as mentioned above, allow such access. Again, one needs to know already that one has this right, in order to find out how to exercise it. The only described procedure of access to Parliament concerns educational and general group visits.⁶³

The Rules allow the participation of civic organizations and NGOs in the work of Parliament (at the level of the reporting standing committee) with written statements on the discussed legislative act. Yet those rules require that these representatives of civil society be specifically invited by a member of the respective committee.

Based on interviews with stakeholders, conducted for the current research, it was established that access of citizens to the Reporting standing committees is not in fact open.⁶⁴ The general practice is: access to the meetings of

⁶¹ Art. 30, 1,2,3.

⁶² In order to check whether it is possible to receive such information, I asked this question using the on-line form, provided by the press-center of the National Assembly. Indeed, the response I received was swift and detailed, yet it does not remedy the flaw that this information is not readily available on the site itself. Citizens (and even some political science colleagues, whom I interviewed on this matter) have little idea about this possibility.

⁶³ See <http://www.parliament.bg/?page=press&lng=bg&id=2>

⁶⁴ Just one example: a lawyer - an activist for the Balkan Assist, A Bulgarian NGO involved in campaigning for a Law on direct citizen’s participation in government and on referenda, claimed regularly to not receive timely information on the schedule and working program of the Reporting Standing committee, this being just one of the many obstacles to civic involvement in the work of Parliament.

the Reporting standing committees is open just to a handful of more prominent NGOs, active in the respective sphere, with connections to particular MPs who are members of the respective committees. Although in principle it is possible to establish such contacts with the MPs, the fact that they have no personal web-sites and do not as a rule hold regular office hours at the Parliament (depending on the initiative of their party, they may have office hours outside of Parliament – in the central or regional offices of the party), and in general that there are no strict rules concerning the contacts of the citizens with the MPs, greatly hinders this process. In addition, there is no list of the experts working for the standing committees on the sites of the respective committees. This makes it virtually impossible for an active individual citizen to participate in the discussion of the new legislative acts and possibly influence them. Thus it could be concluded that there is a significant deficit in the work of Bulgarian Parliament in terms of its openness to civil society.

The 40th National Assembly tried to remedy this clearly antidemocratic practice of holding the civil society away from the legislative process. In the last months of its term, an amendment to the Rules was introduced, which says that ‘representatives of civic, syndicate, sectoral and other organizations have a right to be present and participate in the work of the standing committees on their own initiative with written or oral statements’.⁶⁵ This provision has been also included in the new Rules of Organization and Procedure.⁶⁶ However, no additional administrative rules have been adopted yet. Without such rules the regular and fair application of this provision is not guaranteed.

One finds the working program of the Parliament, as well as the agenda for the fol-

lowing week’s meetings of the standing committees and the plenary sittings on the web-site, yet these are often posted late. In addition, some of the standing committees do not publish the agenda for their meetings at all. Surprisingly, there is no regulation in the Rules, obligating the Parliament to post the draft laws on its site. Most of the drafts are nevertheless posted there, although occasionally quite late for the public to avail itself of all the relevant information. More importantly, there is no explicit requirement to publish the *reports* of the standing committees on-line and on-time, so that the relevant stakeholders can be informed *in advance* of the envisaged changes in the legislation. This is particularly important, since the public often has little direct information as to what parts of the legislative acts, voted positively on their first reading in the plenary sittings, have made it into the final legislative draft. There are rules that require the MPs to receive the reports of the Standing committees at least 24 hours prior to the beginning of the plenary sitting on which they are read. Yet there is no requirement to have them published. In addition, 24 hours is a too short a period for the MPs to form informed opinions on the legislative drafts, let alone to inform and mobilize the citizens in their defense/opposition.

The vote of the MPs as a rule is open and nominal, although on a request of a parliamentary group or of a 1/10 of the 240 MPs, a decision to take a secret vote may be reached. Very rarely has this possibility been used by MPs.⁶⁷ The open vote may be taken by the computerized voting system; by showing of hands; by roll-call, by calling the names of

⁶⁵ Art. 25 (3) of the amended Rules.

⁶⁶ Art 28 (3) of the new Rules.

⁶⁷ The Parliamentary groups of the Bulgarian Socialist Party and the Movement for Rights and Freedoms tried to use this possibility unsuccessfully in order to form a minority government after the 2005 general elections. As a result of this failed attempt, a grand coalition of three parliamentary groups was formed to support the coalition government of Sergey Stanishev. Both his nomination and the choice of Cabinet were voted openly

Members of the National Assembly with replies of *yes*, *no* and *abstained*; by signatures; or roll-call, using the electronic system whereby the Members' names and votes are shown on screen, through the computerized voting system. Typically, voting is electronic.

The printouts of the voting results from the computerized system are attached to the full shorthand records of the sittings of the National assembly, together with an explanatory memorandum, the text of the bills, the reports of the standing committees, the resolutions, and proposed amendments.⁶⁸ These are available to the public in the library of Parliament. Yet the access of the public to the library is limited by the lack of information on the relevant procedures on the web-site and, in general, by the lack of clear rules. A request for one-day access to the library addressed to the main librarian is often sufficient, yet this official seems to have all the discretion to decide the issue.

It is regrettable that the *new parliamentary majority* has till now failed to remedy many of the shortcomings of the Parliamentary Rules in adopting the new Rules for the 41st National Assembly. Despite stating the quality legislative process and the cooperation with civil society in it as its priorities in its political program, the ruling party GERB and their allies in the newly established Parliament have not kept those promises in adopting the new Rules. The main changes introduced concerned the discipline of the MPs - measures were introduced to discourage absenteeism, (through e-control of access to the Parliament assembly hall), against voting with two and more cards, etc. Thus a list of all absences has to be published monthly on the web-site, serious monetary sanctions are introduced and, more importantly, it seems both measures are implemented. The further changes con-

cerned the introduction of clear rules against the practices of so-called 'political nomads', which rules should prevent the practices of migration between parliamentary groups – the formation of new political groups and the splitting of the existing ones.

However, the 41st Parliament has introduced some improvements which have substantially improved the visibility of its work:

Firstly, its web-site is greatly improved, in terms of the categories of information and the quantity of documents. One weak point in previous Parliaments was the scarcity of information about the work of the MPS within the standing committees, as well as about the progress of the bills from their first reading there to their final passing in the second reading of the plenary sittings. Now, very detailed information on the work of the parliamentary committees is provided. Their agendas are published on-time, which allows interested NGOs and citizens to be present at important meetings. Verbatim reports of the meetings of the reporting standing committees are also published on-time. Verbatim reports of all open sittings of the Bulgarian parliament were available on-line for the last Parliament (since 2007) – the rest could be read only at the Parliamentary library, where access was not immediately granted, but required a somewhat complex application procedure. Now all the reports for the open plenary sittings of all Bulgarian parliaments since the adoption of the new constitution in 1991 are available on-line.

On-line live streaming of all open plenary sittings of the Parliament began in January 2010. An archive is also available together with the verbatim reports of the plenary sittings and the voting record. Voting records are published on-line (with information about voting along party affiliation/name of the MPs) – for the sessions of the 41st National Assembly onwards (August 2009).

⁶⁸ *Ibidem* Art. 60, 2.

Archived information is available about the work of the 39th and 40th National Assemblies – the MPs, the parliamentary groups, the legislation adopted, the standing committees' work, etc. There is extensive information on the activity of each of the MPs – their legislative initiatives, their parliamentary control motions, etc. There is also extensive information about the library of Parliament – access, information about the holdings, even an on-line catalogue.

There is further a public register of all external associates and advisors of the MPs, the parliamentary groups and the parliamentary standing committees (<http://www.parliament.bg/bg/parliamentaryregister>), and a list of all unjustified (on health or other acceptable ground) absences of MPs – from plenary sittings and from their respective standing committees' sittings.

Statistical information about the legislative activity – of the MPs (by parliamentary group and by name) and the Cabinet is provided. An on-line searchable database of all legislation adopted and bills submitted to the 39th, 40th and 41st National Assemblies has been created. The budget of Parliament is published on-line, together with date-to-date information about the payments performed. Information about all public procurement tenders announced by the Parliament administration is also published there.

Further, citizens may be present at the open sittings of the standing committees, observing the general rules of admission to the building of Parliament (Art. 28 (1) of the Rules of Organization and Procedure of the National Assembly). In addition, each member of the leadership of a standing committee may invite discussed physical or juridical persons to participate in these sittings relevant for the legislation or issues (Art. 28(2)). Representatives of civil society organizations, trade and labor unions, and business organizations may

on their own initiative request to participate in those sittings and present their written statements on the issues discussed (Art. 28 (3)).

This last rule was introduced only at the end of the outgoing 40th National Assembly, opening the prospects for the greater participation of a wider range of CSOs in the work of Parliament (not only the “usual suspects” – the favorites of the governing majorities).

Civic Participation in the Legislative Process

The “Law on Direct Participation of Citizens in Central Government and Local Self-government”⁶⁹ was adopted in June 2009 by the outgoing Parliament. Under the pressure of MRF, parts of the Bulgarian Socialist Party and even some opposition parties, the adopted law was much more restrictive than initially envisaged. Not only the requirements for calling a national referendum were greatly increased (200,000 signatures to initiate, and **500,000** – to make it mandatory for the Parliament to call it). The scope of the issues that could be voted on was greatly restricted, leaving out not only constitutional issues and issues covered by interstate and other international agreements, but also taxes, social security payments, the state budget, all laws covering entirely the requisite subject area, etc. Particularly interesting is the exclusion from the scope of the referenda of the Rules of Organization and Procedure of the National Assembly. In addition, to be valid, a quorum requirement was introduced. The turn-out should be no less than that of the last National elections. The quorum in the draft law was 30%, but under the pressure of MRF it was increased. Since the lowest turn-out in parliamentary elections in Bulgaria has been 53%, this means that the quorum under the adopted law is higher even than that

⁶⁹ State Gazette No 44/June 12, 2009.

of the status quo. The referendum is successful if more than half of the participants have voted positively. The period for collection of signatures is also rather short – 90 days. Parliament can also reformulate the wording of the question(s) to be put to vote and their respective ordering, without changing their meaning. Just a month is envisaged for the information campaign.

According to many analysts, politicians and representatives of civil society, the new Law has not lived up to the promise of effectively introducing forms of direct democracy and direct citizens' participation in government. Not surprisingly, shortly after the new Parliament was formed, voices of amending the Laws are being heard. Thus, when negotiating support for its minority government, the leader of GERB, the party that won the 2009 general elections, mentioned such changes. However, to this point (December 2009) no draft-amendments to the Law have been registered in Parliament.

After two abortive attempts to call a referendum (in 2010 VMRO managed to collect less than 350,000 for a referendum against Turkey's EU membership, and later the same year a significant number of the approximately 600,000 signatures, collected by the "Order, Lawfulness and Justice" Party to call a referendum on a new constitution, proved inauthentic), the first real test of the "Law on Direct Participation of Citizens in Central Government and Local Self-government" will be the national referendum on Belene nuclear power plant. It was initiated by the Bulgarian socialist party and will likely be held in January 2013. While the petitioners managed to collect more than 500,000 valid votes, making it obligatory for Parliament to call a referendum, the requirement for a turnout at least as high as that of the last general elections (60% in 2009) means that it is highly unlikely its result

will be valid. Further, the majority in Parliament had managed to re-phrase the question in a way that seems to remove its sting and make the entire enterprise pointless.

Law on the Prevention and Disclosure of Conflict of Interests

In 2008 the Law on the Prevention and Disclosure of conflict of interests was adopted.⁷⁰ Such laws exist in many if not all democratic countries and are considered good instruments for introducing higher standards of transparency and accountability in the government.

According to the 2008 Law, a wide category of state officials are required to avoid the conflict of interests and to declare publicly the information concerning circumstance that may give rise to a conflict of interests. A list of types of behavior constituting conflict of interests is provided, a clear mechanism for declaring such conflicts is envisaged, and also a mechanism for control has been introduced. The adoption of the Law was almost unanimous, and was met with popular enthusiasm and acclaim by our European partners, ever more concerned about the lack of transparency and corrupt practices in the work of Bulgarian institutions.

At present, all MPs also file declarations, announcing their potential conflicts of interest. There is a public register (at <http://parliament.bg/register/?page=home&lng=>), found at Parliament's website, where all declarations of MPs, required by the Law on the Prevention and Disclosure of Conflict of Interests, are posted.

After a series of critiques from the European Commission (and after the funding from the Structural funds of the EU were halted due to corruption and conflict of interests charges

⁷⁰ State Gazette No 94/ October 31, 2008.

the way they were administered in Bulgaria), a new amendment in 2010⁷¹ envisaged (in its Art. 22a) the establishment of an independent Commission for the prevention and disclosure of conflict of interests. The Commission is politically appointed (three of its members, including its chair, are appointed through secret vote by Parliament, one is appointed by the President, and the last member is appointed by the Prime-minister). As all politically appointed independent bodies, there are charges of political dependence and government favoritism. Thus it has been accused of applying double standards in disclosing conflict of interests⁷² – those close to government or the ruling party are treated mildly (the multimillion lev credit given by the Municipal Bank to the son of the then chairman of the Sofia city council Andrey Ivanov, a leading figure in the governing party, was not judged by the Commission to constitute a conflict of interests, while much less serious breaches by persons who have fallen from government's grace are deemed to constitute such conflicts).

Two MPs from the governing party were found guilty as early as in 2011 of being in conflict of interests in proposing legislative amendments: Mr. St. Gyuzelev (GERB) and Mr. D. Avramov (GERB) were convicted by the Supreme Administrative Court (where they appealed against the decision of the Commission) to pay the minimal 5000 fine (their proposed legislation was not adopted). They remained MPs. Two more (one from the opposition, and one from the governing party, vice-chair of the standing committee on agriculture and forestry) are currently being investigated by the Commission. The decisions of the Commission are published both on its website, and on the website of Parliament.

One of the MPs convicted in 2011 was arrested in 2012 on charges of trading-in-influence and his MP immunity was stripped by Parliament in July 2012.

Accountability Mechanisms in Practice. Some Recommendations

In conclusion, it needs to be stressed that transparency has increased considerably in the work of the Bulgarian parliament. Most meetings of the Parliament are open; the working agenda is posted on the site. The vote is open – rarely is a secret vote taken. There is also detailed information on the legislative activity of the Parliament, with a database, where all draft laws could be searched for by several criteria – keyword, date of filing, who filed it, reporting committee and code number. There is also summary statistic on the legislative activity of each of the Parliamentary sessions: how many draft laws were filed, how many were adopted, etc.

All these are positive developments. As a matter of principle, we recommend the following:

- A special attention warrants the individual work of MPs – including their individual voting record, their legislative initiatives and other activities in the standing committees and in the plenary sittings, and their work back at their constituency. All these should be documented and made public.

At present, even an MP's mere presence in Parliament's meetings is still not reliably recorded – often MPs register and leave almost immediately, mandating a colleague to vote with their electronic voting cards. The new provision in the Rules of the Organization that explicitly prohibit such irresponsible behavior on the part of the MPs (by attaching a monetary sanction to it in addition to the moral blame) have been largely ineffective, despite

⁷¹ State Gazette no 97/2010, effective Jan. 1, 2011.

⁷² "The conflict of interests – petty breach and gross privilege", in *Sega daily*, Oct. 4, 2012, available at <http://www.segabg.com/article.php?id=618520> (last visited Oct. 15, 2012).

the resolute efforts of a series of Parliamentary Speakers to terminate this practice.

Another direction for improvement of the transparency of our Parliament concerns another aspect of MPs' work – their activities back in their constituencies. Even though according to the Rules for the Organization of the Parliament on Mondays and Tuesdays MPs are to meet and work in their constituencies, they are still not required to submit any report on their activities there, nor is a record of these kept. It is interesting to note that the MPs receive a small amount for maintaining their personal websites. Yet most of these sites contain just a photo and a very brief bio note.

- The MPs' sites could be used much more effectively, with information posted there as to the office hours of the MP in the capital and in their constituency, a list of the staff working for the respective MP, a list of the legislative initiatives, a list of draft laws they are working on, the questions they have raised at the parliamentary control over the Cabinet sessions, etc.
- More transparency in the work of the MPs – a public register of their experts and staff, for example, would shed more light on it. Public reports for the activities of the MPs in their constituencies would also help.

Open Parliaments Bulletin 2012 – Croatia

Marina Škrabalo

1. Introduction

The current role of the Croatian Parliament (*Sabor*) in the political regime and the politically prominent context of the full decade of accession to the EU should be regarded in view of the fact that only now - in 2012 – Croatia, as an independent democratic country, is turning 21 and should be expected to overcome the childhood and teenage troubles of its first two decades of parliamentary democracy. Despite its practical deficiencies, *Sabor* has a strong symbolic significance as the key institutional carrier of the Croatian statehood, due to its historical continuity of decision-making from the crowning of Croatian kings in the middle ages, through the confirmation of Hungarian (1102) and Habsburg rulers (1527), the abolishment of serfdom (1848), the full break-up with the Austrian and Hungarian rule and the unification with the Slovenia and Serbia (1918), the victory of antifascist resistance, liberalization of the country and constitution of socialist federal republic of Croatia within Yugoslavia (1945) and, finally the break-up from it and proclamation of independence (1991)⁷³.

Just like in several other CEE countries, throughout the 1990s, the development of parliamentary democracy was hindered by the authoritarian tendencies of the president (Tudjman), who directly controlled the executive, took over a portion of legislative powers and even directly appointed several members of the second chamber of Parliament, which itself mainly served as space for consolidation of the ruling party's hegemony.⁷⁴ After the change of the regime in 2000 and the con-

stitutional reforms in 2001, the presidential powers were limited in favor of the Parliament while the second chamber was abolished. Despite simpler and more efficient internal structuring and higher standards of openness towards non-state actors, the Croatian Parliament continues to function primarily as a "talking" as opposed to a "working" parliament, due to the predominance of plenary debates and the leading role of the Government in the legislative process.⁷⁵

In the accession process 2005-11, the Parliament performed a critical function of the guardian of political consensus throughout tedious and often troubled negotiations, including periods of suspension, due to unsatisfactory cooperation with ICTY and one-sided blocking on part of Slovenia. At the same time, it was often reduced to the voting machine on highly complex, seemingly technical matters, with limited but also inadequately used opportunities for strategic, political discussions and meaningful oversight of the Government⁷⁶. For illustration, in the past parliamentary term 2007-2011, 898 laws were passed, of which a third (298) were *acquis*-related, prevalently by urgent procedure (in 79% of the cases), with relatively high rate unanimous adoption in 27% of the cases, mostly related to EU harmonization and international matters.

Only in 2010-11, the Parliament passed 393 laws, of which 86 were *acquis*-related; almost a third of them (118) were adopted unanimously while urgent procedure was ap-

⁷³ Škrabalo, Ivo. (2009). "Hrvatska - povijest izbora". In: Nathan, A. i Škrabalo I. (2009). *Totalna predstavljnost: novi model izbornog sustava za predstavničku demokraciju*. Zagreb: Novi liber. 147-154.

⁷⁴ Zakošek, Nenad. (2002). *Politički sustav Hrvatske*. Zagreb: Fakultet političkih znanosti Sveučilišta u Zagrebu, p. 106

⁷⁵ Ibid.

⁷⁶ Škrabalo, Marina (2009), "Hrvatski sabor u procesu pristupanja Hrvatske Europskoj Uniji", in Stranke i javne politike: Izbori u Hrvatskoj 2007 (Petak, Zdravko (ed.), and [Croatian Parliament in the accession process of Croatia in the EU]. Zagreb: Fakultet političkih znanosti, pp. 159-222

plied in 86% of the cases⁷⁷. As highlighted in the 2010-11 SIGMA Assessment, “the ‘urgent procedure’ is abused and is not just affecting negatively law making: it is also lowering the quality of laws other than limiting consultation procedures.”⁷⁸

Enhancing effectiveness, openness and public image of the Croatian Parliament in the post-accession period and Croatia’s membership in the EU is a challenge acknowledged by the new center-left parliamentary majority that won the December 2011 elections after eight years of the center-right Government led by the Croatian Democratic Union (HDZ), the dominant political option which has ruled Croatia for as many as 18 out of the 21 years since independence. In the current, seventh term, the Croatian Parliament has 151 members from 13 political parties (including two regional parties and two parties of national minorities) as well as 6 independent MPs of whom two act in affiliation with political parties. There are eight representatives of national minorities including three representatives of the largest Serbian minority. The MPs are organized in ten parliamentary groups, called “deputy clubs”, which also include an independents’ club and a national minorities’ club. The center-left majority holds 80 mandates from the Social Democratic party (59), the Croatian People’s Party (14), the Croatian Pensioners’ Party (4) and the Istrian Democratic Union (3), with additional support from the Independent Democratic Serbian Party (3) and other national minorities’ MPs. Women continue to be under-represented, yet the current ratio of 25% of women is an increase from 21% of women MPs in the last term (2007-11) and 22% in the former two

terms since 2000. Age-wise, the Parliament has been radically rejuvenated since the last elections, at present there are 20% of MPs younger than 40, while 12% of MPs are over 60, which is exactly opposite of the previous structure of MPs where 11% were below 40 and 20% were over 60⁷⁹. While it is too early for predictions, a younger structure of the Parliament may be reflected in more informal and interactive communication with citizens, both live and through internet.

2. The Legislative Framework

2.1 The Constitution

In June 2010, access to information became a constitutional right, as part of broader constitutional changes, motivated by preparations for membership in the EU, i.e. the need to loosen up the conditions for holding a referendum and ensure the right of EU citizens to take part in local elections. Article 38 of the Constitution, dealing with the freedom of expression, was amended to include a line on the right of access to information: “The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such a restriction in each individual case and necessary in a free and democratic society, as stipulated by law.”⁸⁰ The latter point is particularly important as it actually disables classification of information by means of by-laws, which represents a radical shift away from the current mode regulation of secrecy of information, requiring further changes in the Freedom of Information Act. The new constitutional provision provides grounds for (1) stricter legislative procedure, as a qualified

⁷⁷ Source: online archive of legislative acts with statistics on legislative activity and MP structure <https://infodok.sabor.hr/StatistikaFrm.aspx>

⁷⁸ SIGMA Assessment Croatia. May 2011, <http://www.sig-maweb.org/dataoecd/40/31/48970754.pdf>

⁷⁹ Ibid.

⁸⁰ Croatian Parliament, The Constitution of the Republic of Croatia (consolidated version), English translation, <http://www.sabor.hr/Default.aspx?art=2405> (accessed June 26, 2012)

majority is required in adopting any law on human rights issues defined by the Constitution; (2) enhanced citizens' access to justice, as court procedures related to human rights issues are free of judicial taxes and (3) a stronger institutional position of oversight and testing of public interest, independent from the public bodies responsible for ensuring access to information, which requires further improvements of the relevant regulation and institutional framework.

2.2 The Parliamentary Standing Orders

Since January 2002 when they were adopted, the parliamentary Standing Orders have survived four governments over a full decade of EU integrations, marked by agenda overload, intensive review of legislation and dynamic international relations⁸¹. The early amendments reflected some technological modernization – introduction of electronic voting in 2003 and web development with the requirement of online publications in 2004⁸². The most recent amendments from 2008 formalized the status of permanent external members of parliamentary working bodies – up to six public officials, scholars and professionals, selected through a public nomination process by professional institutions, professional organizations, civil society organizations and individuals, in addition to the earlier provision that scholars, professionals and other persons may be invited on an ad-hoc basis to committee sessions to provide their views on matters discussed (amended Article 54)⁸³.

The institute of permanent external members represents a unique form of stakeholder engagement that has proved highly beneficial both for parliamentarians and interested pub-

lic. External members are a source of expertise and experiential knowledge of policy matters, and as such they make up for insufficient committee capacities for independent policy review of Government proposals⁸⁴. Their equal status with MPs in terms of obtaining information and taking part in committee work (right to vote and access to classified information excluded) enables them to directly impact the contents of discussions and even to propose new agenda items and conclusions. The main weakness of the current regulation is the lack of universality of permanent external membership. Namely, in the sixth term 2007-2011, this institute was available to 22 out of 30 regular parliamentary committees, engaging a total of 104 members, their number varying from 2 to 9 members per committee, 5 being the average⁸⁵. An additional area of improvement is the selection procedure, which does not require any public hearings of the candidates, nor opinion or consent from the committee in question, but is fully controlled by the Elections, Appointments and Administration Committee. Considering their access to decision-making process, it would be reasonable to bind external members with obligations related to conflict of interest of political appointees.

The public character of parliamentary work can be restricted only in respect to parliamentary bodies to close their sessions in full or partially to the public, based on the decision of the body in question (Article 255), which implies that plenary sessions must at all circumstances, be open to the public. The shortcoming of the provision is the lack of any criteria for closing the parliamentary commit-

⁸¹ Poslovnik Hrvatskog sabora [Standing Orders of the Croatian Parliament], Official Gazette 6/2002.

⁸² Official Gazette 91/2003 and 58/2004.

⁸³ Official Gazette 39/2008 and 86/2008.

⁸⁴ Škrabalo, Marina (2009), "Hrvatski sabor u procesu pristupanja Hrvatske Europskoj Uniji", in *Stranke i javne politike: Izbori u Hrvatskoj 2007* (Petak, Zdravko (ed.), [Croatian Parliament in the accession process of Croatia in the EU]. Zagreb: Fakultet političkih znanosti, pp. 200-203.

⁸⁵ Croatian Parliament archive of the 6th term, rubric on parliamentary committees <http://www.sabor.hr/Default.aspx?sec=4893>

tee sessions. Interestingly, media representatives may be allowed to attend the closed sessions, under the condition that they report only on decisions reached, while the bodies may decide to release information on a specific matter discussed at closed sessions, with a time lag (Article 256). Confidential information relates to those documents that are classified in line with special regulation on information secrecy, which parliamentarians are prohibited to disclose in sessions (Article 252), while management of classified information is additionally regulated by the Secretary of Parliament (Article 253).

Article 254 mandates the Parliament to adopt another act - *Rules on the public transparency of the work of Parliament and its working bodies* - to regulate the presence of representatives of civic associations, non-governmental organisations and citizen observers at sessions, visits to Parliament by organised groups, audio and visual documentation methods, direct radio and television broadcasts during sessions, registration of media correspondents and "other matters pertaining to the public transparency of the work of Parliament"⁸⁶. These *Rules* were adopted three years later, in January 2005 and have not been amended since. As a significant improvement from the Standing Orders, the Rules specify the purpose of the parliamentary website, which should be updated on a daily basis, both in Croatian and, "subject to technical, staff and other capacity", in other international languages. The Rules also proscribe direct on-line communication of the public with MPs, working bodies and the staff service, via their emails or other means. In Article 13, the Rules gen-

erally reinforce the principle of free access to information, yet without any specification of the procedure. The Rules state that all media can transmit parliamentary sessions, yet the registration of foreign journalists is conditioned by opinion from the Ministry of Foreign Affairs.

The new Speaker of Parliament initiated the revision of the Standing Orders in spring 2012, with the objective of improving attendance of plenary sessions, quality of debates, openness to the public and efficiency of parliamentary bodies, especially in respect to EU affairs. The amendments that were adopted at the closing of the summer session, in mid July 2012⁸⁷ have introduced electronic registration of MPs as a tool for monitoring regularity of their plenary and committee work, including official travel. Eventually, an article was added on the internet and a multimedia presentation of parliamentary proceedings and documents. The changes in plenary discussion modalities have abolished the much abused institute of "correction of the reply", which has turned into a public symbol of futile partisan skirmish. In addition, the institute of permanent external members has been applied to several, yet not all, parliamentary committees which had not had that option, leaving behind the three politically important committees on national security, foreign affairs and European integrations. It is expected that additional amendments will take place by the end of 2012, in order to further adjust the restructuring of the EU affairs at technical and strategic levels⁸⁸.

⁸⁶ Pravilnik o javnosti rada Hrvatskog sabora [Rules on Public Access to Proceedings in the Croatian Parliament and its Working Bodies], adopted on May 20, 2005, Official Gazette 66/05, English version available at <http://www.sabor.hr/Default.aspx?sec=734>

⁸⁷ Official Gazette 81/2012. Integrated, updated version of the standing orders is also available in Croatian at <http://www.sabor.hr/lgs.axd?t=16&id=21637> (last accessed on September 18, 2012).

⁸⁸ Consultations with Mr. Slaven Hojski, Secretary of the Parliament and Mr. Daniel Mondekar, Chair of the EU Integrations Committee, June 20, 2012.

2.3 Access to Information Laws

Improving the legal and institutional framework for access to information, introduced in 2003 by the Freedom of Information Act (FOIA)⁸⁹, has been a long-standing priority, recognized by the EU and strongly advocated by civil society organizations⁹⁰. Apart from FOIA, access to information is regulated by the Data Secrecy Act⁹¹ (DSA), and the valid provisions on business (and professional) secrets of the otherwise void Law on the Protection of Secret Data⁹², the Personal Data Protection Act⁹³ and the Act on Information Security⁹⁴. The resilient legacy of administrative culture of silence makes this policy a long-term challenge.

In the period 2010-2011, legal and administrative changes took place, as part of Croatia's fulfilment of negotiation obligations related to Chapter 23 – justice and fundamental rights, where access to information was treated as an instrument for prevention of corruption⁹⁵. Six months after constitutional changes, in December 2010, amendments to FOIA were adopted, with the most significant change being the appointment of the Agency for Personal Data Protection (hereafter: AZOP, in line with its Croatian abbreviation) as the independent body in charge of monitoring implementation and acting as the appellate body. The Agency is not in charge of performing a test of public interest in cases when information is classified or when it is denied by highest level state institutions, includ-

ing Parliament, the Government, the President, the Supreme Court, the Constitutional Court, the Attorney General and the Army Chief of Staff (Article 17.8 of FOIA). Instead, these appeals are directly submitted to the Administrative Court, which is supposed to perform proportionality and public interest tests, yet there is concern that these tend to be reduced to checking whether classification of data is procedurally aligned with legal provisions of the Data Secrecy Act, with no evidence of a public interest test performed with respect to the disclosure of personal data or business secrets⁹⁶.

Even though most of the shortcomings of the amended FOIA were spotted immediately, the Government missed the opportunity to improve the law in spring 2011, after the Constitutional Court's overruling of the new FOIA on March 23, 2011, due to procedural reasons. Despite the usual consensual approach to the so called EU-related legislation, the opposition voted against the law and Social Democratic Party even proposed its own version of the law with an independent commissioner for testing public interest⁹⁷. The end result was that Croatia closed negotiations with the EU with an inadequate policy of freedom of information in place, as confirmed in the EC's Progress Report from April 2012 on remaining accession obligations, stating that "the practice of applying the public interest test for classified information needs to be developed."⁹⁸ After the change of Government in December 2011, FOIA is being revised again through a new legal drafting working group assembled by the Ministry of Administration,

⁸⁹ Official Gazette 172/03, amended in 2010 Official Gazette 144/10 and in 2011 Official Gazette 77/11, available online at www.nn.hr

⁹⁰ Hence, the following review of the current legislation is grounded in the most recent policy analysis prepared by GONG's Research Center, combined with review of legal documents.

⁹¹ Official Gazette 79/07 available online at www.nn.hr

⁹² Official Gazette 108/96 and NN 79/07 available online at www.nn.hr

⁹³ Official Gazette 103/03, 118/06, 41/08 and 130/11 available online at www.nn.hr

⁹⁴ Official Gazette 79/07 available online at www.nn.hr

⁹⁵ Croatia 2011 Progress Report, page 48 http://www.delhrv.ec.europa.eu/files/file/progres%20report/hr_rapport_2011_en.pdf

⁹⁶ Ibid.

⁹⁷ The legislative proposal was submitted to Parliament on June 14, 2010 and not discussed until February 24 2011. The protracted placement of the proposal on the agenda and its rejection make up the standard Croatian parliamentary practice of treating opposition legal proposals, regardless of which parties make the ruling majority.

⁹⁸ European Commission, (2012). Monitoring report on Croatia's accession preparations. April 24, 2012, http://ec.europa.eu/commission_2010-2014/fule/docs/news/20120424_report_final.pdf

with representatives of relevant institutions, legal experts and specialized NGOs⁹⁹.

2.4 Laws on Conflict of Interest

Over the past two years, there have been several legal and administrative changes in managing conflict of interest of public officials, greatly driven by the final stage of the EU accession process, featured by political turmoil and missed opportunities to develop a fully functioning and trustworthy system-wide mechanism for monitoring and managing conflict of interest of public officials, primarily the Conflict of Interest (Col) Commission. A new Act on the Prevention of Conflict of Interest in Exercise of Public Office was hastily adopted on 11 February 2011, in the very last weeks prior to the expected closing negotiations in Chapter 23 in March 2012 (the negotiations did not reach closure)¹⁰⁰. In addition to stricter verification of self-reported data, control of business shares, and greater competences of commissions to access all bank accounts of public officials, the key novelty is the full professionalization of the Commission to consist of five experts, supposedly appointed on merit by the Croatian Parliament and provided the status of high public officials with respective salaries and themselves bound by the Col Act. To demonstrate the intention of de-politicization, there is a legal provision that the Commission's president and its members are not allowed to have been members of a political party within five years prior to the beginning of their terms of office or during their term. According to SIGMA assessment from May 2011, the new law better regulates conflicts of interest for promoting integrity in the public sector, but "some concerns remain about the effectiveness of the sanctioning framework"¹⁰¹.

In practice, too general eligibility criteria and the political context of the appointment of the new Col Commission prior to the elections have resulted in two failed rounds of selection, indicating that the new regulation has not met its goal, as highlighted by 15 NGOs engaged in independent monitoring of Croatia's obligations in Chapter 23¹⁰². A full year and a half after the enactment of the new law and change of Government, the remaining five expert members of the old Commission are filling the void, mainly focusing on technical matters such as public officials asset reports, after their MP counterparts completed their mandates with the dissolution of the Parliament prior to the December 2011 elections.

Setting the new Commission in motion is further delayed by the amendments of the law undertaken by the new Government, also listed in the Revised Plan on Meeting Remaining Obligation Negotiations from June 2012¹⁰³. Unfortunately, again, the drafting took place without public consultations and engagement of experts and specialized NGOs; hence here there is a concern that identified weaknesses in the system will not be addressed systematically. The actual adoption of new legislation is lingering, due to negative feedback from the European Commission on the quality of the new legislation, including criticism of the re-introduction of political appointments in governance structures of public enterprises, which the new Government considers a matter of political accountability. Again, the challenge of managing conflict of interest has turned into a matter of political conflicts, this time between the Government and the EC, with

⁹⁹ Consultations with Vanja Škorić, GONG, June 25, 2012.

¹⁰⁰ Official Gazette 26/11 available at www.nn.hr

¹⁰¹ SIGMA Assessment Croatia, May 2011, page 12, <http://www.sigmaxweb.org/dataoecd/40/31/48970754.pdf>

¹⁰² *Joint Opinion of the Croatian civil society organisations on the readiness of the Republic of Croatia for the closing of negotiations in Chapter 23 - Judiciary and Fundamental Rights*, Zagreb, February 16, 2011, submitted to the European Commission, member states and the Croatian Government. http://kucaljudskihprava.hr/system/attachment/file/1/20110216_Joint_opinion_of_Croatian_CSOs_on_Chapter_23.pdf

¹⁰³ Adopted by Government of Croatia on June 1, 2012, www.vlada.hr/hr/content/download/214670/3153699/file/29-2.a.pdf

its actual implementation on “stand-by”. In the meantime, another public call for applications for the five seats on the professionalized Commission on Managing Conflict of Interest was announced in late August 2012, in line with the law adopted by the last government, yet with little prospect of successful completion, considering the negative opinion of the new Government on its structure, mandate and appointment procedure.

2.5 Rules on the Financing of Parliamentary Parties and Groups

In 2011 there were significant improvements in the effectiveness of legislation and efficiency of actual control of party financing, as confirmed by independent assessments of the EC, SIGMA, OSCE/ODIHR and local NGOs, primarily GONG. Again, these achievements were triggered by Croatia’s accession obligations in Chapter 23, but should also be understood as a political response of Prime Minister Kosor to the magnitude of the political corruption case “FIMI MEDIA”, where funds from public enterprises were systematically extracted throughout the two prime-ministerial mandates of Ivo Sanader, allegedly under his supervision, via a media agency with the assistance of a party treasurer, for the benefit of the leading party and Sanader himself. While the inquest started at the time when HDZ was still in power, the party itself was indicted on December 9, 2011 just five days after HDZ lost the national elections and, *nota bene*, on the very day that Prime Minister Kosor signed the Accession Treaty with the EU member states, while the court hearings started in March 2012¹⁰⁴. While the EC restrained from mak-

ing any official comment on the indictment, or any other individual case, the court epilogue of the FIMI MEDIA affair has definitely strengthened Croatia’s track record of improved institutional capacities and political will to process high-profile corruption cases¹⁰⁵.

The new Law on Political Activity and Election Campaign Financing, adopted in February 2011¹⁰⁶, closely reflects most recommendations made by local and international experts, including OSCE/ODIHR, GRECO and GONG. The election candidates can finance their campaign activities with their own financial resources and donations from domestic sources, while foreign and anonymous donations are prohibited. Total campaign costs per candidate list should not exceed HRK 1.5 million per constituency, including market value of in-kind contributions. Proportional reimbursement of campaign costs is provided for lists that win at least five per cent of the valid votes in their constituency, while additional compensation at a different level is available for national minority candidates. Most importantly, each electoral contestant must open a separate bank account for all campaign contributions and expenditures and a strong mandate is given to the State Electoral Commission (SEC) to oversee campaign finance regulations, including checking these accounts at any time and forwarding detected cases of irregularities to the courts to decide on sanctions, including fines or transfers of unauthorized funds to the state budget. In addition, all electoral lists, whether partisan or independent, are required by law to submit preliminary reports to the SEC on campaign income and expenditure seven days before election day, while the deadline for final reports is 15 days after the final election results are announced.

¹⁰⁴ The archive of news articles in English on the case is available at <http://daily.tportal.hr/> and www.croatiatimes.com via search engine, see also Business New Europe, “Behind the Landmark Political Corruption Case Rocking Croatia”, March 26, 2012 http://articles.businessinsider.com/2012-03-26/europe/31238744_1_corruption-trial-ivo-sanader-preliminary-hearings/2#ixzz1zGe4VQuo

¹⁰⁵ European Commission. (2012), *Interim report from the Commission to the Council and the European Parliament on reforms in Croatia in the field of judiciary and fundamental rights (negotiation Chapter 23)*, March 2, 2012

¹⁰⁶ Zakon o financiranju političkih aktivnosti i izborne promidžbe, Official Gazette 24/11 and 61/11

Failure to report is sanctioned by fines and forfeiture of the right of reimbursement for the campaign¹⁰⁷. An area of improvement of the regulation is the need for more precise rules on public disclosure of media advertising costs, while OSCE also recommends that “sanctions be reconsidered in order to enhance their efficacy and deterrence effect”¹⁰⁸.

The other key oversight mechanism is the State Audit Office’s annual auditing of financial reports of political parties, independent and national minority MPs and members of local and regional councils, as defined by the Law on Political Activity and Election Campaign Financing (both current and earlier version from 2007¹⁰⁹). The State Audit Office is obliged to publish the annual audit report on political finances on its website, in addition to submitting it to Parliament by the end of the current year. While sanctions for non-compliance with reporting requirements exist, in the form of fines and suspension of payment of budgetary funds, their actual implementation is deficient, as shown by the 2010 audit report that as many as 28 instructions for sanctions on the part of the State Audit Office were not processed by responsible institutions, without any further action taken by the Government.

The precise legal provision on public disclosure of reports on party and campaign financing provide the media and civil society the basis for independent monitoring, which is particularly important, given huge delays in parliamentary review of the State Audit’s Reports, indicating political manoeuvring of public attention to its findings. That was the case with the last report for FY 2010, not

discussed and approved by Parliament until March 2012. In the recent parliamentary discussion, the purpose and usefulness of audit reports on party financing were put into question, considering that the 2010 report does not provide any indication of the huge fraud disclosed through the FIMI MEDIA affair that took place in HDZ at the time.

2.6 Electoral Rules

Despite numerous deficiencies of electoral legislation and administration, including overblown voter lists, electoral units on the verge of gerrymandering, with sizeable discrepancies of the weight of each vote, in the past term of Parliament there have been no structural changes of the election system or the administration process, which has clearly reflected the will of the ruling party, HDZ. In addition to the aforementioned improvements in the oversight of campaign financing, the only other change of parliamentary electoral rules is the revised constitutional provision on the mode of voting of citizens without residence in Croatia (so called diaspora), which is now restricted to consular centers in country of residence, resulting in the fixed number of three mandates, as opposed to the former sliding scale depending on the proportion of overall turn-out and the turnout in the special electoral district for voters abroad. The new provision represents a political compromise between HDZ (which has traditionally relied on prevalent support of voters from abroad, primarily Bosnian Croats) and SDP (which has traditionally abstained from campaigning among Bosnian Croats and diaspora in general and explored ways of restraining, if not ideally eliminating, diaspora voting.)

There was, however, an attempt to revise the model of national minority voting, but the amendments of December 15, 2010 were overturned by the Constitutional Court in July

¹⁰⁷ The Overview of the key provisions is based on OSCE/ODIHR Limited Election Observation Mission Final Report in the Republic of Croatia Parliamentary elections December 2011 parliamentary elections, pages 10-11, also available at the Croatian State Election Commission website, http://www.izbori.hr/izbori/dip_ws.nsf/public/index?openform

¹⁰⁸ Ibid, page 18.

¹⁰⁹ Zakon o financiranju političkih stranaka, nezavisnih lista i kandidata, Official Gazette 1/07

2011, after consideration of expert opinions, and upon the complaint from a Serbian minority NGO that claimed unequal treatment of different ethnic groups¹¹⁰. The proposal was a reflection of the coalition agreement between HDZ and its Serbian minority coalition partner SDSS, as well as other national minorities supporting the Government. The cautious, not to say lingering decision-making process of the Constitutional Court reflected the political sensitivity of the matter in the turbulent months prior to the elections, marked by citizens' protests, and parallel, intense government efforts to close negotiations with the EU. Interestingly, only after Croatia completed the negotiations, did the EC start insisting on the revision of voters' list, which may be motivated by the fear of sub-standard procedure for the election of Croatian members of the European Parliament.

Comprehensive electoral reform is the task embraced by the new Government, with support from the President of the Republic as well as civil society organizations. In spring 2012, the Ministry of Administration set up several working groups on electoral issues, the current priorities being voter lists, local election rules and electoral units. It is the expectation of civil society and academic experts that a comprehensive review will be undertaken, resulting in standardized procedures for all aspects of election administration and the revised electoral model for parliamentary elections, including controversial issues of diaspora and minority voting.

2.7 Media Laws

Since 2010, there have been no significant changes in media regulation affecting parliamentary accountability and transparency. The only substantial legislative action in the period, related to media policy was the adoption of new Croatian Radio-Television (HRT) Act¹¹¹, aligned with the *acquis*, which provides a more detailed overview of public television station's public duties. According to Article 9, HRT's program must "fulfil democratic, social and cultural needs of the society, guaranteeing pluralism and cultural and linguistic diversity", by means of (among others) "informing the public about political, economic, social, health, cultural, educational, scientific, religious, ecological and sports events, and phenomena in country and abroad, and ensuring open and free discussion on all matters of public interest". In the follow-up Temporary Agreement between the Government of Croatia and HRT February 2011 – January 1, 2013, on programmatic and technological objectives and tasks of HRT, there is no explicit mention of coverage of parliamentary activities, which have been routinely specified in annual Program Orientations. It should be noted that in June 2012 the law on HRT was amended¹¹² after the change of Government in order to address the protracted governance crisis, featured by the blossoming of particular interests and clientelist relations that has seriously undermined programmatic development and the credibility of HRT over the past three years. The new law gives stronger powers to the Croatian Parliament and, subsequently, to the ruling majority, which now directly appoints the Director General of HRT with a qualified majority – a solution that was

¹¹⁰ "The amendments had sought to introduce two key changes. First, the three reserved seats for the Serb minority would be transferred from the national minority constituency to the territorial constituencies. Second, the other minorities would retain five reserved seats but also be granted a "supplementary vote," allowing them to vote in both their territorial constituency as well as the national minority constituency. See: Constitutional Court Review of the Legislation U-I-/3786/2010, Decision 29.07.2011. Source: OSCE/ODIHR Limited Election Observation Mission Final Report on Republic of Croatia Parliamentary elections December 2011 parliamentary elections, page 5.

¹¹¹ Zakon o Hrvatskoj radioteleviziji, Official Gazette 137/10, www.nn.hr

¹¹² Zakon o izmjenama i dopunama Zakona o Hrvatskoj radioteleviziji, Official Gazette 76/2012, www.nn.hr

criticized by the opposition as an attempt of the new Government to take political control over HRT. Yet, the Croatian Journalist Association and other professional and human rights NGOs have advocated this political intervention as the only way out of the state of capture of the public television by economically and politically driven private interests and chronic dissolution for professional standards¹¹³.

3. Changes in the Practice

3.1 Parliamentary Practice of Ensuring Access to Information

The Croatian Parliament meets the formal obligations of FOIA - on its website there is a special section on the right of access to information with instructions for citizens, contact information for an information officer and a catalog of information. The catalog provides links to specific sections of the main website www.Sabor.hr also including internal acts, online data bases with legislative acts, parliamentary questions to the Government, statistics on legislative activities, parliamentary structure, attendance of sessions (<http://infodok.Sabor.hr>) and video recordings of sessions (<http://itv.Sabor.hr/video>). There is a special website www.sukobinteresa.hr of the Commission for Prevention of Conflict of Interest in the Exercise of Public Office, with information on public officials' assets and company ownership. *Sabor's* main website seems to be increasingly well attended – in 2010 there were 268,590 separate visitors and an average of 3.57 pages viewed per visitor; in 2011 – the election year - the total number of separate visitors tripled to 892,815, while the average number of pages viewed increased

more slightly, to 3.67. In the first half of 2012, there were 189,003 visitors, which is closer to the 2010 trend, yet the number of viewed pages per visitors increased to 4.57, indicating that more time is spent on the website and more information is being consumed¹¹⁴.

The websites are well organized and regularly updated, especially regarding plenary work, with committees' web-pages lagging behind. A highly visible section on FAQ contains a number of practical explanations of the mode of operation of Parliaments, working hours and ways to contact MPs. RSS technology (Really Simple Syndication) enables subscriptions to news updates from the website, which has also been adjusted for mobile access. However, the parliamentary websites are not adjusted to facilitate access to information for people with disability, i.e. visual adjustments for people with weak sight, as well as presenting key information in format and wording specifically adjusted to people with intellectual difficulties, but also to people with lower education, children and youth. Hence, Parliament is among the majority of state institutions that lag behind in ensuring accessibility of new ICT technologies and systems, listed measure 1.7.1. of the National Strategy of Equalization of Possibilities for Persons with Disabilities 2007-15¹¹⁵, as part of the overall e-governance project, in line with Article 21 of the UN Convention on the Rights of People with Disability.

According to official annual reports on implementation of the Freedom of Information Act, in 2010 the parliamentary information officer processed 59 requests for information all within legally binding deadlines, out of

¹¹³ Public announcements of Croatian Journalist Association of July 11, 2012 January 16, 2012 and December 23, 2011, available at <http://www.hnd.hr/hr/arhiva/0/> and <http://www.hnd.hr/hr/arhiva/20/>

¹¹⁴ Information provided by the parliamentary Information Officer on July 17, 2012.

¹¹⁵ Vlada RH, Nacionalna strategija za izjednačavanje mogućnosti za osobe s invaliditetom 2007-2015, http://www.mspm.hr/djelokrug_aktivnosti/osobe_s_invaliditetom/zakonodavni_okvir

which 52.5 requests were approved, 3.5 requests were forwarded to other public bodies, 3 requests were refused on the grounds of classified information and lack of knowledge of where information may be located, and 1 request for additional information was approved¹¹⁶. Hence the approval rate was 89%, with refusal rate of 5%. In 2011, Parliament reported that it received 64 requests for information, of which 59 were processed within the deadline, 41 were approved, 5 requests were forwarded, 1 request for correction or addition of information was approved, while 17 were refused. In comparison with the previous year, the approval rate decreased by 64%, while the refusal rate increased significantly, to 26%. There was also one case of appeal to the Administrative Court, against the refusal of information issued by the Elections, Appointments and Administration Committee. In the report, Parliament notes that the evidence does not cover requests directly submitted to parliamentary bodies, which process them independently, based on the provisions of the parliamentary Standing Order¹¹⁷.

Regarding classification of information, in the period (July 2007 – May 2012, i.e. since the Data Secrecy Act came into force, Parliament has classified a total of 222 documents, within legally defined categories of “very secret” (52), “secret” (65), “confidential” (11) and “limited” (94). In line with the legal provisions, parliamentarians had access to all classified information, without security checks and issuing of certificates, given that they signed a confidentiality statement before the Office of the Council for National Security. In the entire period, Parliament refused only two requests for information (one fully and one

partially) due to the fact that the information was classified.

While the parliamentary information and security policies are obviously in place, the main challenge is insufficient internal coordination and consistency in provision of information across parliamentary bodies. Namely, Parliament’s information officer does not seem to coordinate closely with the PR Department, soon to be divided into the Media Department and the Citizens’ Department, which receives, according to the Department Head, around a thousand citizens’ inquiries per year, mostly by phone and email, many of which represent requests for information. Ideally, the web rubric on access to information may be linked with FAQ to include an inventory of past inquiries and answers, with a search engine, which might, in some cases, prevent multiple requests for same information. Similarly, parliamentary committees deal with requests for information independently. While processed on a daily basis, these inquiries are neither properly recorded nor analyzed. A positive recent step forward has been the written instruction from the new Secretary of the Parliament to all parliamentary bodies that they should provide the information officer with copies of all requests for information and responses provided by bodies on their own, as soon as the requests are processed¹¹⁸. It is also clear that there is no common practice of dealing with sensitive information at the level of Parliament as a whole, as evidenced by three different approaches undertaken by different committees, on the issue of disclosure of biographical information of candidates for public positions, appointed by the Parliament, detected by GONG over the past two years¹¹⁹. In addition to the evident lack of common policy on the part

¹¹⁶ AZOP. (2010). *Godišnje izvješće o provedbi Zakona o pravu na pristup informacijama za 2010. godinu*. [Annual Report on FOIA Implementation - Summary], March 8, 2010, page 11.

¹¹⁷ AZOP. (2011). *Godišnje izvješće o provedbi Zakona o pravu na pristup informacijama za 2011. godinu*. [Annual Report on FOIA Implementation], March 30, 2012, page 13.

¹¹⁸ Information provided by the Parliament Information Officer Daniela Sraga on June 28, 2012.

¹¹⁹ GONG. (2012). “Upravni sud i Hrvatski sabor u raskoraku: funkcije javne, a podaci o kandidatima tajni?” [“Constitutional Court and Croatian Parliament at Odds: While Functions are Public, Data on Candidates are Secret?”], press release, May 3, 2012.

of parliamentary working bodies and an evident lack of coordination with the information officer, the case has disclosed that the Administrative Court did not perform the test of public interest as mandated by FOIA (Article 8.4.).

Targeted education of both civil servants and MPs, the presidents of parliamentary groups and committees in particular, would be a valuable vehicle for building both knowledge and internal cohesion necessary for competent provision of information and public communication. So far, no training on FOIA has been organized by Parliament and only two officers from the Information-Documentation Department attended the basic day-long training on FOIA for civil servants. In the future Parliament is expected to improve its online databases, in line with the principle of proactive disclosure of information, deemed key for efficiency of both access to and provision of information. The key missing elements at this point include MPs' voting records, and more detailed information on staffing and financing of Parliament operations.

3.2 Engagement With Citizens and Interested Public

Over the past years, there has been a positive trend in *Sabor's* openness to initiatives on the part of civil society, government bodies or international organizations to organize special events on the premises of Parliament, which is a guarantee of media interest and an easy way to engage parliamentarians and raise public awareness of specific policy issues. This option is particularly valuable for advocacy-oriented civil society organizations. Requests for holding a round table at Parliament are addressed to and approved by the Secretary of the Parliament. Another option is direct cooperation with a parliamentary committee as co-organizer of a round-table or even thematic open

sessions. The regularity of such events and plurality of themes, political views and civil society organizations engaged indicates the existence of good parliamentary practice in cooperation with civil society, which is getting only stronger and is well ahead of the level of openness of the past and present Government.

According to the list of public events provided by the PR Department, in 2010, there were eleven public or special events held at Parliament, including four round tables or conferences (on political accountability and communication with citizens, and current affairs in the Western Balkans); in 2011 there were 10 such events, including seven thematic committee sessions, round tables or conferences. The number has doubled in the first half of 2012 with 9 listed events, including four round tables or conferences. It is important to note that the actual number is certainly higher since the PR Department only lists those events announced on Parliament's homepage. For instance, the list does not account for any round-tables organized by the National Committee on monitoring the negotiations with the EU, even though two such events were organized in 2010 (on EU funds and strategic importance of public television)¹²⁰. Similarly, on the webpage of the Economy Committee there is a report from a joint thematic session, with the Environmental Protection Committee, held in June 2011, and the Committee on implementation of policy of energy efficiency, and initiated by two NGOs – the Academy of Political Development and DOOR. Just like in the case of citizens' requests for information, internal coordination of public relations is still weak, which is understandable considering the high degree of autonomy of parliamentary groups and committees.

¹²⁰ Archive of the National Committee website <http://www.sabor.hr/Default.aspx?sec=2397>

The Croatian Parliament also hosts study visits from primary and secondary schools on a regular basis, as well as other citizens' groups from Croatia and abroad. Citizens can also attend plenary sessions, given the space limitation. This activity was initiated by GONG ten years ago and successfully handed over to Parliament in 2006. The statistics are impressive, indicating that every working day there are on average two groups visiting the Parliament and around 20 citizens attending plenary sessions. In 2010 there were 483 study group visits from educational institutions totalling 13,600 visitors as well as 4,632 visitors of plenary sessions. In 2011 the number of group visits dropped to 314 engaging 11,246 visitors with equal attendance of plenary sessions (4,698 visitors). In the future, the head of the newly formed Citizens' Department (and former head of the PR Department) plans to complement additional educational activities, such as quizzes, a tailored webpage for children and youth and worksheets for teachers, acting as supplements to the newly introduced and long-awaited school subject Civic Education¹²¹.

Another programme developed in cooperation with GONG and currently managed by the Parliament PR Department is parliamentary internship or volunteering, carried out in cooperation with the Law School and Faculty of Political Science of Zagreb University through which interested students are recruited to assist parliamentarians in organizational and analytical matters. Over the past two years, the number of volunteers has decreased significantly – from 54 in 2008 when Parliament took over the organization to 38 in 2010 and 35 in 2011, which is reflective of the parliamentarians' interest and readiness

in engaging volunteers. As concluded by the Head of the PR Department in charge of the programme, in the future more intense preparations are needed, with focus on informing MPs about benefits but also their own obligations related to successful internships.

Despite these examples of a proactive approach to the public, Parliament missed the key opportunity, posed by the EU referendum, to position itself as a trustworthy, resourceful source of political information autonomous from the Government, i.e. the Ministry of Foreign and European Affairs, which was fully in charge of the public campaign activities, combining information on the outcomes of the negotiations with the promotion of the government-held pro-EU position. Parliament did not take any active part in the communication campaign, other than holding a thematic plenary session on the outcomes of the negotiations, broadcast live by HRT, nor did it prepare any specific information materials, other than the long-standing web rubric with basic information on Croatia's accession process to the EU. It is also evident that over recent years there has been very little coordination on the communication of EU issues between the PR Department and the National Committee, which used to hold a series of round-tables.

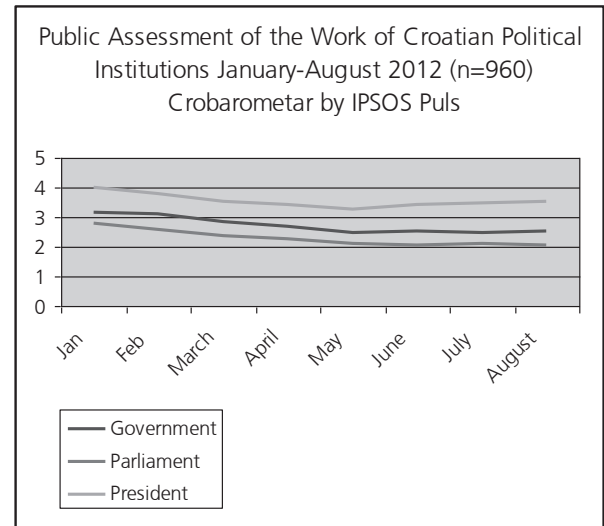
The future plans entail a full redesigning of the parliamentary bulletin *Izvjешća Hrvatskoga Sabora* (IHS), which has lost its function of weekly review providing summaries of parliamentary debates, since internet took over as the primary source of public information. In the past, IHS was printed in 5000 copies and even sold country-wide, while at present it is also available online. The current idea is to turn IHS into a more analytical quarterly journal (both in online and printed form) on parliamentary issues and political affairs in Croatia, with extensive coverage of Croatia's engagement in EU affairs.

¹²¹ Meeting with Ružica Šimunović, former Head of the PR Department and current Head of the Citizens' Department of the Croatian Parliament, June 21, 2012.

4. Public Attitudes vis-a-vis Parliament

Despite the historical, symbolic significance of Parliament as primer national political institution, public trust in and respect for Parliament are very low. As demonstrated by the most recent findings from the monthly public opinion survey Crobarometer, conducted by the leading polling agency IPSOS Puls in the period January-August 2012, the performance of Parliament is assessed much lower than that of the Government and the President, taking into account the overall trend of declining satisfaction since the parliamentary elections. The average parliamentary performance in policy-making of 2.28 has fallen into the category of 2 out of 5 (barely satisfactory), in comparison with the Government (2.77) which was in the next category of 3 out of 5 (satisfactory) and the President (3.55) who has been ranked the highest, at the level of 4 out of 5 (very satisfactory). There seems to have been little change in the low standing of Parliament over recent years, as evidenced by the 2008 survey on public trust in political and social institutions, commissioned by Parliament from the Ivo Pilar Institute¹²² – the percentage of respondents who highly or moderately trusted the Parliament was only 20%, which ranked *Sabor* the third from the bottom of the list, just below the Government (22%) and just above the judiciary (14%) and political parties (12%), while the President held a relatively high fourth position (44%), preceded by the church and the military (50%), and the school system (47%). Even though there are not specific qualitative studies, it can be inferred that the negative public perception of parliamentarians labels them

as idle and overpaid second-rate or worn-out politicians, with little interest in and influence over key political issues and decisions, made by party leadership and the Government.



5. Media Coverage of the Work of Parliament

While no research has been identified on media coverage of parliamentary work, it can be observed that the plenary debates are regularly covered by both public and private electronic and printed media, with less attention paid to the work of parliamentary committees and special events. Most media attention is directed towards Question Time, with fierce and often verbally outrageous exchanges between the ministers and opposition MPs taking place at the beginning of every session, i.e. on a bi-monthly basis. Also, considering the physical closeness of the Parliament and Government, located opposite each other on the same small square in the old part of Zagreb, it is routine practice for journalists to collect parliamentary feedback on a number of Government decisions. The Croatian Public Television (HRT) is expected the leader in air time allocated to *Sabor* — in addition to regular reporting in the radio and television news, the second channel of the Croatian Television

¹²² Institut Ivo Pilar. (2008). "Pilarov barometar hrvatskog društva - listopad 2008.: stavovi i mišljenja građana o društvenim odnosima i procesima", Zagreb. [Pilar's barometer of the Croatian society: October 2008 – attitudes and opinions of citizens about social relations and processes.]

provides live broadcasts of parliamentary sessions from 10 a.m. until 1 p.m. Yet, what is missing is a more analytical and deliberative approach, which would expose the citizens to the background of parliamentary politics.

6. Conclusion and Recommendations

As Croatia is turning a new page in its democratic development – hopefully, leading to maturity – with the new Government and prospective membership in the EU, the Croatian Parliament has a unique yet brief chance to re-establish itself as a trusted, open and efficient institution that bridges the divide between the citizens and the rulers. The current process of formulation of new Standing Orders, accompanied by an internal capacity of building and restructuring, is a clear opportunity for setting higher standards and more efficient practices of public information, consultations and deliberation. It is encouraging that the Speaker of Parliament, his Deputy and the Secretary of the Parliament are vocal supporters of parliamentary openness and transparency, truly interested in suggestions and cooperation with civil society organizations.

Civil society's main request relates to the opening up of all parliamentary committees to permanent external members, based on a transparent merit-based nomination and selection procedure. An additional request relates to the elaboration and more extensive use of various mechanisms for informing and engaging interested public and citizens in parliamentary work, in line with the international Declaration of Parliamentary Openness, supported by GONG and other

Croatian advocacy NGOs, making up the watchdog coalition Platform 112¹²³. The deliberative and supervisory functions of Parliament would be greatly improved by means of public consultations on legislative acts, public hearings on specific issues, open thematic sessions at the level of committees, and open plenary discussions on strategic issues of Croatia's social and economic development, democracy and human rights, and positioning in the EU policy making. Also, incentives for more frequent and meaningful interaction between individual MPs and their constituents are much needed, which should also be reflected in the current electoral reform. Finally, Parliament's website is a strategic resource not only for information, but for two-way communication and even deliberation of policy issues engaging citizens and their MPs. A special issue is ensuring greater accessibility of the parliamentary website and publications to diverse groups of citizens, especially people with disability, children and youth, the elderly, and less educated individuals. As Croatia enters the EU an even greater scope of contents of parliamentary documentation and public relations activities will need to be available in at least English. Many of these ideas are probably better addressed through the parliamentary Rules on Public Access to Proceedings in the Croatian Parliament and its Working Bodies, which may also be the document where the internal procedure for coordinated provision of information in line with the Freedom of Information Act may be specified. It is encouraging that the window of political opportunity for these most welcome improvements in parliamentary openness is currently open.

¹²³ Platforma 112. „U očekivanju drugačijeg Sabora“ [In Expectation of a Different Parliament], public statement of the coalition of civil society organizations Platform 112, released on September 19, 2012. www.gong.hr

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www.nn.hr

Case Study: Greece

Eleni Stathopoulou

1. Introduction

Succeeding the fall of the seven year dictatorship in 1974, Greece achieved the establishment and subsequent development of a stable and consolidated democratic political system. The existence of unity and a stable party system, providing mostly majorities, has meant that several changes have been introduced in both the constitution and parliament's internal rules, whereas in other Southern European countries this has been seen as more problematic (Norton 2003). As it has been argued in literature, robust parliamentary majorities, combined with strong party discipline in parliamentary systems, i.e. in the Greek case, may enhance the ability of governments to innovate and impose losses on groups and institutions (Weaver and Rockman 1993: 17). In particular, Penelope Foundethakis has pointed out that the readiness and ease of introducing changes in Greece has led to a 'worrying' instrumental use of the electoral system by the parties in government (Foundethakis 2003). However, with the advent of the economic crisis, and with the country having to implement in a very short time severe austerity measures, over the last two years the political system has been through, and is still going through, turbulent times.

The two consecutive national elections of 6 May and 17 June 2012 in Greece deconstructed the Greek party system and took a completely different form from that which we had known over the last two decades. The latter elections confirmed many of the trends and patterns which were identified in May's election – fragmentation, disaffection,

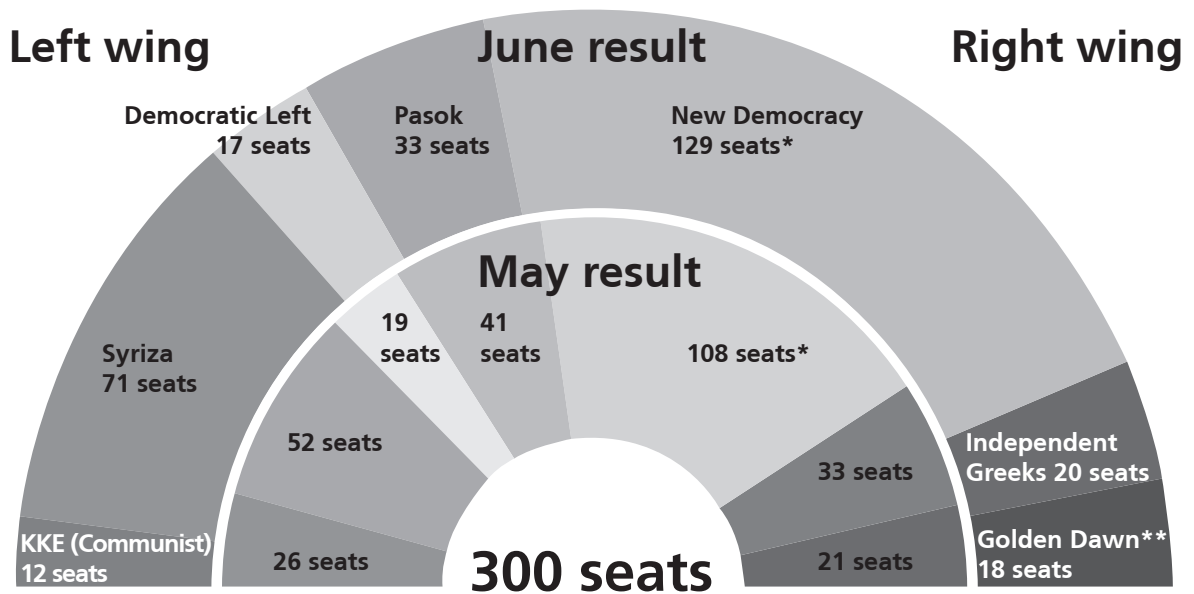
extremism, fear and anger. The Greek electorate, while highly polarized between the supporters of the Euro and the anti-memorandum parties, with its vote in May broke down bipartisan rule, which had been situation in the country for over three decades. The two main political parties that had monopolized power for decades lost most of their electoral strength. Pasok, the social democratic party, lost almost 60% of its 2009 voting power, while for New Democracy, the conservatives, despite winning the first place, the 30% they achieved was not sufficient to form a government and they had to reach to a coalition agreement. New Democracy, benefiting from the electoral law that gives to the first party the bonus of 50 seats, formed a broad coalition government with the participation of Pasok and the moderate Democratic Left Party (Dimar). Syriza, the party of the radical left, proved to be the winner of this electoral battle since the party got its highest share in history and came very close to winning the election. The extremist party, Golden Dawn, maintained its share of the vote, despite being exposed to the media by the violent behavior of one of its MPs against a representative of the communist party on national television.

The new parliament that was formed after the June elections consists of seven parties, depicting the fragmentation of the political system and the new political culture of coalition and power sharing that the participating political parties have to adopt. This fact accentuates the need for a more transparent and accountable parliament, but also a parliament that not only serves as a forum of

dialogue, but as a legitimizing power as well. What is presented in the present paper are the changes that have been made in the legal framework in terms of which the parliament

works, the last two years in Greece, the public attitudes vis-à-vis parliament and a general assessment of how the work of the parliament is depicted in the media.

Greek parliamentary election results



*includes 50 extra seats for coming first
Source: Greek interior ministry

**Ultra-nationalist party

BBC Graph: Distribution of the seats in the Greek Parliament after the June 17 elections.

2. The Legal Framework

Following the dissolution of the 7-year dictatorship and the “smooth” transition (Boulgaris 2002, p. 25) to a democratic regime, the Constitution of 1975, besides any omissions, it supported the establishment and the consolidation of democracy. The fact that the President of the Greek Democracy would concentrate many superpowers became the main point of conflict between the governing party and the opposition. The issue, which was dissolved with the revision of the Constitution in 1986, however, lacked the adequate checks and balances against excessive concentration of power with the majority (Alivizatos 2001, p21). In this regard the revision of 2001 and 2008 did not offer

any change. Taking also into account the existing reinforced electoral system, it becomes evident that the prominent role that the governing majority holds in the chamber, and its legislative functions and initiatives, are driven by the party in power. All Greek parties used to constitute powerful disciplined organisations (Mavrogordatos 1984, Alivizatos 1990, Voulgaris 2001), whose leaderships efficiently controlled their parliamentary members (Alexopoulos 2010). The 2001 revision of the Greek standing orders brought in a considerable increase in the autonomy given to the committees’ legislative and monitoring functions (Norton & Leston-Bandeira 2005). At this point it is important to stress that the legal framework is a necessary condition, but not a sufficient one to ensure parliament’s

transparency and accountability. The actual practice in accessing public information and the challenges in this respect are equally important. Outlined below are the changes implemented in the legal framework of the parliamentary work.

Amendment of Standing Orders 2010.

The amendments of the SO were passed on 14 April and 16 July 2010, after debate by the Plenum. Important institutions, such as the multi-party presidium, the Conference of Presidents, the current questions and interpellations and the permanent committees, were established by the SO passed in June 1987 and still constitute the basic text. According to Foundethakis, these, to some degree, reinforce the position of the opposition comparatively to the previous SO of 1975, and provide for many more analytical regulations. The 2001 amendment confirmed the characteristics of the post-1974 SO with reference to the interpretation and the specification of the constitutional provisions. The latest reform was announced in the midst of the financial crisis and citizen's disaffection with the democratic process piling up. The main goal to be achieved through this change was to win back citizens' trust in politics and political actors mainly by boosting the trustworthiness and accountability of MPs.

With regard to improving the legislative work, the changes that were issued in the last amendment of Standing Orders stipulated mandatory supervision of deposited bills, a report evaluating the impact of the suggested regulations and possible consequences, and a report on the public deliberation that had preceded. Almost every piece of draft legislation or even policy initiative by the government is posted in a blog-like platform prior to the submission to parliament. Citizens and organizations have the opportunity to post their comments, suggestions and

criticisms article-by-article (<http://opengov.gr/en>). In addition, the double processing of the bills in the committees was introduced, in the mediation of seven days between the two sessions, so that Members have the opportunity to study the bills and submit their proposals thereon. The forbiddance of the so-called "late night amendments" was also in this direction. This was a very common practice in the past, when a minister would introduce amendments in the chamber in late night meetings, in this way limiting the discussion and deliberation, since most MPs were not present (Kaminis 1999).

Another point of great importance is the introduction of two special standing committees on *Armament Programs and Contracts* and also the *Monitoring of the Social Security System*. The former is assigned with the task of monitoring the implementation of armament programs and the related contracts. These meetings will not be public unless the Board decides otherwise. Furthermore, parliamentary control was introduced for public works contracts with a value of over 20 million euro by the competent parliamentary committees. The reason for these amendments is most probably the economic scandal involving a former Minister of Defense, Akis Tsochatzopoulos that hit the headlines in May the same year. On 30 May 2010 the newspapers *I Kathimerini* and *Proto Thema* gave to publicity their discovery that his wife had purchased a house for one million euro from an offshore company on one of the most prestigious streets in Athens. The fact that this news came to light just a few days before parliament passed a series of austerity measures made the anger of the people even stronger and drew the attention of the media.

Whether those parliamentary reforms proposed after scandals are likely to be ef-

fective in strengthening and deepening the relationship between Parliament and the public is still under question. The third crucial point was the prohibition of transforming the contract of a revocable officer into a permanent employee of Parliament. Many MPs in the past have taken advantage of this regulation and appointed employees to permanent positions. Notwithstanding the noteworthiness of the above reforms, although relatively slim, the media did not give them any publicity, other than the purely informative side. Last, but not least, the online publication on Parliament's internet site of the finances of the MPs was introduced.

The new scene that generated after the last elections, in the composition of parliament and the formation of a coalition government motivated the new President of Parliament to announce his intention to proceed with a further reform of the SO, in order to adjust the legislative work of the parliament and parliamentary scrutiny to the new conditions. However, there was severe criticism from the opposition party, arguing that such a decision serves the purpose of downgrading the role of opposition in parliament; consequently it would have negative effects on parliamentary work and democracy itself.

In addition to the changes of the SO that were implemented, the previous government, under Giorgos Papandreou, even in a term of six months, in an effort to change the heated political climate, issued and voted two bills against corruption. The crisis triggered citizens' disaffection with the workings of parliament, MPs, political parties and the political system in general, and this was acknowledged by the previous government, which worked towards reversing it. The aim of the first bill was to make more effective the investigation of potential criminal liability of government officials on matters of pub-

lic interest. In March 2011 the government passed a modification of the law on ministerial responsibility (3126/2003), which stipulates the following: (a) suspension of the period of limitation for offences or felonies committed by Ministers (Art. 1, 3961/2011), (b) the establishment of a three-member advisory council. It consists of a Deputy Prosecutor of the Hellenic Supreme Court and two prosecutors of the Court of Appeals, which take the responsibility of proceed to legal controls in order to assess if there is any substantial evidence and consult for further investigation of potential criminal liability of a Minister. (Art. 2, 3961/2011), (c) in the case of felony, the interrogator has the right to seize any economic advantage that is associated with the felony or block any kind of bank accounts (Art. 4, 3961/2011), (d) imposition of restraining orders, e.g. prohibition of leaving the country (Art. 5, 3961/2011).

On July 2011 (4022/2011) parliament voted another bill in order to facilitate legal proceedings against offences by Ministers and Vice Ministers, committed by taking advantage of their authority, and setting time limits of two months for the preliminary examination, and four months for the investigation. This was an attempt to combat the argument of many dissatisfied citizens that no one is punished and the reason is usually that the procedure takes too long.

Another issue that drew publicity because of the crisis was the financing of political parties. The Greek political parties are funded mainly by the state, members' subscriptions, bank loans, income from companies that the party holds and MPs' contributions (Bernardakis 2009). Anagnostou and Xiros have argued that *the issue of establishing effective control over the finances of political parties and parliamentary representatives is of ongoing relevance and is widely acknowledged*

to be a serious impediment to guaranteeing their accountability. However, fundamental reform of the existing process of control and of the respective committee that engages in it requires constitutional revision. The last constitutional amendment was concluded in 2008, thus every official discussion and proposal for future amendments cannot take place earlier than in 2013, i.e. 5 years after the last revision, which means that this cannot start earlier than June 2013 and is unlikely to be completed before 2015.

Therefore, it is difficult to implement fundamental reforms in the legal framework of the parliamentary work. Notwithstanding, Papandreou's government attempted to initiate a public administration reform. One fold of this venture was in respect to transparency of public spending. The project aimed to enhance transparency by using new electronic means. The 'Clarity' programme, as it was named, ensured that all public entities' decisions should be implemented or else they could not be implemented <http://diavgeia.gov.gr/en>). Progress in this field was also acknowledged by the Interim report (EC, 2010). It should be pointed out that the Memorandum only made compulsory the publication of any public spending, but the government took this regulation one step further by applying this rule for all decisions. Ladi categorizes 'Clarity' as a reform which, although it has been completed successfully, cannot be characterized as radical.

Another good indicator of the openness and the fairness of the legislative control on the government are the temporary investigative Commissions, which also usually attract wide attention of the society and the media. During the last two years three were created on behalf of especially acute political issues. One concerned the Siemens bribery scandal, the second was about part of the reserves

of the Greek auxiliary pension funds which were invested in structured bonds and the third was about the deficit of 2009, which led to controversy concerning the liability of the Greek Statistical Authority. Despite the fact that all three investigative Commissions resulted in political liabilities and the first two also criminal liabilities, they did not seem to have such a cathartic effect for the citizens, as the trial for the Koskotas scandal had had in 1991. Koskotas was a former banker who led the financial scandal which brought down the PASOK government in 1989. Andreas Papandreou, who was prime minister, was accused of ordering state companies to deposit money in a troubled private bank and taking bribes of stolen money, but was cleared of all charges. The trial in a symbolic way reassured the citizens that no one was above the law and it applied to all without any exception. The effect (if there was any) of the investigative committees did not have the same gravity. The main difference was that the latter did not have the massive amount of publicity.

3. Public Attitudes vis-à-vis Parliament

In contemporary politics, the role of parliament appears to be circumscribed by drafting legislation and budgets. At the same time, a growing network of decision-making, involving not only the government but also non-government organizations, and national and international organizations, has meant as a result that decisions are increasingly removed from the parliamentary realm into areas that are considered not to be under public control or even scrutiny. In addition to the above, the current financial crisis, which has severely affected Greece, has prompted more discussion in this area, raising also serious questions about the legitimacy and sovereignty of the political sys-

tem. There has been an ongoing discussion as to whether Greece's sovereignty has been massively limited by the European Union, the International Monetary Fund and the European Central Bank-known as a troika.

Although parliament is considered to be one of the fundamental political institutions of democratic regime, several barometers, worldwide and not only in the Greek case, prove that citizens show a severe lack of confidence and trust in it. Before we continue to outline and identify the causes of such phenomena in the Greek case, a certain theoretical representation is needed on the meaning of trust. Ideas like "political trust" are not so simple, for this reason their measurement is not straightforward and consequently the interpretation of the evidence is even more complicated. Items measuring trust in parliament do not necessarily do a good job of measuring people's assessments and confidence in specified linkage institutions (i.e. parties and parliaments, since they represent the most important institutional settings, which provide linkage between citizens and the state). This means that when the interviewee is asked on a scale to rate his or her trust in parliament, we cannot be sure what exactly he/she is evaluating, for example it could be the political performance of the current MPs or the legislative work of parliament. To make accurate conclusions we need a more complex set of questions, which is usually not available, and that would be the case in Greece. On the other hand we cannot be confident that low levels of trust in parliament affect the stability of the democratic regime and the legitimacy of parliament. There are several arguments. However, it is not the purpose of this paper to present the theoretical framework, but only to give a hint of possible implications in measurement and interpretation of political trust.

In the Greek case we should take into serious consideration three endogenous factors, and one exogenous one, in order to explain the low levels of trust, and these are populism, corruption, weak social capital and, as already mentioned, the pressure to implement austerity measures in a relative short period of time. Populism is not a new malaise of the Greek political system, which the financial crisis has brought to the surface. It is a much debated concept and many researchers have studied its use in Greek politics (Lyrintzis 1987 and 2005, Pantazopoulos 2006).

For the purposes of this paper, let us only note that one aspect of populist logic is the adoption and implementation of policies on the basis of electoral and narrow party criteria, claiming that a policy is beneficial to the general public, in order for the political parties to satisfy the particularistic demands of the party base and/or specific clientele groups, and introducing policies that were bound to have in the future severe negative implications, not only for the Greek economy but for the Greek society as well (Lyrintzis 2011). The outcome was an oversized public sector subjected to the political parties, which the state, as it has been proved today, would not be able to fund for a long time, and a long process of undermining people's trust in the representative structures of democracy.

Yet, additionally, there is one further very important consideration which needs to be taken into account, and that is the extensive corruption in the Greek political system. All the scandals and also rumors concerning the unexplained wealth of prominent politicians, which have recently come to light, have turned the citizens into being even more cynical and distrustful towards the representative political institutions of democracy, one of them being parliament. The citizens are

also turning to new forms of political protest and extremist right wing parties. A significant movement was the one called *Aganak-tismenoi* [The Outraged], which started on 25th May 2011, with Greek citizens gathering in the central squares of major cities all over the country and the electoral percentage that Golden Dawn-the extreme right wing party achieved and maintained in the two recent elections.

At the outset of our analysis we should keep in mind the dominant perception about civil society in Greece, which is that it is particularly weak in relation to other European member states. It is argued that the legacies of the undemocratic past, especially in the post war period, and clientelism are the two most influential institutional properties that hinder the emergence of a strong civil society in Greece (Sotiropoulos 2004). Civil society was unable to organize politically, so as to exercise pressure on the state, and the trade unions were colonized by political parties.

Considering these three points of political malaise paralleled by the pressure for reform that is imposed by the troika, a balance is difficult to achieve. The Greek parliament as an institution has admittedly been suffering from the political malaise. What is seriously challenged today is the legitimacy of the political system. Citizens tend to distrust MPs and perceive them as corrupt, while the public also considers political and parliamentary discourse to be superficial and ostentatious (Foundethakis 2003: 99-100). During the last decade all major surveys including the European Social Survey (ESS, 2009) registered increasing percentages of political apathy, distrust of political parties and disenchantment with politics. The waves of the European Social Survey register declining levels of trust in parliament, not only in Greece but all around Europe. Especially in Greece the amount of

complete disenchantment has doubled, and positive support for parliament has almost disappeared (ESS, 2003-2009). In a survey conducted by Public Issue, which assessed public trust in Greek institutions for 2010, the Greek Parliament was ranked 30th out of a list of 48 institutions. Especially since 1989, the year of the Koscotas scandal, when trust levels fell significantly, they took a downward turn, and only slightly in the year of 2004, the year that Athens held the Olympic Games and a general feeling of national pride was widespread, only then did they mark a slight rise. Recently, the deficit of public trustworthiness that appears to surround not only the Greek Parliament but the entire political system and the general trend of its downgrading is acknowledged not only by the political elite but also a large number of civil actors. The democratic deficit of the Greek Parliament lies in the fact that developed into a forum of discussion and furthermore as a legitimizing institution. Rather than being the center of decisions, it legitimizes the process of decision-making.

One other popular explanation of any growth in public disaffection is based upon theories of political communications, and thus the role of the media should be examined. Unfortunately there is no extensive research in Greece that addresses to the media coverage of the work of the parliament. Demertzis and Armenakis conducted in some research in 1999 about the frequency of parliamentary coverage in newspapers from 1977 to 1997. The tendency that is noted from the beginning is that the parliamentary news in proportion to the total of the publication is quite low and remains at a very low level. In proportion to the political news it shows a dramatic decline. These data reveal either the unwillingness of the press to cover the parliamentary work, or a significant decay of the

importance of Parliament's role. Parliament itself has moved toward greater openness in its proceedings. The effect of a more open Parliament, particularly through the medium of television, would appear to be a more informed public. Televised proceedings - which means essentially televised extracts - reach a large audience, especially through news and regional programs. These practices, however, do not ensure that the public will turn to show higher levels of support. A more informed public might be a more skeptical and demanding electoral body.

4. Concluding

Parliaments and legislatures as institutions are supposed to be the cornerstone of representative democracy. Nevertheless, in the list of institutions - public or private - they most frequently occupy the last places according to the level of citizen confidence or esteem (Beetham 2006: 110). The Greek Parliament is no exception to that. Despite the fact that after the establishment of the democratic regime in Greece and its consolidation for more than three decades, its institutions do not enjoy the citizens' support as democracy does as an ideal. Parliament has a key role in addressing this paradox. As the central institution of democracy, one of the primary functions of parliament is to hold the government to account. In the process the Greek parliament was subordinated to the parties in government. Indicative of Parliament's weak status is the adjective that was used by Alivizatos, characterizing it as a "talking" parliament, opposed to what was supposed to be, a "working" parliament with a central aim of supporting action by the executive (Alivizatos 1990: 144).

What is of great importance and needs to be changed but is mostly avoided, at least

over the last 15 years, is a revision of the electoral system. The electoral system should be revised in the direction of enabling MPs to act independently and allow them a degree of freedom from their party. That is the main reason why parties have been seen as intrinsic to a stable democratic polity. The wishes and actions of MPs individually have had to be subjugated to the dictates of party. In Greece small amendments have been introduced in order to give MPs individually more freedom of action, but these have been very timid changes. Because the reality is that party control is much 'safer' for the working of democracy. Autonomous behavior by MPs is still seen as a threat to the stability of the political system, and therefore to democracy. The recent changes in the political system may with time develop a new democratic political culture and maybe it will enable the integration of more autonomy in MPs' actions into the normal functioning of the political system. Similarly, closer links between MPs and their constituencies may also develop.

The measures already implemented have not been sufficient to change the conviction of general public that "MPs in Greece care only for their jobs", serving their own private interests and electioneering purposes rather than the public interest. More information, publicity and transparency concerning the work of the MPs, a good practice could be, for example, a public register of their experts and staff; this way more light would be shed on it. Another idea that could help would be that the MPs would publicly report their activities in their constituencies. In sum, more sustained efforts to improve the transparency of all aspects of Parliament's work, not least important - that of the individual MPs, are needed to boost the trust of the citizens in this central institution of representative democracy.

Concluding, it should be pointed out that there is no safe solution to tackle public distrust and disengagement. However, promoting a greater familiarity with politics, politicians and the Parliament and building on the more positive views that people have may have a better

chance of succeeding. The current challenges that Greece is facing in the financial, the political and the social sector should be a chance for letting go of old practices and implementing more reforms towards a more representative and “working” parliament.

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Openness of the Assembly of Kosovo

Artan Venhari

1. Introduction

The Assembly of Kosovo is the highest legislative institution of Kosovo directly elected by the people for a mandate of 4 years, and consists of 120 members elected by secret ballot on the basis of open lists. Currently, the Constitution provides that of these 120 seats 20 are guaranteed for non-majority communities, with 10 seats being guaranteed for representatives of the Kosovo Serb Community and another 10 for other non Albanian Communities.¹²⁵

Although there has been some movement forward, there is still criticism that not enough has been done on any of the points, which has had a great influence. Since the end of the war of 1999, the Assembly of Kosovo has had 4 legislatures,¹²⁶ which have been faced with the arduous task of adopting a great number of laws which would aid with the transition towards democracy and the establishment of a functional state, to oversee the work of the Government, and to build a relationship with the Civil Society.

With regard to its main three obligations, namely the adoption of laws, oversight of the work of the executive and the representation of people, the Assembly has not performed at its best. The adoption of laws is slow and only a third of the laws envisaged within the legislative plan get adopted. It has not managed to find a way yet to raise the level of accountability in order to hold government officials accountable for their policies or use of funds. And the civil society

feels that it is becoming less representative and cannot find a way to have their voice of concern heard in the Assembly.

Lack of funds for its functioning and the dependency on the Government for budget allocation; lack of stronger cooperation and relations with numerous independent agencies to conduct overseeing; the unclear roles and mandates of parliamentary committees and the lack of cooperation between them; the poorly defined role of the administration with insufficient powers to be a stakeholder in the Assembly - these are only some of the problems that the Assembly of Kosovo is facing.

However, we have to acknowledge that there are still positive developments. Although there are claims of lack of meaningful space for civil society representatives for involvement in public decision-making, the Assembly has opened its doors, and it is partly an obligation of civil society to also find a way to participate in the processes. Some of the parliamentary committees¹²⁷ have started defining their mandates and drafting their internal description of rules of procedure to aid them in the process of seeking accountability. The Rules of Procedure of the Assembly are also being amended in order to provide space to strengthen the role of the administration and to further clarify the administrative structures.

One of the issues that remains as the most concerning, and which has a strong influence on the Assembly of Kosovo and its work, is the elections and the behaviour of political parties.

¹²⁵ Constitution of the Republic of Kosovo, Article 64,

¹²⁶ Information on previous legislatures can be found at: <http://www.assembly-kosova.org/?cid=2,158>

¹²⁷ The list of Parliamentary Committees can be found at: <http://www.assembly-kosova.org/?cid=2,110>

Kosovo is still in search of a suitable election system, whereby there would be a higher level of accountability of MPs towards the people, with the representation of all groups. The constant accusations of vote theft are shattering the already fragile position of MPs.

2. The Legislative Framework

The legislative and institutional reform in Kosovo has been rather slow, and is still changing. There has been a change of election rules every time there are elections, and currently the legislative is still discussing what the next ones should look like. The decisions taken by the Constitutional Court remind us of the weakness in the work of the Assembly and of political life in Kosovo in general. The changes of the last Rules of Procedure were only minor and cosmetic, and the new Rules of Procedure have not been adopted yet. Although there is still a positive perception with regard to its openness to media and civil society, and there is sufficient access to information, this is a relation they still need to build on.

a) Elections: in search of a formula

Kosovo is a Parliamentary Republic, and through a secret ballot voters directly select their representatives for a mandate of four years. So far Kosovo has witnessed four general elections, and what is interesting to note is that there have been changes to the system of elections almost every time there are elections, and this shall undergo further changes, as it is currently being worked on by the Parliamentary Ad Hoc Committee for Election Reform. However, the two features that have persisted in all of the above systems are the reserved/guaranteed seats for non-majority communities and the gender quota of 30%.

In the first elections of post-war Kosovo, OSCE called for the application of *closed lists*

and the *single district* formula because it was deemed best and most suitable, and easiest to apply.¹²⁸ However, civil society organisations were unhappy with this model and request changes that would increase the level of accountability of those chosen towards the electorate. As a result of the lobbying by civil society for a better democratic system, in the elections of 2007 and of 2010 the lists were opened and the electorate could also select their representatives besides the political party.

Because of the growing feeling of disappointment of the electorate with the existing system, and the decreasing number of voter turnout in elections, civil society organisations have been looking into a possible reform of the Electoral System that would change this trend and offer recommendations for that reform.¹²⁹ One of the issues raised was that, since it was in the power of the central party leaders and not the voters to choose the candidates, the links between voters and the electorate are almost non-existent. Another deficiency of the system which was noticed was that there is no regional representation in the assembly.

The proposal of the civil society was that, in order to diminish the role of the central party leaders and create balance, at the same time as ensuring regional representation, and strengthening the link between the electorate and their representatives, the new system should consider the division into more than one district, that there be one vote per ballot, and that the lists remain open.¹³⁰

However, this system by itself is not sufficient, without more responsible behaviour

¹²⁸ This formula was applied in the general elections of 2001 and 2004.

¹²⁹ KIPRED, Reforming the Electoral System of Kosova, Prishtina, June 2005, 2nd edition.

¹³⁰ KIPRED, Elections for the Citizen: Evaluation of the Kosovo Electoral System and Recommendations for Future Elections, Prishtina, January 2012.

of political parties. The elections of December 2010 saw a large number of breaches of procedures and irregularities. Because of great external and internal pressures the State Prosecution declared the trial of cases of election crimes as a priority, but the results were feeble. By end of June 2011 out of 174 reports received the Public Prosecution only 18 verdicts had been rendered.¹³¹ The EC called on Kosovo institutions to "...deal more decisively with cases of electoral fraud" and to "...address the shortcomings and ensure political will at all levels to conduct fair elections at every stage of the process."

b) The impact of the Constitutional Court in the work of the Assembly

After the adoption of the Constitution of the Republic of Kosovo on 15 June 2008,¹³² followed the establishment of the Constitutional Court of Kosovo in January 2009, as the chief guard of the Constitution.

Since its establishment, the Constitutional Court has played a very important role in political life in Kosovo. Decisions taken and opinions issued by the Court have had a great influence in the parliamentary and political life in Kosovo.

Following the ruling of the Constitutional Court in autumn 2010, the then President of Kosovo, Mr. Fatmir Sejdiu, stepped down and the coalition fell apart, after which new elections were called for December. The ruling of the Court was that Mr. Sejdiu was violating the constitution as President of the Republic of Kosovo and he was forbidden to hold any other executive positions. During the time of

his exercising the position of the President to Kosovo, he was also the leader of one of the biggest political parties in Kosovo, of the LDK.¹³³ Following the ruling, Mr. Sejdiu presented his resignation as President of Kosovo.

Similarly, the Court also challenged the election of Mr. Behxhet Pacolli¹³⁴ as President by the Assembly. On 22 February 2011 Mr. Pacolli was elected by the Assembly as President, as a part of the agreement with PDK.¹³⁵ The Constitutional Court on 30 March declared that his election was unconstitutional and that he had violated the Constitution. Mr. Pacolli presented his resignation the following day.

After the resignation of Mr. Pacolli, the deadlock had to be broken, thus the Assembly elected a consensual President, Ms. Atifete Jahjaga, agreeing to undertake election reforms, which were to be finalised in 2012, and which would amend the present Law on Elections¹³⁶ and make the necessary constitutional changes for the election of the President by the people in a separate ballot, rather than by the Members of Parliament.

Her election came after the agreement was reached between the three major political parties that immediately after the election reform she would relinquish office and provides the space for new presidential elections. Even though some had been calling for her resignation, the Constitutional Court issued an opinion 6 July 2012¹³⁷ ruling against eight amendments to the Constitution proposed by the Assembly. One of these opinions also stated that early termination of the President's mandate would be unconstitutional, and proposed the exercise of a full mandate.

¹³¹ The EC Kosovo Progress Report for Kosovo, 2011, and KIPRED, Election Crimes: An Analysis of the Criminal Prosecution and Trial of the Cases of Election Crimes in Kosovo, Prishtina, October 2011.

¹³² The constitution can be found at: <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

¹³³ Lidhja Demokratike e Kosovës (Democratic League of Kosovo)

¹³⁴ The founder of the political party Alenaca Kosova e Re (New Kosovo Alliance)

¹³⁵ Partia Demokratike e Kosovës (Democratic Party of Kosovo)

¹³⁶ Law No. 03/L-073 on General Elections in the Republic of Kosovo

¹³⁷ <http://www.gjk-ks.org/?cid=2,28,298>

The Parliamentary Ad-hoc Committee for Amendment of the Constitution has been established with a limited mandate, with the aim on proposing the necessary changes needed for the electoral reform; none of the amendments aims at making changes regarding the nature of work and the procedures of the Assembly, its internal organization, or its legislative powers.

Although some of the decisions taken by the Court have had a great influence in the parliamentary and political life in Kosovo, it has maintained a high level of professionalism and non-partisanship.

c) The RoP: what we have and what we would like

The Assembly of Kosovo is currently running based on the Rules of Procedure (RoP) adopted by the Assembly in 2010.¹³⁸ Neither the administration of the Assembly, nor representatives of Civil Society are happy with the current RoP, considering that the version of the RoP adopted in 2010 had minor and cosmetic changes, to remove the word UNMIK from its content and the presence of the SRSG in the process of adoption and promulgation of laws. Furthermore, the current RoP is not in line with the Constitution of Kosovo.

The Rules of Procedure are in the process of amendment and passed the first reading in June 2012. They are expected to be adopted at the start of the autumn session of the Assembly.

The amendments to the RoP are expected to address a number of issues, among which is also access to Parliament. The proposed amendments are expected to simplify the procedures for participation of civil society and NGOs¹³⁹ in

the legislative process. As a part of the new RoP, public hearings shall not remain optional in the workings of Parliamentary Committees, but shall become obligatory. It also provides that every law that has to be approved has to undergo the procedure of public hearing, which will improve access to parliament.

Another major shortfall in the functioning of the Assembly has been with bodies with overlapping powers and agenda, which has created confusion. While Kosovo was under international administration, the Assembly had developed a dualism. On one side there was the Presidency of the Parliament, which had the power to dictate the agenda of the Parliament and on the other were Chiefs of Parliamentary Groups who coordinated their respective MPs.

This dualism meant not only problems for the government, which had to negotiate with the former in order to set the agenda and with the latter to ensure that issues were voted, but it also created problems for the civil society and media, which did not have any access to the work of the Presidency.

In order to address this dualism, the new RoP have stipulated a new structure to mitigate the role of the Presidency of the Assembly and to strengthen the Chiefs of Parliamentary Groups. A new body is envisaged, which shall be the "Conference of Presidents", which shall consist of Chiefs of Parliamentary Groups, who will decide on the political agenda of the Assembly.¹⁴⁰ There is resistance of the current Presidency of the Assembly to accept these proposed changes, as this would mean a loss of political power, and maintaining of administrative but not political functions.

There are also efforts to move from the current position of subordination of adminis-

¹³⁸ A copy of the current Rules of Procedure of the Assembly of the Republic of Kosovo can be found at: http://kuvendikosoves.org/common/docs/T_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf

¹³⁹ Interview with the General Secretary of the Assembly, Mr. Ismet Krasniqi.

¹⁴⁰ Interview with Mr. Bardhyl Hasanpapaj, Legal Expert at national Democratic Institute

tration of the Assembly to the political representatives towards a partnership between them. This would entail a higher degree of authority to the General Secretary of the Assembly, as the manager of the administration of the Assembly, and would remove the direct influence of the Presidency of the Assembly on the Administration of the Assembly.

The broadcasting of the work of the Assembly is also not regulated well. Although there is an agreement between the Assembly and the RTK¹⁴¹ to air the plenary sessions of the Assembly, there is a general agreement that this service has problems. In order to address a number of issues regarding access to documents, as well as following the work of the Assembly, there is currently a project for the digitalisation of the Assembly, which shall be finalised with Parliamentary TV.

d) How is Access to information regulated?

Based on the reports produced by local and international organisations, neither the legal base, nor the practices within the Assembly of Kosovo restrict access to information.¹⁴² While the Constitution in general calls for full access to public documents in public institutions.¹⁴³ The RoP, although they do not define clearly access to documents and meetings of bodies of the Assembly, have not posed restrictions of access to media and civil society.

A particular chapter of the RoP¹⁴⁴, which deals with the plenary sessions and the tran-

scripts, provides that "Sessions of the Assembly shall be public, unless otherwise decided by the Assembly. The sessions may be broadcast in accordance with the Decision of the Presidency. An electronic record shall be made of all plenary sessions. Each discussion shall be recorded in the language in which it was made. Minutes shall contain the agenda, a resume of discussions and decisions taken by the Assembly." It further stipulates that transcripts of meetings shall be "...filed in the Assembly archives; published in the web site of Assembly; disseminated to the members of Assembly; and made available to the public, pursuant to the law."

Members of civil society noted some shortcomings in the work of the Assembly. The first shortcoming was that although there was a positive response in the request for documents, the Office for Public Relations still needed to ask for permission from administration for the release of any documents. The other more important shortfall regards the participation of the civil society in the meetings of parliamentary bodies. While the Assembly is open and transparent, they do not seem to have found a way of involving civil society in the parliamentary processes. This participation is passive and does not offer space for civil society representatives to present recommendations, and there is currently no mechanism for MPs to consider their recommendations.¹⁴⁵

The administration considers that a good way to address this in the future is by making *public hearings* mandatory upon parliamentary committees, which would provide the necessary space for the civil society's meaningful inclusion.

However, we have to note that the Assembly is still considered as one of the most open

¹⁴¹ Radio Television of Kosovo is a National Television Channel

¹⁴² Center for Policies and Advocacy, The right to access to public documents: results and challenges of implementation, Prishtina, June 2012.

¹⁴³ Article 41 of the Constitution states that 1. *Every person enjoys the right of access to public documents*; 2. *Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.*

¹⁴⁴ Rules of Procedure of the Republic of Kosovo, Ch XII – Article 43 – Publication and Registering of the Plenary Sessions, http://kuvendikosoves.org/common/docs/T-_Rregullorja_Kosoves-29%20prill%202010-anglisht.pdf

¹⁴⁵ OSCE, Reference Book for Civil Society Organizations: Participation in the Legislative, Oversight and Budget Processes of the Assembly of Kosovo, November 2011.

and transparent institutions, as its work and the work of its Committees is extensively covered by the media, and that it has endorsed close cooperation with NGOs in the monitoring of the work of the Assembly, or in a few cases also in the process of institution-building. This involvement of civil society remains to be further strengthened by regulating and clarifying this relationship.

e) Anti Corruption, Conflict of Interest and Disclosure of Assets

As MPs are physical entities, it is hard to have them under any financial supervision. The Anti Corruption Agency of Kosovo is the only institution where MPs declare their assets. However, although the ACA makes public the declaration of assets by high officials, here including MPs, it does not have any investigative powers to look into the reliability of this information.

The Law on Rights and Responsibilities of the Deputy is also vague in the aspect of control and supervision, as it specifies in detail the benefits of the MPs, while failing to address the issues of what should be done in cases when they fail to meet their obligations or fulfil their mandate. Even in the cases when there is a clear violation of mandate, nothing has been done to address this issue.

An important issue raised frequently has been that of double employment by a large number of MPs, by holding positions as board members of agencies, thus violating provisions stipulating that an MP cannot hold an executive position in any other institution.

With the lack of any stronger institutional safeguards in the process of the activities of MPs, civil society members and the Constitutional Court have played a crucial role in the supervision of the work of the Assembly and the MPs.

The Ruling of the Constitutional Court to limit the immunity of MPs has also played an important role, as it removes any lack of clarity regarding immunity from the cases of crime and corruption. While the Court states that “... *the deputies of the Assembly ... enjoy functional immunity for actions taken or decisions made within the scope of their respective responsibility*” they have no immunity “... *from criminal prosecution for actions taken or decisions made outside the scope of their responsibilities.*”

f) Political Parties: their financing and control

Currently the Law on General Elections¹⁴⁶ regulates the financing of the electoral campaign of political parties, the Law on Financing of Political Parties regulates the general financing of political parties, while the Law on the President, which is currently being drafted, shall cover the finances of the electoral campaigns for presidential elections.

Because the issue of financing is so dispersed, all legal provisions that in any way are connected to the financing of political parties shall be included in a single law, that of the Financing of Political Parties. This way of organizing shall not only make the understanding of the legal system of financing of political parties easier, but at the same time shall make the access to information easier.

The financing of political parties and parliamentary groups is regulated by the Law on Financing of Political Parties.¹⁴⁷ This law was subject to amendment in December 2011. One of the substantial changes was the increase of the Fund for the support of parliamentary groups from 0.17% of the overall Budget of the Republic of Kosovo, to 0.34%.¹⁴⁸ Although the Law on Financing of Political Par-

¹⁴⁶ Law No. 03/L-073 on General Elections in the Republic of Kosovo

¹⁴⁷ Law No. 03/L-174 on Financing Political Parties

¹⁴⁸ Law No. 04/L-058 on Amending and Supplementing the Law No. 03/L-174 on Financing Political Parties

ties is considered to be good, the main shortfall is that it has not been fully respected and applied in practice, because of the lack of will of political parties to apply it.

This fund is used for the financing of regular activities of political parties, the financing of their branches, of organizational units of women and youth of political parties, financing of pre-electoral and electoral campaigns, and financing of activities of parliamentary groups.

Based on this law, political parties are obliged to deliver a financial report to the CEC. The primary and secondary legislation, i.e. the Law and Regulations of the CEC should clearly state the standard format for delivery of regular financial reports to the CEC by political parties. The CEC considers that it would be helpful if political parties delivered the electronic version of the report, rather than printed version. This would enable easier access to specific information for each of the political parties. Apart from this, this would also help the process of auditing and publishing of reports by the CEC. Penalties for failing to disclose financial reports, or provision of false information, by political parties are symbolic. Although it is currently stipulated that the CEC is in charge, they do not conduct the role of oversight of financing of political parties. Unfortunately the CEC does not have sufficient human capacities to oversee the financing of political parties, and it should be delegated to other bodies.¹⁴⁹

As MPs are physical entities it is hard to have them under any financial supervision. The Anti Corruption Agency of Kosovo is the only institution where MPs declare their assets. Since they receive only salaries from the Kosovo Budget, it is difficult to request any other audit or supervision.

g) Openness to the Media

The Assembly has not managed to find a way to improve the communication and build relations with the media. This period of transition is evident through some of the decisions taken earlier in 2012, which posed restrictions of media on the premises of the Assembly.

In order to regulate the access of broadcasting media and complaining that cameras in the hall of the assembly were disrupting the work of the Assembly, a decision was taken to restrict the possibility of TV journalists to interview MPs in the hall of the Assembly. Thus they were forced to carry out this activity outside the building. After great protests from media, as this posed a problem to them as well as to MPs, influencing the quality of information, an office was established inside the building for this purpose, which did not work very well. In the end restrictions were again removed and broadcasting media can again film within the premises of the Assembly.

Many representatives of the media and civil society also consider that there is lack of transparency in the work of the Assembly, as there is a complete lack of access to the deliberations of its highest political body, the Presidency of the Assembly. The Presidency, which has decision-making powers, holds regular weekly meetings, which are not open for journalists or for non-governmental organizations that monitor the Assembly.

This lack of transparency in the deliberations and decisions of the Presidency and the lack of engagement of civil society in the legislative process have weakened the overall positive perception of the Assembly as one of the best performing public institutions in Kosovo.

¹⁴⁹ KIPRED, Strengthening the Statehood of Kosovo through the Democratization of Political Parties, Prishtina, June 2012.

3. Public Attitudes vis-a-vis Parliament

However, looking at the development of the Assembly through the legislations, we can note a positive movement forward, with an increasing level of results and external engagement. Nevertheless, there are numerous shortcomings in the work of the Assembly which raise doubts as to their ability to carry out their obligations as representatives of the People.

One of the greatest deficiencies is their lack of ability to conduct meaningful oversight of the Government and to hold the government to account for their actions. A clear show of their weaknesses against the executive became very clear when the executive decided to ignore two motions of the Assembly.¹⁵⁰ One of the motions called for the implementation of measures of reciprocity in the EU and US mediated dialogue between Kosovo and Serbia, and the other motion requested the head of the Kosovo delegation in the dialogue to report to the Parliamentary Committee on Foreign Policy and also report in the plenary sessions of the Assembly. Unfortunately, the Assembly did not have the strength to impose its decisions and the executive simply chose to ignore these motions by claiming that they were mere recommendations by the Assembly and had no obligatory power.

The other widely spread negative practice among parliamentarians is their engagement in the public sector, which sometimes leaves their engagement in the Assembly as secondary. Although there are no clear provisions prohibiting this, this influences the overall work of the Assembly. However, there are provisions in the Law on Rights and Responsi-

bilities of the Deputy that pose limitations in the possibility of engaging in other executive positions, which has been violated in some cases with MPs becoming members of Executive Boards¹⁵¹ of other institutions.

The subordinate role of the Assembly can also be noticed in the budgeting process, in which the Assembly has to negotiate with the Government on its annual allocations, and also has no powers to ensure the budgets for the functioning of independent institutions supporting it to carry out the oversight of the executive.

On many occasions, the administration of the Assembly has requested from international donors and local organisations to provide support not only to the deputies and political representatives, but to extend that support to also include the administration. Although there is a strategy for the Assembly administration developed by the support of the National Democratic Institute (NDI)¹⁵², international donors and local organisations working with the Assembly and Parliamentary Committees do not adhere to it, but rather work based on their plans and projects, and not in coordination with the Assembly administration and their strategy. In some cases this has resulted in overlapping activities and competition between organisations working at the Assembly, and reflects a lack of ownership by the administration of the projects implemented.

The work of parliamentary committees also remains fragmented, as there is no coordination of work between them to maximize their impact and efficiency. There are still joint committee meetings which would help Parliamentary Committees conduct a better review and monitoring of policies of the Government.

¹⁵⁰ Assembly of the Republic of Kosovo, Resolution Nr. 04-R-001, Prishtina, 10 March 2011.
http://www.assembly-kosova.org/common/docs/Resolution_for_dialogue_between_R.Kosovo_and_R.Serbia.pdf

¹⁵¹ Interview with Petrit Zogaj, FOL Movement

¹⁵² National Democratic Institute

The implementation of the Legislative Strategy has continued to be an Achilles' heel of the Assembly. Analysis shows very poor performance of the Assembly in the adoption of laws it envisages in its annual Legislative Strategy. Currently, the Assembly manages to adopt around 50% of the laws foreseen in its strategy.¹⁵³

4. Conclusions and Recommendations

Although there has been general movement forward for the Assembly, there are a number of shortcomings that the Assembly needs to address in order to enhance its efficiency.

1. Because of the highly contested elections of December 2010, identified with "industrial theft of votes", the Assembly enjoys a very low level of trust. In order to change this sentiment, the Assembly needs urgently to complete the process of election reforms and propose amendment that would present a meaningful change in the election process, providing for better controls and a more representative democracy than the existing one;
2. The Assembly has to find ways to carry its oversight role in raising the level of accountability of the executive towards the Assembly. There should be more coordinated and joint work of Parliamentary Committees for a better monitoring and assessment of the work of the performance of the executive;
3. The Assembly should adopt as soon as possible the new Rules of Procedure, in order to increase the efficiency of its work, as well as to provide clarity with regard to the functioning of the Assembly and its committees;
4. The Assembly administration should work on raising the capacities of its staff to provide better support to Parliamentary Committees in conducting oversight and analysis of the performance of the executive. The Assembly administration should coordinate the work of local and international institutions in the implementation of its strategy and internal reforms;
5. The Assembly should seriously consider stipulating legal provisions that set out not only the benefits, but also address the obligations and limitations of MPs. One of these should be to prohibit any engagement of MPs in the public sector, to maximize the impact of their work as MPs. This could improve not only the quality of deliberation by MPs, but also increase the level of implementation of the legislative agenda;
6. The Assembly should work on its relations with the public and improve its relations with the media and civil society in order to change the overall negative perception of the work of the Assembly;
7. The Assembly and its committees should strengthen their work with Independent Agencies in order to improve oversight of the work of the executive. To this end they should review the legal provisions regarding allocation of budgets for Independent Agencies and the Assembly itself, in order to preserve financial independence;
8. The Assembly should establish a separate channel that would provide direct broadcasting of plenary sessions of the Assembly and the working of its bodies.

¹⁵³ A brief Study on Legislative Strategy: Its implementation and influence on the work of the Assembly and Government, GAP Institute, February 2010.

Open Parliaments: The Case of Macedonia

Renata Treneska-Deskoska

1. Introduction

In contemporary democracies, there is no doubt that “transparency is new leadership imperative”.¹⁵⁴ Fulfillment of this imperative is even more important for countries of transition, trying to consolidate democracy. In these countries, including Macedonia, the dignity and transparency of the Parliament is very important for the legitimacy of this and other state institutions elected by this body, as well as for democratic consolidation.

A leading idea of the constitution drafters in Macedonia was that the Parliament should be a “nest of democracy” and an institution which represents the genuine will of the citizens. Because of that, in the constitution drafting process, they created a semi-presidential system (with elements of an assembly system), which on the scale between parliamentary and presidential system is closer to the parliamentary one, and in which no other state body should be allowed to dissolve Parliament. This constitutional peculiarity, which means a lack of one of the mechanisms of the system of balance between legislative and executive power, could lead towards the wrong conclusion that the Parliament of the Republic of Macedonia has the leading role in the political system. But the legal norms should only be a starting point in the evaluation of the role of the political institutions.

After the period of “glory” of the Macedonian Parliament at the start of the transition, when the Parliament was the mediator in the transition and initiator of debate and making decisions on important issues; the process of

marginalization of Parliament started. Marginalization of parliaments is a tendency in most of the contemporary democracies. The theory speaks about “sunset” of the legislatures or rubber-stamps legislatures. This problem is even bigger in the Republic of Macedonia, because submission of the Macedonian legislature under the government is accompanied by a violation of the Constitution and Rules of Procedure by the Parliament itself. Because of that the Macedonian Parliament can be qualified as a non-institutionalized parliament.¹⁵⁵

The current composition of the Parliament in Macedonia was elected in June 2011. It consisted of 123 MPs, of which 120 are elected in six electoral units on the basis of proportional representation. These mandates are distributed according to D'Hont formula. For the first time, in 2011 Macedonian citizens living abroad voted and elected 3 MPs in the Parliament. In the last elections, 5 coalitions won seats in the Parliament: 56 seats are held by the coalition headed by VMRO-DPMNE; 42 seats are held by the coalition headed by SDSM; 15 seats are held by DUI; 8 by DPA and 2 by NDP. The current government was elected by the MPs from the lists headed by VMRO-DPMNE and DUI.¹⁵⁶

¹⁵⁵ According to Rod Hague, Martin Harrob and Shaun Breslin parliament is institutionalized when: it efficiently performs legislative function; has well established internal organization (for example committees); abides by its own rules; and reaches an accepted place in the political system. Rod Hague, Martin Harrob and Shaun Breslin, “Komparativna vladavina i politika”, Zagreb: Fakultet političkih znanosti Sveučilišta u Zagrebu, 2011, p. 319

¹⁵⁶ VMRO-DPMNE has been in power since 2006. In the period from 2006 to 2008 the ruling coalition consisted of the MPs elected on the list headed by VMRO-DPMNE and MPs elected on the list of DPA. Since the pre-term elections in 2008 till now, the ruling coalition is composed of MPs elected on the list headed by VMRO-DPMNE and the list of DUI.

¹⁵⁴ http://blogs.hbr.org/cs/2012/04/transparency_is_the_new_leader.html

The first impression of the transparency of the Parliament in Macedonia is that it is the most transparent of all institutions, but a closer look at its functioning shows many problems of its openness.

2. Legislative Framework on the Transparency and Accountability of the Parliament in Macedonia

The question of transparency and accountability of the Parliament of the Republic of Macedonia is regulated in the Constitution and several laws and by-laws, such as the Law on Parliament, the Law on Free Access to Public Information, the Law on Members of the Parliament, the Law on Prevention of Corruption, the Law on Conflict of Interest, the Rules of Procedure of Parliament, the Rules on Internal Order of Parliament, etc. This analysis will address only the new legal developments, i.e. legal changes that were not addressed in the previous Open Parliaments Bulletin.

2.1 Law on the Parliament of the Republic of Macedonia

In spite of the debates as to whether the Constitution contains the basis for adoption of the Law on the Parliament of the Republic of Macedonia, this law was adopted, regulating in a more detailed manner questions of transparency and accountability of the legislative body.

a) *Contacts of MPs with citizens and NGOs* - This law regulates that MPs, aside from their regular work during sessions in the Parliament and its working bodies, shall perform contacts with citizens; contacts and consultations with non-governmental organizations; contacts, cooperation and consultations with trade unions and with associations of citizens, etc. (Art.8) This law also obliges

the bodies of local self-government to provide equal assistance to MPs in performing their function. The local bodies should provide an office and conditions for the MPs for contacts with the citizens from their constituencies (Art. 11). Further, Article 36 determines that Parliament, in cooperation with the local self-government units, shall provide office space for meeting between MPs and citizens in their constituency. If these two articles are compared, inconsistency could be noticed: Article 11 determines an obligation for local self-government bodies, while Article 36 regulates shared obligation between Parliament and the local self-government bodies. Further, Article 36 regulates that every Friday shall be devoted to the MPs' contacts with the citizens in the constituencies. The Parliament should not convene sessions on Friday (plenary sessions, meetings of working bodies and activities of the Parliamentary Groups for cooperation with parliaments of other states), except in urgent and extraordinary circumstances. The finances for maintaining contacts between MPs and citizens should be secured from Parliament's finances in the Budget of the Republic of Macedonia. This should be done with an act adopted by the Budget Council of the Parliament, which consists of president (one of the vice-president of the Parliament), a vice-president (the president of the Parliament's Commission for financing and budget) and 9 MPs.

b) *Disclosure of assets of MPs* - This law also regulates the transparency of the financial situation of MPs. According to Article 15, MPs are obliged in the period of 30 days from the verification of their mandate to fill in a questionnaire with detailed information on their assets and property, debts and financial claims, other values that are owned by them or by members of their families, as well as the origin of the property. MPs also should give a

statement for giving up of protection of secrecy of bank accounts. MPs are also obliged to fill in the same questionnaire 30 days after termination of their mandate. These questionnaires should be submitted to the State Commission for Prevention of Corruption and the Public Revenue Office. The information from the questionnaires is public, except those that are protected by law.

c) *Supervisory hearings* – The Law on Parliament introduces supervisory hearings, whose purpose is to examine the work of the government in executing legislative mandates. At the supervisory hearing other persons can be invited who can give information regarding the subject of the supervisory hearing. The public shall be informed about the supervisory meetings through the Parliament website and the Parliament TV Channel. The Law does not regulate the possibility of interested persons attending the hearing and offering their testimonies. While in some countries, citizens can attend hearings and offer their written testimonies, in Macedonia citizens must be invited to testify at a public hearing.¹⁵⁷ The conclusions from the supervisory hearing shall be posted on the web site of the Assembly.

d) *Parliament TV Channel* – The Law on Parliament regulates the functioning of the Parliament Channel. Parliament has program responsibility for broadcasting the activities of Parliament through the Parliament Channel. The Parliament Channel informs and educates the citizens about political life, through parliamentary, educational and civic programs. The Parliament Channel Council, which is composed of 11 MPs (6 from the ruling coalition and 4 from the opposition) elected by the Parliament, has responsibility of securing the broadcasting of the activities of the Parliament.

e) *Parliamentary Institute of the Assembly of the Republic of Macedonia* – The Law on Parliament provides for the creation of a special organizational unit of the Parliament – the Parliamentary Institute, with the aim of fostering the legislative, supervisory and analytical research capacity of the Parliament. The implementation of the legal norms was supported by the Swiss Agency for Development and Cooperation (SDC), USAID and NDI. The organization scheme of the Parliamentary Institute was set up and within that special unit for education and communication was drafted. The aim of this unit is to develop and organize communication and informational activities on the work of Parliament, including a service where visiting citizens may obtain information on the work and role of the Parliament; it prepares various printed and electronic informative materials related to the legislative powers geared towards different target groups; it organizes tours of the Assembly and facilitates visitor access to working sessions in the Assembly; it supports the further development of communication with the public, schools and universities, etc.¹⁵⁸ The activities for organization of this Parliamentary Institute started in 2010, the public announcements for employing in this Institute were made at the end of 2011 and beginning of 2012, but the results were missing. Some of the TV stations informed about the scandals in the process of selection of candidates for the posts in the Parliamentary Institute, which led towards nullification of the job announcements.¹⁵⁹

¹⁵⁸ "Katalog so opis na rabotnite mesta i licnite kvalifikacii", Parlamentaren institut na Sobranieto na Republika Makedonija, November 2011, p. 69.

¹⁵⁹ Ima li skandal so Parlamentarniot institut? <http://www.vestif.mk/default.aspx?eventId=46004&mld=36&egld=6>

¹⁵⁷ "The Public Hearing Process – A Guide for Citizens", NDI, November 2011, p. 8.

2.2 Rules of Procedure of the Parliament of the Republic of Macedonia

The Rules of procedure of the Parliament were adopted in 2008, but in 2010 they were amended. The amendments mostly contained changes in the procedural guarantees of the MPs in the law-making process and one provision that provided a legal basis for improvement of the transparency of the work of the Parliament. Article 226, as it was adopted in 2008 contained the possibility for citizens to follow the plenary sessions. The amendment adopted in 2010 included the possibility for the citizens to follow the sessions of the Parliament, as well as of the working bodies, in accordance with the act on internal order of the Parliament.

2.3 The Rules on Internal Order of the Parliament of the Republic of Macedonia and Manual for Their Implementation

In November 2011 the President of the Parliament issued the Rules on Internal Order of the Parliament of the Republic of Macedonia, regulating the conditions and procedure for entrance into Parliament. The provisions from these Rules are further developed in the Manual for implementation of the Rules on Internal Order of the Parliament, issued by the Secretary General of the Parliament. According to these acts, only the president of the Parliament, vice-presidents of the Parliament, presidents of the working bodies and coordinators of parliamentary groups can receive visits from visitors for consultations, on the days on which Parliament is in session. If we bear in mind that Parliament should not convene only on Friday, it could be concluded that MPs are restricted in their contacts with the citizens, because they are not formally allowed to be visited in Parliament, at least four days

of the week. Also, when there are protests in front of the building of Parliament, and Parliament is convened, the coordinator of the parliamentary group can receive visits from a maximum of three representatives of the persons who protest. For realization of that visit, they must submit a written demand to the coordinator of the parliamentary group. If the coordinator of parliamentary group agrees to receive the visit, he/she must also fill in a written form that should be sent to the Secretary General of the Parliament. The Secretary General informs the security service of the Parliament that the coordinator will receive a visit from the people protesting in front of the Parliament. A copy of the written form filled in by the coordinator of parliamentary group is also sent to the President of the Parliament.

These procedures are criticized by some of the MPs, because they feel that they are restricted in the communication with their electors, because they have sessions at least four days in the week and are not allowed to receive visits from citizens. Also, the procedures for receiving visits in cases when there are protests in front of the Parliament are also considered as restrictive.

2.4 The Law on Free Access to Public Information

The Law on Free Access to Public Information was adopted in 2006, and amended in 2008 and 2010. The main changes in 2010 were in the definition of the holder of information, the notion of information of public character, introduction of the “public interest test”, in broadening of the obligations of the holders of public information, composition of the Commission for protection of the right to free access to public information, etc.

The text of the Law adopted in 2006 contained a narrow definition of the notion of

information of public character, which was defined as information of any kind that was produced and held by the holder of the information, or was held only by the holder of the information according to their competencies. This definition produced problems in practice. This problem was addressed in the amendments from 2010, according to which public information is information of any kind that is produced or is held by the holder of the information according to their competencies.

The changes from 2010 also introduced a “public interest test”, as an obligatory procedure followed by the holder of information, before they refuse access to information, during which procedure the holder of the information checks the consequences over the interest that is protected, i.e. the public interest that will be reached with allowing public access to the information.

The amendments from 2010 enhance the list of information that should be published by the holders of the information. The holders of information should publish laws and by-laws on the official web page of the institution, should publish announcements for the activities taken in fulfillment of their legal competencies, should publish statistical data on their work, etc.

Another important change made in 2010 was the shortening of the term in which the holder of information should give access to the information to the person who demands the information (from maximum of 10 to maximum of 5 days). In a case of refusal by the holder of information to give access to the information, the law determines the procedure for appeal to the Commission for protection of the right to free access to public information. The procedure for election of this Commission has also been changed. Now the Government does not have formal competencies in the procedure of election of

this Commission, but it is in the competence of the Parliament, and it can be elected only with the support of the ruling majority.

The changes from 2010 also in a more detailed manner regulate the content of the report that the holders of the information send to the Commission for protection of the right to free access to public information.

2.5 Electoral Code and Law on Financing of Political Parties

The Electoral Code in Macedonia was adopted in 2006 and it has been changed several times. In most of the cases the provisions on financing electoral campaign were changed. All the changes were under the “excuse” of searching for more efficient control and better transparency of financing of electoral campaigns, but in reality the changes were not made with “honest intentions”.

The latest changes to the Electoral Code were adopted in 2011. These changes of the Electoral Code introduced reporting on donations and expenditures in the middle of the electoral campaign. According to current norms, the organizer of the electoral campaign is obliged to submit a financial report for the revenues and expenses on the 11th day from the day of opening of the special account for financing the electoral campaign. This report is submitted to the form that is adopted by the Ministry of Finance. These reports should be submitted to the State Electoral Commission, State Audit Office and to the State Commission for Prevention of Corruption, which are obliged to publish them on their web pages.

Fifteen days after the end of campaign the organizers of the campaign are obliged to submit a total financial report to the same state bodies, including Parliament. If the State Audit Office determines irregularities

in the financial report, it should, in period of 30 days, submit a demand for the start of a misdemeanor procedure or a demand to the public prosecutor for criminal charges against the organizer of the electoral campaign that violated the law.

The Electoral Code does not contain efficient mechanisms for control of financing of the electoral campaign. Nor do the competent bodies have the capacities and will to perform professional control of financing of electoral campaign. The newly elected MPs in the 2011 elections did not enter Parliament with “clean hands” if the financing of their campaign is in question.

The need for improvement of the legal frame of financing of electoral campaigns is also highlighted in the latest report of OBSE/ODIHR, which recommends that “provisions on campaign finance reporting should be expanded to provide more effective mechanisms for audit. Consideration should also be given to adopting a more detailed template for the reports, which requires contestants to itemize expenditures. Deadlines should be introduced for auditing campaign finance reports before election day. Responsible institutions should strengthen their resources to enable an accurate and timely audit.”¹⁶⁰

The irregularities of financing are not present only during the electoral campaign, but also during the everyday operation of political parties. The Law on financing of political parties was adopted in 2004 and has been changed several times. The latest changes in 2011 introduced provisions for improving the transparency of financing of political parties, such as: obligation for political parties to publish the register of donations on their web page; the obligation of competent state

bodies to publish financial reports of political parties on their web pages, etc. Despite all these provisions that should provide transparency, financing of the political parties is still “shrouded in fog”.

2.6 Law on Lobbying

The Law on Lobbying was adopted in 2008. In 2010 the Constitutional Court abolished several provisions of the Law, and in 2011 Parliament adopted changes to the Law. In the procedure for adoption of the Law on lobbying several influential NGOs in Macedonia pointed out that the law restricts the right of NGOs and citizens to participate in the law-making process.¹⁶¹ After the adoption of the Law, they initiated the procedure before the Constitutional Court, arguing that the law was imprecise in the attempt to make a difference between activities that were considered as lobbying and activities that were not considered as such. The law provided that only activities of the persons who are invited to participate in the process of preparing or deliberation and implementation of the laws or other acts would not be considered as lobbying. So the problematic part was that only activities of those who were *invited* were not considered as lobbying. In addition, the Law contained contradiction and was imprecise as to whether activities of the NGOs would be considered as lobbying or not. These problems in the Law on Lobbying were also noticed in the 2011 Progress Report on our country prepared by the European Commission, in which it was pointed out that “implementation of the Law on Lobbying continues to create selective access by interest groups to policy making. Lobbying can only be undertaken at the invitation of the relevant legislative body,

¹⁶⁰ OSCE/ODIHR Election Observation Mission Final Report on Early Parliamentary Elections 5 June 2011, p. 21.

¹⁶¹ Remarks on the Law on lobbying, FOSIM, 2008, pp.6-7.

and is permitted for civil associations but not for foundations".¹⁶²

The Constitutional Court in its decision held a position that the provision from Article 23 of the Law did not secure equal opportunities for access to all interested subjects to participate in the process of drafting the laws and other acts, because it was at the discretion of the organizers to invite participants in the debate. Because of that the Court held that there was an opportunity for discrimination and restriction of the access of all interested to participate in the debate on adoption of laws. Because on one hand the Law did not contain precise conditions for invitation of persons to participate in the process of law-drafting, and on the other it determined that activities of NGOs for which they were paid were considered as lobbying, regardless of the fact that such activities performed by other legal persons were not considered as lobbying, the Court held that Article 23 was contrary to the rule of law as a basic constitutional value. Also the Court found that Article 23 did not mention foundations, which led to the conclusion that all activities of foundations were lobbying. The Constitutional Court decided that Article 23 was unconstitutional and because of that it was abolished.¹⁶³

The changes of the Law adopted in 2011 introduced procedural guarantees for the registration of lobbyists.¹⁶⁴

3. Open Parliament in Practice

During the past years of transition, Macedonia has been faced with two kinds of problems in building a rule of law: legal norms

that do not "empower" the citizens, but the state institutions, or are imprecise and not "harmonized" with democratic standards, and non-implementation of laws. Both problems are also present when the issue of open parliament is analyzed.

3.1 Open Day of the Parliament and Visits by People

The procedure for citizens to attend the session of the Parliament or its working body is hostile and publicly unknown. Even those who know the possibility do not always get access, because, as some MPs point out, procedures for giving permission to the citizens to be present at the sessions of the Parliament give too much discretion to the President of the Parliament, who decides whether someone will be allowed to be present or not. As examples, when permission was refused or the demand was not considered by the President, they point to the relatives of the victims from the 2001 events, relatives of a boy (Martin Neskovski) who was killed on the day of the elections in 2011 by a policeman, etc.

Also, as was mentioned, the citizens are not allowed to visit MPs in the Parliament during the days when there was a parliamentary session. Only coordinators of the parliamentary groups can receive visits, for consultations. So the MPs had to "beg" the coordinator of their parliamentary group, formally to "receive" their visitors.

During these previous years, the attempt to open the Parliament resulted in organizing "Open Parliament Days".¹⁶⁵ For the inaugural week-long event in 2005, the Parliament was visited by ten thousand people from all over Macedonia. "Open Parliament Days" were organized in 2006 for a second time, and this

¹⁶² 2011 Progress Report, European Commission, Brussels, 12.10.2011, SEC (2011) 1203 final, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf, p. 6.

¹⁶³ Decision U 232/2008.

¹⁶⁴ In Macedonia, up to today only one person is registered as a lobbyist.

¹⁶⁵ This project was supported by NDI, USAID and NED.

event lasted 3 days, while this event was last organized in 2010 and lasted one day, when 300 people visited the Parliament. After that this event has not been organized any more.

The Macedonian Parliament does not offer regular visit tours, as do other parliaments. In previous years, groups of students or pupils, on the written demand of their professors, were allowed to visit the Parliament. This last year (2012), because of reconstructing works in the building of the Parliament, such visits have not been allowed.

3.2 Participation in the Work of the Parliament

The participation of the citizens and NGOs in the work of the Parliament can be done in several ways. Ten thousand electors can propose a law in the Parliament, which has not happened in the past two mandates of the Parliament (2008-2011 and from 2011 till now). The citizens can participate in the law making process, through voting in referenda for adoption of the law, which has also not happened in the years of this research.

Also citizens, as interested parties, experts or members of NGOs can participate in the work of the Parliament, if they are invited to present their opinion at public hearings or public debates on the laws. In this regard, two points must be regarded: first, many of the laws are adopted in the Parliament by using emergency procedure, and second, there are no clear procedures according to which individuals and NGOs can request and obtain a chance to participate in public debates or hearings.

During the previous term of Parliament (2008-2011), 157 laws were adopted on the basis of short procedure, 163 laws were adopted on the basis of emergency procedure and 528 laws were adopted by using regular

procedure. During that mandate of the Parliament working bodies of the Parliament held five supervisory hearings and 15 public debates¹⁶⁶. During the same period the National Council for the Euro-integration, which is a special body within the Parliament, consisting of representatives of the legislative and executive power and of civil society (NGOs, Macedonian Academy for Science and Art, Association of Journalists, trade unions, religious communities), organized 18 public debates.¹⁶⁷

As has already been mentioned, the rules that regulate the issue of public debate and supervisory hearings give discretionary power to the president of the working body to choose who they will invite to participate in the debates. There are no prescribed conditions as to who can demand and obtain permission to participate in the debate, so it could be said that there are no guarantees that give chances to individuals or NGOs to be invited to debate or to give written statements on the hearings.

3.3 Access to Information of Public Character

The Law on Free Access to Information of Public Character was not used very often for obtaining information from the Parliament. In 2009 Parliament received 11 demands for access to information of public character, in 2010 – 18 demands, in 2011 – 61 demands. All demands were answered. Most of the demands in 2011 were from one NGO.

¹⁶⁶ Report for the Work of the Sixth Parliamentary Mandate of the Parliament of the Republic of Macedonia, 21.06/2008-14.04/2011, pp. 52-52.

¹⁶⁷ Report for the Work of the Sixth Parliamentary Mandate of the Parliament of the Republic of Macedonia, 21.06/2008-14.04/2011, p.69.

3.4 Web Page of the Parliament

The Macedonian Parliament has a well-organized web page. All relevant information can be found on the page, which is regularly updated. The page contains information about relevant legislation, a brief CV of MPs, all received materials into the Parliament, status of the materials (in which phase of the proceeding they are), stenographic notes from the parliamentary sessions, how MPs voted on each question, reports about the work of the Parliament, etc.

Also, the sessions of the Parliament can be followed live on the web page of the Parliament. The Macedonian version¹⁶⁸ of the web page has been visited 350,000 times by over 80,000 different visitors.¹⁶⁹

The shortcoming is that there are no personal pages of the MPs in which they will share their opinions on different issues.

3.5 Constituency Offices

Constituency offices contributed to the transparency of the Parliament and gave better chances to citizens to reach the MPs that represent them, but also gave technical facilities to some of the MPs for easier communication with their electoral base. For this reason opening of such offices was welcomed by the citizens and by the MPs, but also this was pointed out as good example that could be followed.

"The model sought to establish offices in municipal buildings in order to emphasize that constituency service was not-partisan. In addition, the offices are now staffed by assistants who are recruited through open competition; these assistants are also put through a training program to ensure that they know how to deal with the cases brought before them and that

they are adequately equipped to support the MPs."¹⁷⁰ "The offices are so located that no citizen is more than 30 kilometers away and most people are within 5 kilometers. Voter awareness of the offices is over 60 percent."¹⁷¹

The opening of 75 offices in 44 municipalities is planned. This plan is based on several criteria – number of seats of the political parties in the Parliament, geographical distribution, representation of women, representation of smaller ethnic groups, etc).

Not all MPs have such offices. Before the parliamentary elections in 2011, there were 65 offices functioning. After the elections, the number of offices was reduced to around 50. One office is used by several MPs from the same political affiliation from the same region. But there are also cases in which the MP has "office on paper" and an assistant, but in fact the mayor does not provide space for the office. Also, some MPs pointed out that the President of the Parliament does not always respect the rule that Friday is a day for meetings with the electors and appoints sessions of Parliament on that day.

At first, citizens used these contacts with MPs for demanding personal favors (such as employment, assistance in judicial proceedings, etc.); later, help for regional problems (roads, etc.) and for introducing specific legal norms was requested. One of the "success stories" from work of these constituency offices

¹⁷⁰ "The program was initially made possible with support from USAID and technical assistance from the Canadian government and was implemented in partnership with NDI. It has subsequently expanded, thanks in part to further support from the Swiss Agency for Development and Cooperation, and is currently implemented with technical assistance from the Institute for Parliamentary Democracy (IPD), NDI's local legacy organization". See: "Global Parliamentary Report – The changing nature of parliamentary representation", Inter-Parliamentary Union, UNDP, April 2012, p. 70. The final phase of the implementation foresees the successful and sustainable handover of management responsibilities to the newly created Unit for support of the Parliamentary Constituency Relations Network – PCRN. See: Parliament's Systematization under Secretary General.

¹⁷¹ "Global Parliamentary Report – The changing nature of parliamentary representation", Inter-Parliamentary Union, UNDP, April 2012, p. 70.

¹⁶⁸ There is also English, Albanian and French version.

¹⁶⁹ Report for the Work of the Parliament of the Republic of Macedonia for the period 25.06/2011-31.12/2011, p.198.

is the mutual work of the offices of MPs from VMRO-DPMNE and SDSM in Strumica, which resulted in the changes of the Law on Pension and Disability Insurance, which gave the opportunity to farmers to obtain a pension.

3.6 Media Coverage

According to the Law on broadcasting from 2005, Macedonian Radio and Television provides one channel only for broadcasting of the activities of the Parliament. All the sessions of the Parliament are broadcast live. Before and after the sessions and on days when there are no plenary sessions, the Parliamentary Channel broadcasts sessions from the parliamentary commissions or other activities of Parliament.

According to the “Global Parliamentary Report” in our country, “the proportion of television viewers tuning into parliamentary TV can reach as high as 17 percent”.¹⁷³

The research of public opinion made in January 2012 showed that 12.3% of those interviewed watch the Parliamentary Channel every day, 18.5% watch two to three times a week, 11.3% watch it once a week, 7.1% watch it once a month, 31.8% rarely watch it, 18.9% never watch this channel and 0.2% did not give an answer.¹⁷⁴

Table 1 – Minutes of broadcasting on the Parliamentary Channel during the mandate of the Parliament from 2008 till end of 2011¹⁷².

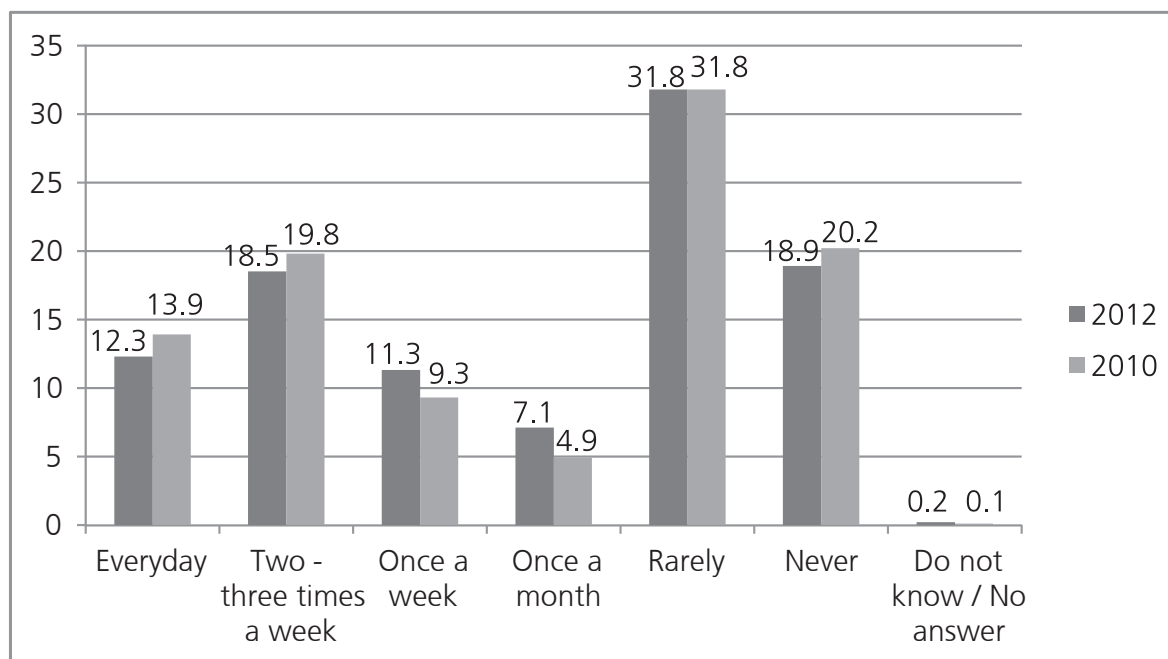
Period	Broadcasting of plenary sessions	Broadcasting of other parliamentary activities
21.06.2008-31.12.2008	13,954 minutes	12,596 minutes
01.01.2009-31.12.2009	21,323 minutes	72,066 minutes
01.01.2010-31.12.2010	34,346 minutes	41,705 minutes
01.01.2011-14.04.2011	6,992 minutes	no data in the report
25.06.2011-31.12.2011	21,445 minutes	25,743 minutes

¹⁷² Report for the Work of the Sixth Parliamentary Mandate of the Parliament of the Republic of Macedonia, 21.06/2008-14.04/2011, pp. 172-173.

¹⁷³ “Global Parliamentary Report – The changing nature of parliamentary representation”, Inter-Parliamentary Union, UNDP, April 2012, p. 29.

¹⁷⁴ The telephone survey on 1111 respondents was made by the Westminster Foundation for Democracy and Institute for Democracy Societas Civilis-Skopje in January 2012, on the order of Parliament. See: “Public opinion for the work of the Parliament of the Republic of Macedonia – research made by telephone poll”, Westminster Foundation for Democracy and Institute for Democracy Societas Civilis-Skopje, January 2012, <http://sobranie.mk/WBStorage/Files/prezentacijaSobranie.pdf>

Chart 1 – Answers from 2010 and 2012 on the question:
How often do you watch the Parliamentary Channel?¹⁷⁵



During the Sixth Parliamentary Mandate 1250 representatives of the media were accredited to follow the work of the Parliament.¹⁷⁶ During the current mandate the number of accredited representatives of the media is 1030.¹⁷⁷

Parliament has a press center for the journalists, equipped with telephones and computers. But the journalists complain that they are not satisfied with the rules issued by the President of the Parliament, which restrict their movement into the Parliament. They also need permission from the Secretary General if they want to take pictures, record materials or want to go through the lobbies of the Parliament.

One MP pointed out the case of the cameraman from France 24 who was not allowed to record an insert from the gallery of Parliament.

Some of the journalists point out that the office of the President of the Parliament is not transparent enough and that they have problems obtaining some information, such as the information of the coordinative meetings, the information on some expenses of the Parliament, etc.

3.7 Public Attitudes vis-à-vis Openness of the Parliament

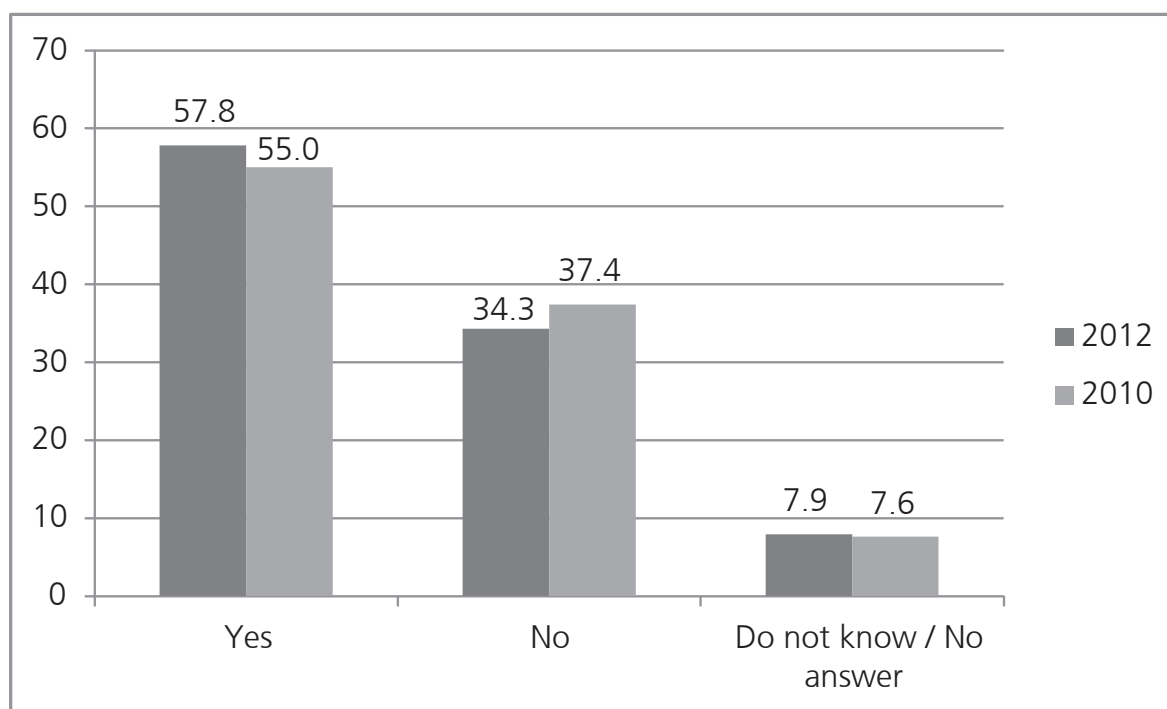
Compared with other institutions, Parliament is considered as most transparent, mostly because of the direct broadcasting of the parliamentary sessions. The research of public opinion ordered by the Parliament and made by the Westminster Foundation for Democracy and Institute for Democracy Societas Civilis-Skopje in January 2012, shows that 57.8% of the 1111 respondents think that the Parliament is open.

¹⁷⁵ The comparisons are made with the previous research of public opinion made in December 2010 from the same organizations. See: "Public opinion for the work of the Parliament of the Republic of Macedonia – research made by telephone poll", Westminster Foundation for Democracy and Institute for Democracy Societas Civilis-Skopje, January 2012, <http://sobranie.mk/WBStorage/Files/prezentacijaSobranie.pdf>

¹⁷⁶ Report for the Work of the Sixth Parliamentary Mandate of the Parliament of the Republic of Macedonia, 21.06/2008-14.04/2011, p.179 and Report for the Work of the Parliament of the Republic of Macedonia for the period 25.06/2011-31.12/2011, p.193.

¹⁷⁷ Report for the Work of the Parliament of the Republic of Macedonia for the period 25.06/2011-31.12/2011, p.199.

Chart 2 - Answers from 2010 and 2012 on the question:
Do you think that the Parliament is open for the public?¹⁷⁸



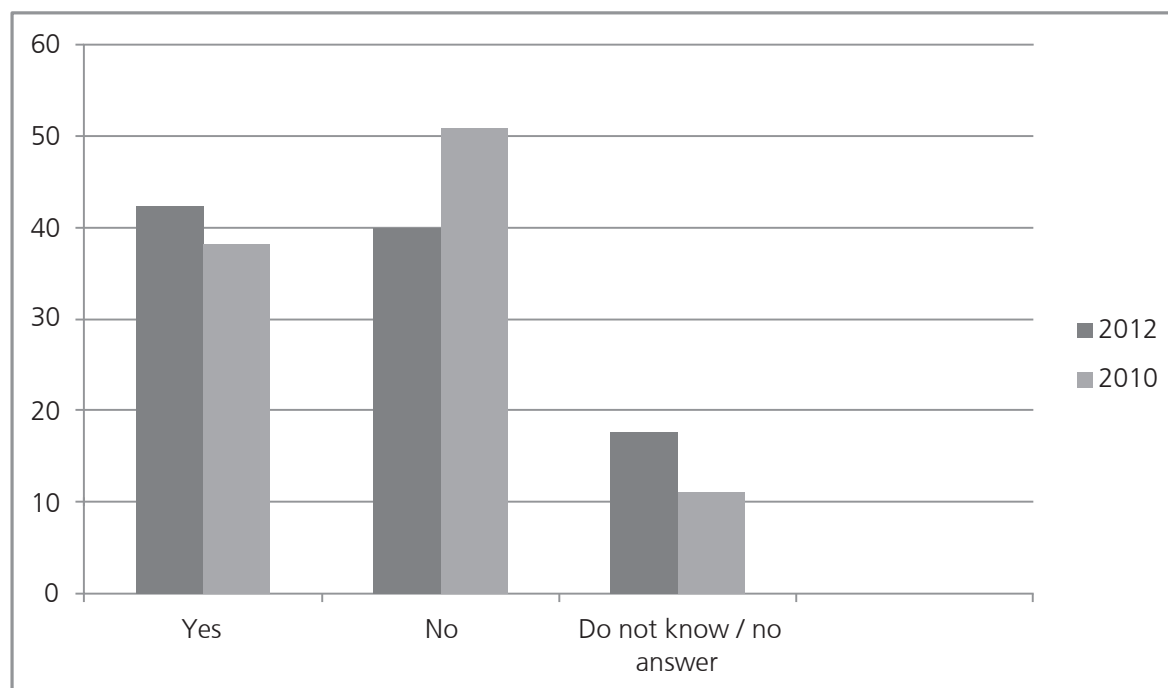
The same research showed that only 42.3 % of the respondents think that MPs are available for meeting with them.

Table 2 – Answers from 2010 and 2012 on the question: Do you think that the MP from your constituency is available for meetings with the citizens?

Answer	Year - 2012	Year - 2010
Yes	42.3%	38.1%
No	40.1%	50.8%
Do not know/ no answer	17.6%	11.2%

¹⁷⁸ "Public opinion for the work of the Parliament of the Republic of Macedonia – research made by telephone poll", Westminster Foundation for Democracy and Institute for Democracy Societas Civilis-Skopje, January 2012, <http://sobranie.mk/WBStorage/Files/prezentacijaSobranie.pdf>

Chart 3 – Answers from 2010 and 2012 on the question: Do you think that the MP from your constituency is available for meetings with the citizens?



4. Conclusions and Recommendations

Trust and accountability is at the heart of an effective relationship between MPs and citizens. A precondition for trustful relations is transparency of the Parliament, which means that citizens are not only informed for the work of the Parliament, but they also have opportunities to participate in the legislative decision-making process.

The predominant opinion of the people is that they are informed about the work of the Macedonian Parliament. That is a result of direct broadcasting of the plenary sessions of the Parliament and media interest on the work of the MPs. But the possibility of observing work of the Parliament through TV is not enough to conclude that the legislative body is open. The Macedonian Parliament needs improvement of its transparency, using the experiences of other parliaments in consolidated democracies.

First, the doors of the Parliament should be open for visits by individuals and groups wishing to enter the parliamentary building.

Second, the possibility of following the plenary sessions as well as work of the parliamentary working bodies directly from the galleries of the Parliament should be made publicly known. Also, friendly procedures and objective criteria for obtaining permission to use the right to follow parliamentary work directly from the parliamentary building should be set.

Third, clear criteria for participation of interested parties, experts and NGOs in the work of parliamentary bodies, public or supervisory hearings should be adopted. The “voices” of the interested parties in the law-making process should be heard. Their arguments can only improve the quality of the legal texts.

Fourth, use of the emergency and shortened procedure should be an exception, not a rule. Public debates should be used, especially

for laws which are very important and introduce major reforms.

Fifth, the work of the journalists searching for information should be made easier. Their constant access to MPs and office of the President of the Parliament should be ensured.

Finally, to have an open parliament we need clear legal norms and procedures, but what is more important is to have willingness from the officials of the Parliament to make the Parliament transparent and to interpret the existing legal norms, by searching their “spirit”, not their “wholes”. The spirit of each law should be that it is “of the people, by the people, for the people”.

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The Evolution of the Parliament of the Republic of Moldova

Igor Botan

1. Introduction

According to the Constitution of the Republic of Moldova, adopted on July 29, 1994, the Parliament of the Republic of Moldova is the supreme representative body of its people and the only legislative authority of the state. The constitutional reform of July 5, 2000 transformed the semi-presidential political regime of the Republic of Moldova into a parliamentary one. After the reform the powers of the country's President remained substantial, which generated political clashes between parliamentary political forces. The fight for the presidential office remained very important because of the patriarchal political culture of a significant proportion of Moldovan society, which is mainly the rural one (about 53% of Moldova's inhabitants live in the countryside), Moldova being pejoratively called "the village of Europe".

Accordingly, in a society with a patriarchal culture, the head of state is somehow viewed as "the father of the nation". But apart from the above-mentioned perceptions the President, according to the Constitution: promulgates the law adopted by the Parliament; has the right to legislative initiative; designates the candidate for the office of Prime Minister after consultations with the parliamentary factions, which should be voted by the parliamentary majority; in cases of cabinet reshuffling or vacancies, on proposals submitted by the Prime Minister, revokes and appoints certain members of Government; takes part in Government meetings, in which case he will preside over them; advises the Government on matters of special importance and urgency; dissolves the Parliament in several cases provided by the Constitution; partici-

pates in negotiations, concludes international treaties in the name of the Republic of Moldova; accredits and revokes the Republic of Moldova's diplomatic representatives; is the Commander-in-chief of the armed forces; appoints judges at the proposal of the Supreme Council of Magistracy, etc. Due to the above-mentioned fact during the last three years the Parliament was dissolved twice because of its inability to elect the country's President. The most frequent political crises in the Republic of Moldova are generated by the same problem – the fact that the parliamentary factions resort to boycotting and mutual blockage during the procedure of the election of the President. Consequently, for about three years, from April 7 2009, till March 16 2012 the Republic of Moldova lacked a legally elected President, the presidential role being exercised by the Chairman of the Parliament.

The Parliament of the Republic of Moldova consists of 101 deputies elected through universal, equal, direct, secret and freely expressed suffrage for a four-year mandate. For the election of members of Parliament (MPs) the full proportional system is used, with closed party lists of candidates, according to the formula: one country – one electoral constituency. According to the Constitution the MP's mandate is representative; any imperative mandate is null and void. The full proportional system for parliamentary elections was implemented in 1993, before the first multi-party elections held after the declaration of the independence of the Republic of Moldova. The full proportional electoral system was selected as a tool for consolidating political parties. Actually, it led to the unwarrantable

role of party leaders, corruption scandals, undermining of internal party democracy, as well as to the distorted representation of party members at the top of candidates lists during elections and consequently to the distorted representation of citizens and territorial-administrative units in the Parliament. Consequently, during the all electoral cycles about 70-75% of MPs territorially represented the capital city, although the number of voters from the capital city represents only about 25% of the total. The above-mentioned fact is one of the causes of a very weak relationship between the Parliament and the voters. Thus, the transparency of Parliament's activity depends more on mass-media and specialized NGO activity than that the direct communication of MPs with citizens. In turn, the poll research constantly shows a low level of trust (about 30%) of citizens in the Parliament and that about 75% of citizens plead for a majority electoral system.

During the five complete and three incomplete electoral cycles since the declaration of independence of the Republic of Moldova from three to five political parties have been represented in the Parliament. The specific features of Moldovan political parties are that they represent segments of society which are deeply fragmented upon ethno-linguistic and geopolitical orientation, and which remain predominately rural and with a patriarchal political culture. This fact founds its reflection in the activity of the Parliament and influences the efficiency of the legislative body and its transparency.

For a short period (2005-2007) the parliamentary factions managed to come to a common denominator concerning the so-called *national idea of Moldova* – the European integration, after the Action Plan European Union – Moldova was signed. The implementation of the provisions of the above-mentioned docu-

ment helped the country enormously in the process of its modernization through the institutionalization of the state central bodies, including Parliament. The elaboration of the legislative plan for the implementation of the Action Plan EU-Moldova and the adoption of the legislation concerning the transparency of decisional processes had a very positive impact.

Unfortunately, after the then ruling Party of Communists of Moldova (PCRM) was defeated during the local elections of June 2007 the political situation degenerated again in a state of permanent conflict, which finally ended with the so-called "twitter revolution" of April 7, 2009. Since then, the activity of the Parliament of Moldova is carried out in working conditions which are far from adequate. The building of the legislative body was destroyed and the sittings of the plenary sessions, legislative committees of the Parliament, the working places of MPs and of the workers of Apparatus are now located in different places. The afore-mentioned facts have had a substantial impact on the decreasing efficiency and transparency of the Parliament over the last three years.

After the last parliamentary elections Parliament consists of four factions representing: the Liberal Democratic Party of Moldova (LDPM), comprising (initially) 32 members of Parliament (MPs); the Democratic Party of Moldova (DPM) – 15 MPs; the Liberal Party (LP) – 12 MPs; and the Party of Communists of the Republic of Moldova (PCRM) – 42 MPs. LDPM, DPM and LP formed the ruling majority coalition – the Alliance for European Integration (AEI), respectively PCRM is in opposition, which is an intransigent one. For the time being seven MPs left their factions (one has left LDPM and six have left PCRM) and have formed the group of the so-called independent MPs. The group does not have any official status and is politically heterogeneous.

2. The legislative and Controlling Activity of Parliament

2.1 Parliament's Role in the European Integration Process

The activity of the Parliament of the Republic of Moldova of 19th legislature, elected on November 28, 2010 is based on the ruling Alliance for European Integration (AEI) governing program "European Integration: Freedom, Democracy, Welfare"¹⁷⁹ which provides a framework for Moldovan governance policies for 2011-2014. By investing the AEI Government on January 14, 2011, the Parliament approved its Program, which was detailed in governmental Decision No. 179 of March 23, 2011 on the Government's Action Plan for 2011-2014, which aims at seven strategic objectives: European Integration as a fundamental priority of the domestic and foreign policies of the Republic of Moldova; country reintegration by finding a solution for Transnistrian conflict; promotion of an efficient and balanced foreign policy; building a rule of law state; poverty reduction and promotion of quality public services; sustainable economic growth; and power decentralization by developing local public administration.

In the above-mentioned context it is worth mentioning that on January 12, 2010 the Republic of Moldova started the dialog with EU about the Association Agreement which is to replace the current Partnership and Cooperation Agreement. Part of the new Agreement will be the Visa Liberalization and the Deep and Comprehensive Free Trade Area (DCFTA). Concerning the DCFTA the European Commission formulated a set of recommendations that the Moldovan Government internalized through a national

Action Plan¹⁸⁰, which need to be undertaken in order to launch the official negotiations on the agreement about DCFTA between the Republic of Moldova and the EU. The Action Plan was structured in 13 distinct domains. In addition to this, the Republic of Moldova received from European Commission, on December 16 2010, the Action Plan on visa liberalization, which in its turn was detailed in Decision No. 122 of March 4 2011 on the National Program (NP) concerning the implementation of the provisions of the EU-Republic of Moldova Action Plan on visa liberalization. The NP refers in detail to four blocks of problems: document security, including biometrics; irregular immigration, including readmission; public order and security; and external relations and fundamental rights.

The Government's Action Plans concerning the AEI governing Program, DCFTA and Visa liberalization are very thoroughly elaborated documents, containing concrete indications concerning: objectives, actions, institutions responsible for implementation, deadlines, and indicators of results and impacts. These Action Plans make references to the bills the Parliament should adopt during the implementation of the AEI governmental Program. According to the statistics of the previous legislatures up to 80-90% of bills debated and approved by Parliament are prepared by Government, and its ministers and other subdivisions. This explains why, after the AEI came to power, Parliament has not elaborated and approved a special legislative plan as a guidance for its activity, though previously, for example, for the parliamentary legislature of 2005-2009, after the Republic of Moldova signed, on February 22 2005, the Action Plan European Union – Moldova, Parliament adopted a special Legislative Plan in order to fit the European integration goals.

¹⁷⁹ <http://www.gov.md/doc.php?l=ro&idc=445&id=3729>

¹⁸⁰ Governmental Decision No. 1125 of December 14 2010 "On approval of the Action Plan for implementation of the European Union's recommendations on creation of the Deep and Comprehensive Free Trade Area between the Republic of Moldova and the EU".

2.2 The General Assessment of the Efficiency of Parliament

According to the information provided by the Secretary of Parliament in 2011 the legislative body adopted 289 legislative acts – 195 laws and 94 decisions, in 61 plenary sessions¹⁸¹. During the two sessions Parliament used only 2/3 of the time available for organizing plenary sessions, twice per week, on Thursday and Friday. The laws were dedicated to:

- 3.4% (6) - new laws for complex regulation in certain domains of public life;
- 1.1% (2) - laws dedicated to the adoption of large complexity strategic and policy documents, but without normative power;
- 24.1% (42) - laws for ratification and adherence of The Republic of Moldova to international acts;
- 12.1% (21) - laws for accepting the import of some goods of general tax rules;
- 59.2% (103) - laws for amendment of existing laws.

Thus, only about 4% of the legislative acts examined and adopted in 2011 are regulatory norms of large complexity. The absolute majority of legislative acts are ad-hoc norms for solving immediate, sometimes insignificant, problems with an individual character or for a unique application. This is the result of the lack of a complex legislative plan. On the other hand, the high number of laws on modification of already existing laws is an indicator of a reduced quality of the normative acts, which undermine the stability of the legal framework and cultivate judiciary nihilism.

The efficiency of the activity of individual MPs raises question marks as well. According to the constitutional provisions MPs can make declarations, ask questions and initiate interpellations for the members of the Government. In 2011 only 24 MPs out of 101 made declarations in Parliament on different subjects and there were only 29 formulated interpellations for the members of Government. Up to now the Secretary of Parliament is unable to provide information concerning the individual vote of MPs. One can judge about the individual vote of MPs according to the public position expressed publicly by the factions.

In order to improve the efficiency of the Parliament on February 2, 2011, through the Law No. 8, amendments to the Regulation of the Parliament were adopted. Accordingly, the chairmen of the parliamentary factions and parliamentary commissions as well as MPs were to be equipped with the necessary resources, means and auxiliary staff. The Permanent Bureau was enabled to elaborate and approve the new regulation concerning the new structure of the Apparatus, the staff and their remuneration. The new provisions were to be enforced by January 1, 2012 but for some unclear reasons the situation remained unchanged and Parliament's Apparatus continues to function in accordance with the provisions of the Decision No. 22-XV of March 29 2001.

2.3 The Implementation of the Parliamentary Controlling Function,

According to Article No. 66 of the Constitution Parliament exercises parliamentary control over executive power in the ways and within the limits provided for by the supreme law; it initiates investigations and hearings concerning any matters touching upon the interests of society; and it exercises other pow-

¹⁸¹ Monitoring report of the Association for Participatory Democracy: "Parliament's activity in 2011", January 2012

ers, as provided for by the Constitution and the Law. The most recent hearing concerning the activity of the state institutions which are under the parliamentary control took place on October 13 2011 when the Prime Minister presented a report¹⁸² at his request. The report referred to the so-called *raider attack* against the banking system of the Republic of Moldova, which took place in July 2011 and during which the Moldovan and international share-holders were unduly dispossessed of their shares. In his report the Prime Minister gave a negative appreciation of the activity of the state institutions which are under parliamentary control and asked for:

- The dismissal of the Director of the Intelligence and Information Service (IIS), of the General Prosecutor and of the Director of the National Commission for the Financial Market (NCFM);
- The setting up of a special parliamentary commission for elaboration of the rules for appointment of the heads of law enforcement bodies so as to ensure their depoliticization, in order to avoid the influence of political factions over the activity of these bodies;

Two parliamentary factions which are parts of the ruling Alliance for European Integration (AIE) opposed the initiative of the Prime Minister, while the opposition faction of PCRM, together with the faction of the Liberal Democratic Party of Moldova, headed by Prime Minister, voted for the adoption of a special Decision No.197 by which;

- The IIS and NCFM directors were dismissed;
- Parliament had to organize in seven days the dismissal of the Prosecutor General.

However, later on the provisions of the parliamentary Decision No.197 were ignored by MPs as Parliament entered into the procedure of presidential elections which reshuffled the interests of the parliamentary factions. Thus, since October 2011 the Republic of Moldova lacks a legally appointed Director of IIS, while the society has no answer as to who were the authors of the banking system attack which caused damage of tens of millions dollars to shareholders.

In 2011 the Parliament of the Republic of Moldova failed to fulfill its constitutional and legal controlling obligations. In this context it is worth mentioning that the parliamentary hearings about the activity of seven state institutions subordinated to Parliament did not take place:

- **on the activity of the Government for 2010.** According to the Article No. 127 of the Parliament Regulation, every year in April, the Government should present in the plenary session of the Parliament a report about its activity. The report, which should be presented by Prime Minister, should be distributed among MPs at least ten days before the hearings, so as to offer the MPs the possibility to ask questions about the governmental activity. As a positive factor one can mention that in April 2012 the Prime Minister presented to the Parliament the report about the Government activity. But it happened after civil society criticism and in the absence of the opposition, which boycotted the parliamentary activity for about half a year, accusing the ruling coalition of usurping power;
- **on the respect of human rights.** According to the Article No. 34 of the Law on Ombudsmen, every year by March 15 the National Center for Human Rights (NCHR) should present to Parliament

¹⁸² <http://www.gov.md/libview.php?l=ro&idc=436&id=4389>

- a report about the respect of human rights for the previous year. Above that Parliament should examine the activity of the NCHR and the necessary measures for improvements of its activity for the next year. Responding to the criticism of civil society organizations, the representatives of NCHR argued that the annual report for 2010 activity was presented to Parliament, which for some reasons failed to organize the hearings stipulated by the law;
- **on the use of public finances and administration of public assets.** Article No. 8 of the Law on the Accountant Court provides that, every year by June 15 the Accountant Court should present an annual report, which should be debated in the plenary session of Parliament. After the expiration of the terms Parliament adopted Law No. 183 of July 28 2011 for amending the Accountant Court, according to which the report of the Accountant Court should be presented annually, by October 10. The parliamentary hearing took place only in late December 2011, when, as well as the reports for 2008 and 2009, the report for 2010 was heard, meaning that after AEI acceded to power in 2009 it failed to debate the report concerning the activity of the Accountant Court;
 - **on the protection of economic competition.** According to the Law No. 1103 of June 30 2000 on the protection of competition in economy the Director of the National Agency for the Protection of Competition (NCPC) should annually present to the Parliament a report about the NCPC activity which should be debated by the legislative body. No public explanation was given when NCPC presented the report and it was not debated by Parliament;
 - **on energy security.** According to Article No. 4(2) of Law No. 1525 of February 2 1998 on the energy system, annually the Director General of the National Agency for Energy (NAE) should present to the Parliament the report concerning the NAE activity. There was no explanation as to why the report was not debated by the Parliament and whether it was presented to the legislative body;
 - **on protection of the financial market.** According to Article No. 2 of Law No. 192 of November 11 1998 on the National Commission for the Financial Market (NCFM) the report concerning NCFM activity and the functionality of the financial non-banking system should annually be presented to Parliament for public debates as well as to the Government and the President of the country. There were no explanations offered to public opinion as to why the report was not debated by Parliament;
 - **on activity of the Information and Security Service.** According to Article No. 20(2) of Law No. 753 of December 12, 1999 on the Information and Security Service (ISS) an annual report concerning ISS activity should be presented and debated in a plenary session of the legislative body. As in the above-mentioned cases no explanation was provided to public opinion about the missed hearings.
- However, usually even when Parliament organizes hearings on the activity of the state institutions which are under parliamentary control and adopts obligatory decisions aimed at the improvement of their activity, things are not followed through. For example, after the hearing of the activity report of the Coordinator Council of Audiovisual Media (CCA) Parliament adopted Decision No. 72 of April 4 2011 which obliged the CCA to present to the

legislative body in 60 days: a new strategy on audiovisual services for the period 2011-2015; and an Action Plan concerning audiovisual digitalization in Moldova, which remained unfulfilled. A similar story happened with parliamentary Decision No. 198 of October 13, 2011 which obliged the General Prosecutor to present in three months to the legislative body the results of the investigation of the so-called case concerning the *Law on casino tax*, No. 176 of July 15 2010, which produced a huge public scandal when it was discovered that, because of some MPs' mistake or ill-intention, the state budget was significantly damaged after Law No. 451-XV of June 30 2001, about the regulation of entrepreneurial activity through licenses, was amended in the interest of some casino owners. Finally, the Prosecutor General never informed Parliament and the story was forgotten until the mass-media recently reminded public opinion about this case again.

2.4 The Relationships Between Parliament and the Constitutional Court

Members of Parliament, according to the Article 38 of the Law No. 503-XIII of June 16 1995 *on the Code of constitutional jurisdiction*, have the right to address the Constitutional Court in order to exercise the control of conformity of adopted legal norms to the provisions of Constitution. In 2011, for example, MPs addressed to the Constitutional Court 17 requests for constitutional control. Four requests were addressed by MPs representing the ruling AEI, while there were 14 by opposition MPs. Five out of nine requests of the opposition MPs, accepted by the Constitutional Court for examination, were satisfied and recognized as unconstitutional. In its Decision No. 2 of January 24, 2012 *on exercising constitutional control in 2011* the Constitutional Court stated that Parliament had failed to remove the unconstitutional provi-

sions from five legal acts. At the same time Parliament failed to examine 10 appeals of the Constitutional Court, aimed at removing the vagueness in the adopted laws.

Parliament's disregard of the Constitutional Court's Appeals generated dangerous political crises. It is the case of the Decision No. 2 of February 8 2011 of the Constitutional Court, in which it appealed to Parliament, noting that "the pertinent legislation drafted after the Constitution of the Republic of Moldova was updated under Law No. 1115-XIV of 05.06.2000, which empowered Parliament to elect the President of Moldova, it does not clearly regulate the procedures to be undertaken in the case of legal situations relating to the new modality of the election of the head of state. Therefore, more than 10 years after Parliament elected the President of the Republic of Moldova legislation does not regulate the modality of handing over and taking over the responsibilities of the President, the mechanism of setting up the interim president office in the case of vacancy and early end of presidential mandate, as well as the president election particularities in the case of introduction of interim office and successive interim office. For all these reasons, under Article No. 79 of the Code of Constitutional Jurisdiction, the Court considers the resolution of these problems as opportune. Under Article No. 28 of the Law on the Constitutional Court, "Parliament will consider the address and will notify the Court with the results within 3 months." Thus, by May 8 2011 Parliament had to inform the Constitutional Court about the legislation amendment and the settlement of the existing problems which consisted in the election of the country President by September 28 2011. In fact, Parliament ignored the appeal of the Constitutional Court and later on, after September 28, 2011 a political crisis erupted.

A week before the expiration of the constitutional terms for the election of the President by Parliament, on September 20 2011 the Constitutional Court issued Decision No. 17 in which it was stated that “In the light of Article No. 78 (5) of the Constitution, the head of state (including the ad-interim one) is obliged to dissolve Parliament every time when the President of Moldova is not elected under the conditions stipulated by the Constitution. After the decision was made public the Chairman of Constitutional Court, Dumitru Pulbere, gave an interview in which he mentioned that “the Parliament has been breaching the Constitution for two years already by not electing the head of state, and the Parliament will be dissolved, shall it fail to elect the head of state by September 28. Any decision taken by the Parliament will be illegal after this date”. That declaration roused the indignation of some members of the Constitutional Court who decided to dismiss the Chairman of the Constitutional Court (Decision No. Ag.5 of September 28 2011) because of “hitting the CC image in front of public authorities.” The Constitutional Court elected Alexander Tanase as chairman and that made the opposition PCRM protest against “the farther power usurping by AEI” because only half a year before that Mr. Alexander Tanase was in the position of vice-chairman of the Liberal Democratic Party of Moldova (PCRM), headed by Prime Minister, Vlad Filat. The opposition considered that AEI politicized the Constitutional Court by installing their man in the position of its chairperson.

Under the pressure of public opinion and the Constitutional Court’s decision, the Parliament appointed on October 20, 2011 the day of presidential elections to be November 18, 2011 but neither AEI no the opposition PCRM registered candidates. This was because AEI was unable to identify 3/5 of MPs

to vote for their candidate, while PCRM was interested in the failure of the election procedure, intending to provoke early parliamentary elections after two unsuccessful attempts to elect the president, according to the constitutional provisions. In that situation, in order to avoid the dissolution of the Parliament, the AEI parliamentary majority decided to stop the presidential election process in order to modify Law No. 1234-XIV *concerning the procedure of election of the President of Republic of Moldova* (exactly what the Constitutional Court recommended in its Decision No. 2 of February 8, 2011), introducing the clause according to which if no candidate is registered for presidential election the process should be stopped and then started anew. Consequently, PCRM accused AEI of unlawfully breaking the presidential election process and of changing the rules of the game during the game. AEI ignored the opposition’s protest, changed the law and started anew the process of presidential election, scheduled for December 16, 2011. But on January 12, 2012 the Constitutional Court through its Decision No. 1 declared unconstitutional the failed attempt to elect the President, as MPs did not respect the secrecy of the vote. In fact, the Constitutional Court saved the parliamentary majority of AEI, which was to start the repeated and last attempt to elect the President. As was expected AEI took advantage of the decision of the Constitutional Court and again interrupted the procedure of the presidential election. The opposition interpreted the event as confirmation that the Constitutional Court is part of the AEI game. The most curious thing is that on January 15, 2012 the leaders of the parties, components of AEI, convoked a press conference to inform the public opinion that they were interrupting the election procedure and starting the Constitution modification process through referendum in order to decrease the necessary parliamentary votes for election of the Presi-

dent by a qualified majority of 3/5 to a simple majority of half the votes of MPs. Again, the opposition interpreted that declared intention of AEI as a fact of power usurpation – “if AEI is unable to elect their candidate as president under the existing norms of Constitution, than they interrupt the process and try to change the constitutional norm to fit their interest”. Finally, under the pressure of civil society’s organizations AEI renounced the organization of the announced referendum and returned back, for the third time, to the procedure of presidential elections. This last time the attempt of March 16, 2012 was successful just because AEI finally realized that it was necessary to change their “permanent” candidate of about three years. Thus the miracle happened and the President was elected, but it made it clear that the political crisis which had lasted about three years was not at all the effect of imperfection of the Constitution, but the effect of AEI leaders’ obstinacy.

During the constitutional reform of June 2000 the Government of the Republic of Moldova was invested with the right to undertake its responsibility before the Parliament (Article 106 *1) for a program, a declaration of general policy or a draft law. Accordingly, the Government shall be dismissed if a motion of no-confidence, submitted not more than 3 days after the engagement of responsibility, is passed. If the Parliament does not dismiss the Government, then its draft law shall be considered as adopted, and the program or declaration of general policy becomes mandatory for the Government. Until AEI came to power in 2009 the previous governments had only twice resorted to that new constitutional provision. After in July 2011 the so-called *raider attacks* on the banking system of the Republic of Moldova took place the Government resorted to the engagement of the responsibility before Parliament by promoting Law No. 184 con-

cerning the modification of some legislative acts referring to the functioning of the banking system institutions but also referring to the functioning of the officers of the court as well as judiciary procedures. Later on the Government’s decision was contested in the Constitutional Court which in its Decision No. 28 of December 22 stated as unconstitutional the law adopted by the Government as engagement of responsibility before Parliament. In fact, the Constitutional Court decided that the Government cannot engage its responsibility before Parliament in the period when the MPs are on vacation. But the most striking thing is that, in the twelve years since the modification of the Constitution, Parliament has not adopted a procedural regulation concerning the Government’s engagement of responsibility. In the afore-mentioned decision of the Constitutional Court it recommended that Parliament finally adopt a regulation concerning the problem discussed, but it remains unsolved.

2.5 The Relationships Between the Parliamentary Majority and the Opposition

The above invoked example of the relationship between the Parliament and the Constitutional Court had a significant impact on the role of the opposition. It should be mentioned that the relationship between the AEI Majority and PCRM opposition was spoilt from the very beginning, since AEI came to power in 2009. PCRM accused AEI of an attempted coup d’état during the so-called “twitter revolution” of April 7, 2009, as the pretext for starting mass protests against PCRM’s electoral victory of April 5, 2009, when it obtained 60 parliamentary mandates out of 101. The result was that the elections were deemed invalid. That provoked unrest and repeated elections. When AEI came to power after repeated elections on July 29, 2010 it was unable to

present any proof confirming the accusation against PCRM. This fact motivated PCRM to display a special behavior – resorting permanently to an accusation of power usurping, protesting and boycotting the plenary session of the Parliament. In its turn, this antagonism motivated AEI obstinacy. However, the responsibility, as usual, lies more with the majority. After the AEI majority managed to elect the President it decided to give a lecture to PCRM. On April 17, 2012 the AEI MPs addressed the Constitutional Court asking its permission to deprive PCRM MPs (39 out of the total of 101) of mandates on the grounds that they were boycotting the plenary session and presented the following statistics: in 2009 the PCRM MPs boycotted the plenary session during the periods: September-December 2009; February-September 2010; February-April 2012 (On June 12, 2012 the PCRM faction decided to return to Parliament). In its Decision No. 8 of June 19, 2012 the Constitutional Court invoked that, according to Article No. 68 of the Constitution, “In the exercise of their mandate MPs are in the service of the people” and that “Imperative mandates shall be null and void” and, therefore, if MPs decide to boycott the plenary sessions because of political reasons they could proceed to do so as the MPs activity in representing the people includes different kinds of demonstration.

Another example of AEI majority pressure on the opposition was the adoption of amendments (Law No. 26 of March 1, 2012) to the Parliament Regulation which aimed at “disciplining” PCRM by cutting a part of the wages of MPs whose absences at the plenary session and at the parliamentary commissions’ sittings are unmotivated. On July 12, 2012 the Constitutional Court decided that the above-mentioned problem is part of labor relationship obligation and it is permitted to resort to such a kind of disciplining measures.

And finally, on July 12 the AEI majority adopted a parliamentary decision *concerning the historical and politico-juridical appreciation of the totalitarian communist regime in the Republic of Moldova*, which was immediately used by the AEI majority to introduce a modification in Article No. 4 of Law No. 294-XIV of December 21, 2007, stating that “it is prohibited for political parties to use the symbols of totalitarian regimes”. By proceeding so AEI invoked recommendations No. 1096 of the Parliamentary Assembly of Council of Europe and No. 1481 of the Parliamentary Assembly of OSCE concerning the condemnation of the crimes of communist totalitarian regimes. The reporter on the bills mentioned, the leader of Liberal Party, Mihai Ghimpu, openly argued from the parliamentary tribune that PCRM is in fact a bourgeois party and just misleads its massive electorate of about 40% by using the communist symbol – the sickle and the hammer, and that it would be better by condemning the crimes of the communist regime in soviet times to prohibit the use of the respective symbol. In its turn PCRM protested, invoking that the parliamentary decisions are nothing more than political reprisals. PCRM arguments were: the crimes of Stalinism were condemned in 1956 by the 20th congress of the Communist Party of the USSR; the Communist Party of the Moldovan Soviet Socialist Republic was prohibited in August 1991; the Party of Communists of the Republic of Moldova is a new party, set up in April 1994, its official political doctrine is democratic socialism and not Marxism-Leninism; The PCRM democratically, through free and fair elections came to power in 2001 and governed the country for eight years; the latest Barometer of Public Opinion of May 2012 showed that 37% of the respondents consider that PCRM governed the country better than AEI while only 30% consider the opposite.

3. Parliament's Transparency and Cooperation With Civil Society

The legislation concerning the transparency of the decision making process is rather well developed in the Republic of Moldova. Law No. 239 of November 13, 2008 on the transparency of the decision making process states that the transparency of the decision making process in Parliament is established in accordance with a special regulation elaborated by the legislative body. Consequently, by Law No. 72 of May 4, 2010 the regulation of Parliament was amended with provisions aimed at developing the mechanisms of public consultation of the bills to be examined by Parliament. Accordingly, the responsible parliamentary commissions should compile lists of competent experts and specialized organizations of civil society, organize public debates on the bills with the participation of the civil society experts and prepare the debates of bills in Parliament whose reports contain the conclusions of those public debates.

The civil society organizations' reports¹⁸³ on the decision making process conclude that the main provisions of the Law No. 239 on the transparency of the decision making process are not fully respected by the institutions of the central public administration. At the same time it is worth mentioning that the provisions of Government Regulation No. 96 of 2010, adopted in order to develop the practical mechanisms for enacting the provisions of Law No. 239 are often ignored. The report concludes that, partially, the impossibility of adequate application of the afore-mentioned law and regulation is due to the lack of institutional capacity and of financial resources but also due to the ambiguity and complexity of the same provisions. The recommendations

were aimed at the simplification of the provision after the accumulation of certain experience and the unification of procedures which should be done in concrete time limits.

After AEI came to power the relationships between Parliament and civil society organizations became more oscillatory than previously and lack coherency. However, a very positive factor is that a strategy of cooperation with civil society was elaborated and that the Secretary of Parliament elaborated in 2011 the Communication Strategy for the period 2011-2014.

This mechanism is functioning, although it is very far from being efficient, because, amongst other things, the civil society organizations are rather weak and lack expertise. In fact, one cannot complain about the lack of mechanisms of cooperation, as the parliamentary Decision No. 373 of December 29, 2005 contains all the necessary rules, elaborated with the support of civil society organizations and international experts from Germany and Lithuania, for successful cooperation:

- Parliament established a special subdivision of its Secretary for cooperation with civil society;
- Public meetings of Parliament and civil society representatives should be organized periodically with the frequency of at least once per year for debating the most important problems of society and for improving mutual cooperation;
- The contribution of the civil society organization aimed at the development of the legislative process shall be taken into account by Parliament, provided that they are submitted in good time;
- Acknowledgement of the receipt of the contributions by the Secretary of Parliament is obligatory, etc.

¹⁸³ <http://www.e-democracy.md/files/final-report-transparency-2011.pdf>

The transparency and the efficiency of the Parliament of the Republic of Moldova were the subject of the *Appeal for ensuring the transparency and the information of public opinion about the activity of the Parliament of the Republic of Moldova*¹⁸⁴ of 36 NGOs addressed to the legislative body. The Appeal hailed some improvements in the activity of the Parliament in 2011, mainly the better communication with the mass-media and the acceptance of on-line video transmissions (www.privesc.eu) of Parliament plenary sittings by a private company, as well as:

- the development of a new webpage of the Parliament, which contains more and diverse information about its activity;
- the elaboration of the Communication Strategy of the Parliament for 2011-2014 period;
- the elaboration of the strategic development of the Secretary of the Parliament, etc.

On the other hand, the Appeal put into evidence a series of drawbacks and stressed the inadequate application of the provisions of Law No. 239-XVI of November 13, 2008 about the transparency of the decision making process, as well as of article No. 49¹ of the Regulation of Parliament:

- on the web page of the Parliament the information about the rules on the procedures concerning the organization of public consultations is lacking;
- announcements about the public consultations of the registered bills are lacking;
- information about the coordinators of the public consultations in the framework of the parliamentary commissions is lacking;
- the annual reports of the parliamentary commissions concerning the implementa-

tion of provisions about the transparency of the decision making process are lacking;

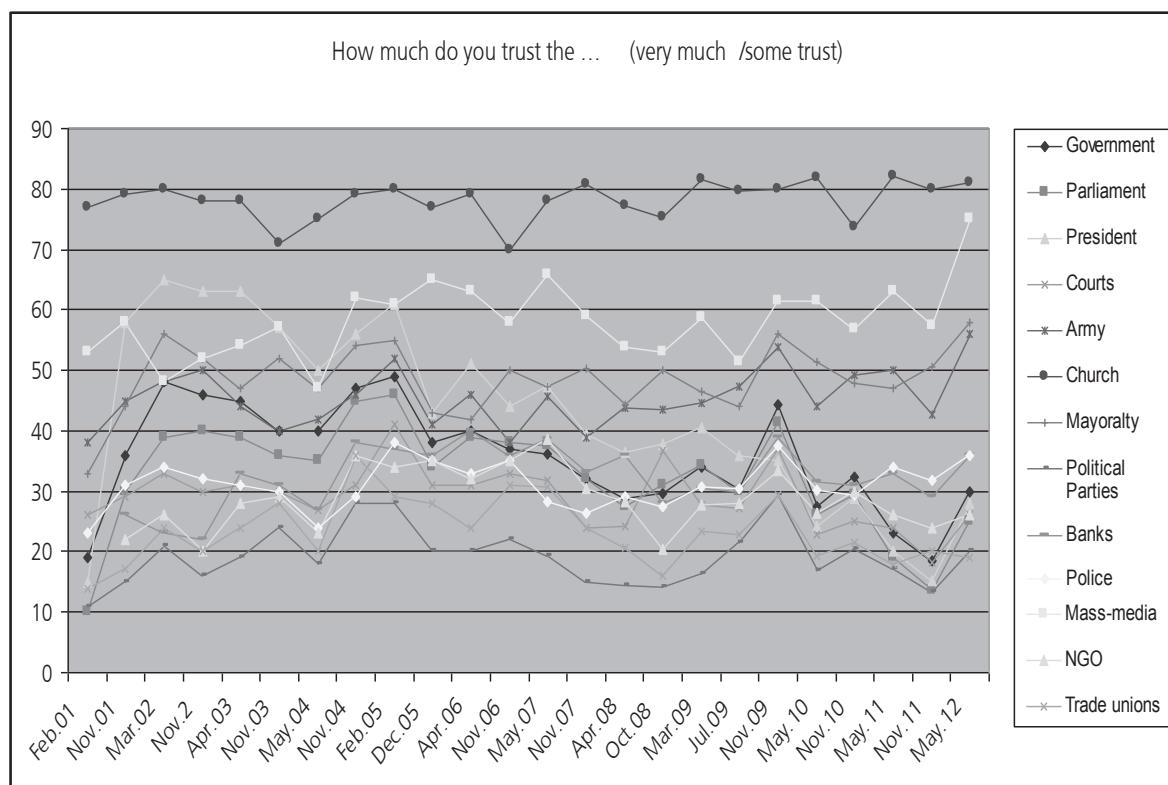
- the shorthand records of the public sittings of the permanent parliamentary commissions are lacking;
- the shorthand records of the plenary sessions of Parliament are published with a substantial delay;
- the declarations of MPs about their income, properties and conflict of interests, as well as those of Parliament's Secretary staffers are lacking or are published with great delay;
- the information about the MPs' voting of the bills, the summaries about the legislative initiatives and control requests of MPs is lacking; this information of public interests becomes available only due to the efforts of civil society organizations.

Parliament's activity during the last two years has resulted in a dramatic drop of citizens' confidence in the legislative body. Thus, according to the results of the Barometer of Public Opinion (BPO) effectuated twice per year by the Institute of Public Policy (IPP)¹⁸⁵ in November 2011 the trust of citizens in Parliament represented 13.6% (in comparison with November 2010, when it was 30%)¹⁸⁶. Thus, Parliament, together with political parties and trade unions, are the less trusted institutions.

¹⁸⁴ <http://www.e-democracy.md/files/apel-transparenta-parlament.pdf>

¹⁸⁵ <http://ipp.md/?l=en>

¹⁸⁶ <http://ipp.md/libview.php?l=en&idc=156&id=580>



The major problem in the relations of Parliament with civil society organization is related to the disclosure of MPs' incomes, properties and conflict of interests. Despite the fact the legislation concerning the above-mentioned problems is rather well developed, the practical implementation of the legal provisions seems to be deliberately impeded by MPs because of personal interests. Thus, Law No. 1264-XV of July 19, 2002 *on the declaration of the incomes and properties of high ranking officials*, together with Law No. 16-XVI of February 15, 2008 *on conflict of interests* provides that every year MPs and other high ranking officials should declare on their own responsibility what are their annual income, their properties as well as the property of their close relatives and the conflict of interests. Nevertheless, this does not happen or, if they declare it, the information is obviously distorted so as it provoke the impression that MPs are the poorest citizens of Moldova. The Controlling Commission has never presented reports to public opinion. Thus, the level of citizen satisfaction regarding anti-corruption mea-

sures remained very low, and concerns about the problem of corruption have increased¹⁸⁷. The efforts in anticorruption strategy have remained mainly declarative and are not supported by system reforms and impacting actions. For this reason under the pressure of international partners and civil society organizations Law No. 180 of December 19, 2011 on National Integrity was elaborated and adopted.

However, after the adoption of the law Parliament did not respect its own regulation and did not form the National Integrity Commission (NIC), and the way in which the members of the NIC were appointed demonstrates excessive politicization of the process and in-compliance with public interest. Appointment of NIC members was conducted through non-transparent methods; the compliance assessment with integrity criteria of the candidates nominated by political parties was not made. There is the suspicion of the unsuitability cri-

¹⁸⁷ Progress Report in implementing PEV, 15.05.2012

teria of integrity of some candidates and lack of impeccable reputation¹⁸⁸. External reports show stagnation or considerable deficiencies in fighting corruption in Republic of Moldova, describing corruption as a major problem in the country, and the relevant legislation is implemented ineffectively²⁷. A decisive and effective approach in fighting corruption is needed, legislation and institutional frameworks have to be comprehensive, and clear reform and action visions are needed, which will not cause deficiencies in implementation.

4. Conclusions

Generally, one can assess the activity of the Parliament of the Republic of Moldova as satisfactory though very far from being efficient. The Republic of Moldova has the image of the champion in the European Union's neighborhood strategy – Eastern Partnership. The Government has huge benefits from this status as during the last two years the direct income in state budget (grants and credits at a convenient rate) from EU and other development partners is about 15-20%. This explains why Parliament is very diligent in approving legislative acts related to the European integration process, mainly those which are directly mentioned in the action plans on visa liberalization and DCFTA. The European Commission usually assesses as positive the legislative process in the Republic of Moldova, but at the same time mentions the huge deficiency in implementation.

Concerning other strategies and reforms announced in the Government programs, Parliament's contribution is much more modest. Among the main deficiencies it is worth mentioning:

- the Parliament Regulation lacks clear procedures concerning the situations when MPs elected on candidate lists of some political parties leave the respective factions for some reasons. This gap is sometimes used by the parliamentary majority for splitting the opposition faction by promising the "renegades" functions in the ruling bodies of Parliament or the possibility of creating new factions, as happened in 2010. In the current legislature the majority managed to split the opposition faction twice by initially removing its capacity to block the election of the country's president and later on by trying to create the impression that it entered in dissolution;
- parliamentary control over both Executive power and the institution under parliamentary control is ineffective;
- MPs and the internal departments of Parliament lack the necessary human, information and technical resources for efficient activity. The impact is the rather low quality of the bills;
- the low quality of the bills is also the result of the behavior of the opposition, which prefers more to boycott the ruling alliance than to work on bills, showing evidence of their weakness;
- the procedures and relationships of the Government with Parliament remain unclear when the Government resorts to the engagement of responsibility for a bill or national program;
- the criteria for financing the structures of Parliament's Apparatus lack transparency and administrative or external control against potential abuse;
- MPs who are not in the ruling administrative or political bodies of the Parliament lack any assistance of qualified personnel, as Parliament does not have at its disposal

¹⁸⁸ Public appeal of NGOs on the selection process of NIC members (18.04.2012), <http://www.api.md/news/35243/>; The Call of the Civic Initiative for a Clean Parliament on revising the list of candidates in National Integrity Commission (17.05.2012), <http://moldovacurata.md/?mod=news&id=27>.

the necessary resources to hire it; consequently the quality of their activity is assessed to be low;

- due to the recent modifications of the Permanent Bureau of the Parliament, the transparency of staff remuneration has become more obscure as well as the logistic provision of the Parliament Secretariat;
- the provisions concerning MP status remain obsolete and need updating;
- about half of the MPs are a kind of bal-

last, they do not participate in debates in the plenary session, although they could be co-authors of the legislative initiatives;

- MPs communication with their fellow party members in the Government is weak, as there are bills initiated by MPs and contested by the Government and vice-versa.

The main recommendations formulated by civil society organizations are to remove the above-mentioned drawbacks and just to implement carefully the existing legal norm and regulations concerning the activity and transparency of the decision making process.

Open Parliaments: The Case of Montenegro

Stevo Muk

Introduction

Montenegro renewed independence in 2006, after a peaceful and democratic referendum. The Montenegro political system remained parliamentary according to the Constitution adopted in 2007. Montenegro has unicameral parliament of 81 seats, serving a four-year term. The allocation of seats/mandates is done on the basis of a proportional list system (d'Hondt method) within a single nationwide constituency with a 3% threshold and an exceptional lower threshold for minority lists.¹⁸⁹

While underestimated in the past, the role of parliament has been strengthened during recent years. Montenegro remains among few countries in Europe, and the last within the Western Balkans where one party has remained in power for decades. According to Freedom House "Nations in Transit"¹⁹⁰, Montenegro did not improve its democratic record in 2011 and remained among countries with a "semi consolidated" democracy.

The last parliamentary elections were held in March 2009, where the ruling coalition "European Montenegro-Milo Đukanović", consisting of the Democratic Party of Socialists (DPS) and Social Democratic Party (SDP) together with two minority parties Croatian Civic Initiative (HGI) and Bosniak party (BS) won 45¹⁹¹ seats out of 81. His Coalition together with the Democratic party of Alba-

nians (1 seat) formed a parliamentary majority. The rest of the parliament is occupied by the opposition Socialist People's Party (SNP) with 16 seats, the New Serbian Democracy (NSD) with 8 seats, the Movement for Changes (PZP) with 5 seats, as well as the Albanian List (Democratic League of Montenegro and Albanian Alternative) with 1 seat and FORCA with one seat.

Election turnout is still¹⁹² relatively high with 66.2% of voters using their right at the latest parliamentary elections in 2009. During the recent convocation, speaker of the Parliament is Ranko Krivokapić, leader of SDP, while two deputy speakers are Željko Šturanović and Rifat Rastoder, from DPS and SDP respectively. Although, according to Parliamentary Rules of procedure, one deputy speaker should come from the opposition, this has never happened, as the majority refused to vote for the opposition candidate. During the term, President of the Government Milo Đukanović, DPS leader resigned in December 2010 and Igor Luksić, vice president of DPS took over the position. Early parliamentary elections have been announced for mid October 2012.

The Stabilisation and Association Agreement between Montenegro and the EU was signed in October 2007 (entering into force in May 2010). Montenegro presented its application for membership of the European Union on 15 December 2008. Following a request by the Council, the Commission sub-

¹⁸⁹ Law on Election of Councillors and Members of Parliament of Montenegro, "Official Gazette of MNE", no. 4/98, 5/98, 17/98, 14/00, 9/01, 41/02, 46/02, 45/04, 48/06, 56/06, and "Official Gazette of MNE", no 46/11.

¹⁹⁰ Nations in Transit, Montenegro, 2012, Freedom House, available at: <http://www.freedomhouse.org/report/nations-transit/2012/montenegro>

¹⁹¹ DPS has 34 seats, SDP has 9 seats, HGI 1 seat, BS 3 seats.

¹⁹² The number of those who abstained from voting was in the 2001 Elections: 18.2%, in 2002: 22.5 %, in 2006: 28.6 %, while in the latest parliamentary elections in 2009 33.8% of voters did not go out and vote.

mitted its Opinion on Montenegro's application in November 2010. In December 2010, the European Council granted Montenegro candidate country status. In its conclusions, the Council noted that the opening of accession negotiations will be considered by the European Council, in line with established practice, once the Commission has assessed that the country has achieved the necessary degree of compliance with the membership criteria and, in particular, has met the key priorities set out in the Commission's Opinion. The Council invited the Commission to focus its 2011 progress report on implementation of these key priorities in particular. The accession negotiations started in June 2012.

The main challenges with regard to transparency and accountability of the Parliament of Montenegro were noticed in several consecutive European Commission Progress Reports for Montenegro. These challenges were transposed in one, out of seven, Recommendations¹⁹³ for Opening Negotiations for Montenegro published together with the EC 2011 Report.

The constitutional competencies of the Parliament of Montenegro include the adoption of the Constitution; laws; other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations); the National Security Strategy and Defense Strategy; the Development plan and Spatial plan of Montenegro. Parliament regulates the state administration system and calls national referenda.

With regard to security and defense, Parliament proclaims a state of war and a state of emergency, decides on the use of units of the Army of Montenegro in international forces; adopts the National Security Strategy and Defense Strategy; Parliament performs supervision of the army and security services.

Parliament has competencies with regard to the election and dismissal of the Prime Minister and members of the Government; the President of the Supreme Court, the President and the judges of the Constitutional Court; the Supreme State Prosecutor and State Prosecutors, the Protector of human rights and liberties (Ombudsman), the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State Audit Institution, and other officials stipulated by the law. Parliament also has a right to decide on immunity rights; grant amnesty; and confirm international agreements. Parliament adopts the budget and the final statement of the budget, announces public loans and decides on the borrowing of Montenegro; it decides on the use of state property above the value stipulated by the law.

In Montenegro, according to the Constitution, the Government (the Ministry), members of parliament and 6000 citizens through a member of the parliament they have authorized¹⁹⁴ have the right to submit legislative proposals. Provision of the new Constitution was a step backwards with regard to the provision of the previous Constitution, which guaranteed a right of direct legislative initiative, signed by six thousand voters. Such a provision was used by several NGO-led campaigns, including the most known to protect the Tara River Canyon, leading to the adoption of the Declaration in Parliament in December 2004.

¹⁹³ The key priorities concern the following areas: legislative framework for elections and Parliament's legislative and supervisory role; public administration reform; judicial reform; and the fight against corruption; the fight against organised crime; media freedom and cooperation with civil society; implementation of the anti-discrimination framework and the situation of displaced persons. For the full text of the key priorities, please see: Commission Opinion on Montenegro's application for membership of the European Union, COM (2010) 670, Brussels, of 9 November, 2010.

¹⁹⁴ Article 93 of the Constitution of MNE, "Official Gazette of MNE", No. 01/07, of 25 October 2007

In practice, the Government proposes legislation almost exclusively. In 2011 MPs submitted one proposal for amendment of the Constitution of Montenegro, two constitutional acts, 32 proposals for laws on amendments to laws, seven decisions, one declaration and two resolutions. In the same period, the Government of Montenegro submitted 106 proposals for laws, 54 proposals for laws on amendments to laws, two decisions and one proposal for amendment of the Constitution of Montenegro. The citizens did not submit any proposals for laws through an authorised MP in the year 2011.

Parliamentary budget for 2012 is six million Euros. The Secretary General of Parliament is appointed by parliamentary majority. Parliamentary staff consists of 125 people employed in the Service of the Parliament on 31 December 2011, in comparison to 92 employed on the same date 2010.

The Legislative Framework

The 2007 new constitution provides the basis for a civic nation state with full political, civil and human rights on the basis of the rule of law. The preamble names as citizens Montenegrins and the representatives of minority groups. Furthermore, the new constitution provides for an 81-member parliament that elects a Prime Minister, while the President is elected by popular vote. The Constitution was adopted after a long period of negotiations in Parliament by 55 out of 81 members of Parliament – that is, by a two-thirds majority. Together with the ruling coalition DPS, SDP and HGI, the Movement for Changes (PzP) with the Bosniak party, Liberal Party ensured the two thirds majority required to adopt a new Constitution.

In December 2010, the Law on Parliamentary Oversight of the Security and Defence Sec-

tor has been adopted, while in July 2012, the Law on Parliamentary Inquiry was passed. Both laws define certain control mechanisms more closely, expand on the general provisions of the Rules of Procedure and introduce obligations for the persons and entities outside the Parliament in conducting oversight function. Both of these important laws were adopted unanimously, with the support of all the MPs.

There is during 2011 and 2012 an ongoing constitutional reform aiming at strengthening the independence of the judiciary. Parliament endorsed draft amendments to the Constitution on 28 September 2011. The draft was subject to public debate until 31 October 2011.

Constitutional amendments will cover composition of the Judicial Council, composition of the Prosecutorial Council, election of President of the Supreme Court, competences of the Parliament regarding the appointment and dismissal of the President of the Supreme Court, Supreme Prosecutor, public prosecutors and the Prosecutorial Council, as well as competences for the appointment and dismissal of the President and judges of Constitutional Court. Amendments will also include the composition and selection of judges and President of the Constitutional Court and decision-making procedure in the panel of three judges when the Constitutional Court decides upon constitutional complaints for the purpose of more efficient action.

Following an expert debate on draft amendments to the Constitution organized by the Ministry of Justice in October 2011, minutes were delivered to the parliamentary Committee on Constitutional Affairs and Legislation. The Venice Commission and the EC had meetings with two parliamentary committees – the Committee on Constitutional Affairs and Legislation and the Committee on International Relations and European Integration, as well as with the Con-

stitutional Court, the Supreme Prosecutor and the President of the Supreme Court. In February 2012, the Prime Minister held consultations with representatives of opposition parties regarding amendments to the Constitution referring to the judiciary.

The Committee on Constitutional Affairs and Legislation held the session on 19 March 2012 for purpose of endorsing the proposal for amendments to the Constitution referring to the judiciary. The Proposal for amendments was considered by the Collegium of the Parliament (a consultative body consisting of Heads of MP Clubs convened by the speaker of parliament) and it was concluded that additional harmonisation was required for the purpose of defining the final proposal for amendments. After endorsement of the final proposal for amendments to the Constitution, it will be referred to the Venice Commission in order to obtain its opinion. Further consultations are in progress between the Prime Minister and opposition parties in order to provide the two-thirds majority required for adoption of Constitutional amendments. The Committee on Constitutional Affairs and Legislation held its session on 10 May 2012 and continued its work on preparing the proposal for amendments.

Public Nature of the Work of Parliament

The Parliament of Montenegro Rules of Procedure prescribes that work of Parliament and its Committees shall be public and that it shall inform the public of its work, topics discussed and decisions made. The sitting of Parliament and meeting of the Committee shall be closed for the public in the case of considering an act or material designated as a "state secret". Parliament may decide, without debate, to close the sitting or a part of the sitting for the public upon a reasoned proposal by the Gov-

ernment or 10 MPs.¹⁹⁵ For the purpose of ensuring comprehensive information to the public on the work of the Parliament, the Parliament has its web site¹⁹⁶ for posting data and information on the work of Parliament and its Committees. The presentation of Parliament and its Committees on the web site shall be regulated by a special act of the Collegium of the President of Parliament.¹⁹⁷ Parliament shall inform the public of its work, topics discussed and decisions made. Proposal acts discussed may be published in the media or in a special publication.¹⁹⁸ Television and other electronic media shall be entitled to direct broadcasting of the sittings of Parliament and its Committees. Parliament shall provide conditions for the television and other electronic media to broadcast sittings of Parliament.¹⁹⁹ Sittings of Parliament and meetings of Committees of Parliament shall be covered by reporters accredited by the competent authority.²⁰⁰ Materials considered at the sitting of Parliament or the meeting of the Committee shall be at disposal of reporters, unless otherwise determined in the general act on the manner of handling the material in Parliament that is considered a state secret or confidential.²⁰¹

Only the MPs that are members of the Committee for Security and Defence or the ad-hoc inquiry committees have the right to access confidential data. Initially, the Law on Confidentiality of Data completely excluded the MPs, but gradually the MPs have initiated changes (in 2010 and 2012) that have broadened the scope of persons with the right to access confidential information.

¹⁹⁵ Rules of Procedure, Article 211, Parliament of Montenegro, available at: http://www.skupstina.me/cms/site_data/AKT1%202010/poslovnik%20skusptine%20cg%20novi.pdf

¹⁹⁶ See: www.skupstina.me

¹⁹⁷ Rules of Procedure, Article 212

¹⁹⁸ Rules of Procedure, Article 213

¹⁹⁹ Rules of Procedure, Article 214

²⁰⁰ Rules of Procedure, Article 215

²⁰¹ Rules of Procedure, Article 216

Since 2009, the Parliament produces comprehensive annual reports on its overall work, as well as separate reports on the financial transaction and the execution of the budget (with detailed information on public procurement procedures). Recently (since 2010), certain committees have also initiated practice of producing annual reports on their work and making plans for the year ahead. However, this practice is not uniformed, not all the committees produce these reports and the reports do not have the same structure and types of information.

The Parliamentary service prepares both the reports and the complete transcripts of the plenary sessions, while the committees produce reports on the points of agenda and the overall minutes from the sessions. The structure and contents of various documents that the working bodies of the Parliament produce (minutes, reports, etc.) are not prescribed in detail by the Rules of Procedure. This leads to a diverse practice and often a discrepancy between the amount and type of information in documents of the various committees.

The work of Parliament is regulated by Parliamentary Rules of Procedure, while several organizations, including the National Democratic Institute (NDI) and Institute Alternative, asked for the introduction of a specific Law to regulate the position of Parliament and Rules of procedure instead of existing Rules.

Before the draft laws are discussed at the plenary parliamentary session, proposals must pass the test of coherence and compliance with relevant EU legislation. Within the present institutional arrangement of Parliament there are two working bodies, neither of which is expected to engage with the content of the laws, and both conduct a "technical check" of the submitted draft legislation: the Committee for Constitutional Affairs and

Legislation and the Committee for International Relations and European Integrations. The first evaluates compatibility with the legal system and the Constitution of Montenegro, while the other checks for alignment with the EU *acquis*. In fact this means that a draft legal proposal has to pass on average through four committees: the Committee for Constitutional Affairs and Legislation (mandatory), the Committee for International Relations and European Integrations (additional technical evaluation), the committee in charge of that particular area of interest, and the Committee for Economy, Finance and Budget (if it has repercussions on public finances). The effect is that the regular legislative procedure is very long, which might act as an incentive for frequent recourse to urgent procedures.

The recent amendments²⁰² to the parliamentary Rules of procedure have established a model in which the compliance of the draft law with the *acquis* considers the professional service of the body that is specialized for that area. The Parliament of Montenegro has introduced the impact assessment of the legislation coming to Parliament to support the capacity building of Parliament to monitor proposed legislation and its compliance with EU law, and to enable monitoring of application RIA by the Government.

Special premises in the Parliament have been equipped and prepared for conducting sessions that are closed for the public – a "bugs free" room has been created in order to enable the MPs to discuss matters and documents designated with a certain degree of confidentiality.

²⁰² Decision on amendments to Parliament's Rules of Procedure, May 2012.

Parliamentary Rule of Procedures 2012 Changes

There were changes of the Parliamentary rules of procedure in July 2012. The work on amending the Rules of Procedure took more than a year to finish, having been motivated by the assessments and remarks in the Opinion on Montenegro's application for membership of the European Union. Amendments to the Rules of Procedure that were adopted unanimously in May 2012 entail some important novelties.

Changes in the structure of the working bodies of the Parliament were made in July 2012, including the splitting of the Committee for Constitutional and Legislative Affairs into the Constitutional Committee and Legislative Committee, as well as the splitting of the Committee for International Relations and EU Affairs into the Committee for International Relations and Emigrants and the Committee for EU Integration. A new committee, the Committee for Anti-Corruption was founded as well. Competencies of the existing committees have been amended or clarified in certain cases. (e.g. the Committee for Human Rights and Freedoms gained the competency of reviewing and deciding upon appeals of citizens and legal entities regarding realization of human rights.) The issue of subcommittees has been more precisely defined, including the introduction of the possibility of establishing permanent subcommittees. The jurisdiction for verifying the harmonization of legislative acts with the EU *acquis*, which was previously centralized in the Committee for International Relations and EU Integration, has been conferred to eight committees in total. There have also been changes in the definition of certain control mechanisms. The Prime Minister's Hour and MPs' Questions will be held once a month. Additionally, the scope of persons that

can be called to appear before the committees at control hearings has been broadened and clarified. Rights of the parliamentary minority have been strengthened by the article that prescribes that the proposals for the agenda coming from the minority will be included in the overall proposal of the agenda of the plenum. Additionally, control hearings can be initiated by one third of committee members, two times per year (besides the general norm that the hearing can be initiated if it is endorsed by the majority of committee members). These changes will fully come into force as of the next convocation of the Parliament.

Access to Information

The Constitution prescribed that "everyone shall have the right to obtain information held by state authorities and organizations exercising public authority"²⁰³. Where the only limitations might be "in the interest of: the protection of life; public health; morality and privacy; carrying out of criminal proceedings; the security and defense of Montenegro; and foreign, monetary and economic policy." The first ever legislation on free access to public information in Montenegro was adopted in 2005. The Law was implemented with serious deficiencies, mainly caused by lack of culture of openness and transparency and lack of mechanism for law enforcement.

The new Law on free access to information was adopted at the end of July 2012. The recent changes of legislation are a step forward as efforts have been made to harmonize the law with the highest standards in this area.

²⁰³ Article 41 of the Constitution of MNE

Requests for free access to information per year		
	Total number of requests	Number of denied requests
2008	229	16
2009	124	13
2010	104	23
2011	162	39

During the public debate about the law the Government received numerous comments on the law, of which a number have been adopted. The new Law introduces mechanisms of a proactive approach to the disclosure of information, disclosure harms test, and the prevailing of public interest. An independent agency has been given competencies with regard to the second level appeals, keeping up an IT system to access information, and submitting regular annual reports on the status of access to information. This responsibility is assigned to the existing Agency for Personal Data Protection. There was a serious debate about "restrictions on access to information". The version of the law that was at the public hearing contained these restrictions listed in detail, thus giving a legal basis for a restrictive approach of the state authorities, which could deny access to information, under the guise of protecting privacy rights, rights to protection of personal data, and the protection of national security, etc. In the final version of the draft Law on free access to information this article has been changed and is not below standards. It remains for us to see whether those possibilities will be abused and used to deny access to information for which there is a prevailing public interest to know. However, it is clear that the implementation of the law itself will be a challenge, both for the Agency for the Personal Data Protection, which still does not have enough capacity even for the protection of personal

data, which obtained a jurisdiction to decide appeals in the second degree, and for those government bodies that are traditionally closed and non-transparent. A real political will for the implementation of the Law will be crucial to allow the public the right to know and have access to information held by public authorities.

In 2011, the Parliament of Montenegro received 162 requests for free access to information, which contained 529 items, i.e. sub-requests. The Parliament of Montenegro responded to all the submitted requests, either with a decision (114), notification (46) or conclusion (2). For 75 submitted requests for free access to information, access was granted either by direct insight, the information transcription or by providing a copy. In 2011, the Parliament of Montenegro denied 39 requests for free access to information, because it did not possess the required information. Notifications are sent to the requestors in cases when the required information has already been published and is available to the public. Such requests were a total of 46 in 2011. The Montenegrin Parliament responded to two requests for free access to information by Conclusion, because it had previously decided on the same request. Most requests for access to information were submitted by NGOs. Requests are mostly related to financial transactions, i.e. copies of MPs payroll statements, copies of documents containing information on the amount that was spent from the budget of the Parliament of Montenegro to pay for travel costs, accommodation, then the data on per diems for MPs travelling abroad and around Montenegro, public procurement, realisation status of the Action Plan activities, etc.

Conflict of Interest, Disclosure of Assets, Anti-Corruption Legislation

Legislation on conflict of interest prevention was introduced into the legal system of Montenegro in April 2004 after a two-year-long public and political debate. Implementation of the law was strongly criticized by numerous domestic NGOs and international organizations, including European Commission progress reports. New provisions of the Law on Conflict of Interest Prevention were adopted in mid 2011 and entered into force in January 2012, prohibiting sitting MPs from serving as directors of state administrative bodies or as members of other managerial bodies at either a national or local level. Following the entry into force of the amended law on conflict of interest prevention, all 36 MPs who were also members of management boards of state-owned companies resigned from these positions and all 16 MPs who also held executive positions (including 2 mayors) resigned from one of their functions. The EC noted in its spring report “Despite its strengthened administrative capacity, the Commission for the prevention of conflict of interest still lacks the capacity to control the accuracy of civil servants’ asset declarations and declarations of interest to identify illicit enrichment as it has no investigative powers and access to relevant databases.”²⁰⁴

The Constitution of Montenegro stipulates that a Member of Parliament of Montenegro shall enjoy immunity, shall not be called to criminal or other account or detained for expressed opinion or vote in the exercise of his or her function as a Member of Parliament. Moreover, no criminal proceeding shall be initiated against a Member of Parliament,

nor shall detention be assigned, without approval of the Parliament, unless the Member of Parliament has been caught performing a criminal offence for which the prescribed penalty is more than five years of imprisonment. There is an unwritten practice in the Administrative Committee of the Parliament that in the case of private charges against MPs, the Administrative Committee does not allow for court proceedings.

With regard to parliamentary extraordinary activities in the field of anticorruption it is important to mention that an opposition member of the Parliament (and Chair of The Board for Budget, Economy and Finances) is a member of the National Committee for the Fight against Corruption²⁰⁵. Moreover, another opposition MP is a member of the Judiciary Council.

Financing of Parliamentary Parties and Groups

In the field of financing political parties and election processes, and within efforts aimed at harmonization with GRECO recommendations, the Law on the Election of Local Councillors and Members of Parliament and the Law amending the Law on Financing Political Parties were adopted, and control of the financing of political parties was shifted from MF to State Audit Institution (SAI) and State Electoral Commission (SEC), while administrative improvement of work performed by SEC still remains a problem.

The State Audit Institution will in 2012 perform audits of annual financial reports of all political parties as well as election campaign financing reports (parliamentary and local elec-

²⁰⁴ Report from the Commission to the European Parliament and the Council on Montenegro’s progress in the implementation of reforms, Brussels, May 2012, p. 8.

²⁰⁵ The National Commission is a body created to monitor implementation of Strategy and the Action Plan for Fighting against Corruption and Organized Crime. The Commission consists of representatives of executive, judiciary, NGOs and MP.

tions in five municipalities). The State Audit Institution has prepared an audit plan for conducting an audit of 14 annual (2011) financial reports of political parties in Montenegro.

According to some preliminary statements²⁰⁶, political parties in Montenegro have had income from national and local budget sources of more than 3 million Euros in 2011, while overall income was around 4.5 million Euros. It is important to mention that income from private sources is around 5%, where most of this sum (200,000 euro) is income of ruling DPS while all other parties received only 34,000 Euros.

Electoral Rules

Amendments to the Law on election of municipal councillors and members of parliament were adopted by a two-thirds majority in Parliament in September 2011, thus harmonizing it with the Constitution and addressing the main OSCE/ODIHR and Venice Commission recommendations on elections. These amendments implement the constitutional commitment to authentic representation of minorities by introducing a system of affirmative action for representation in parliamentary elections, extended to all minorities. They improve the technical side of voting and offer better safeguards for equality of votes. The powers of the State Election Commission and the system of appointments of its members have been further clarified, as has political representation of opposition parties in local elections.

The EC noted that these legal advances “need to be complemented in the future as regards a number of pending OSCE/ODIHR and Venice Commission recommendations, in particular those related to the dissolution of coalitions and their funding obligations, and the extension of the mandate of the Cen-

tral Election Commission to municipal elections.”²⁰⁷ The issue of the constitutional two-year residency requirement before citizens can obtain the right to vote (while reduced to six months for local elections) remains unaddressed for national elections. Although the new provisions provide for 30% of female candidates on the candidate list, gender equality is still not guaranteed in practice, as the law does not stipulate that candidates of each gender should be ranked high enough on the list to have a realistic opportunity for being allocated a mandate.

Parliament and Media

The Media Map in Montenegro	
Radio stations	54
TV channels	24
Printed media	58

The media regularly cover the work of Parliament. Parliamentary work is presented in media mainly through key statements of the leading majority and opposition MPs on certain topics. Daily newspapers generally review the activities within the Parliament and its role in the European integration process with the statements from NGO activists and MPs. TV stations usually have a few minutes of a program with key announcements and conclusions from the parliamentary sessions. With respect to media coverage of parliamentary committees’ sessions, journalists in principle cover introductory parts and early speeches of MPs. Control hearings attract some higher media attention.

The Department for Public Relations, International Affairs and Protocol of the Parliament issued 390 annual accreditations for journalists from 26 electronic and print media in 2011.

²⁰⁶ Member of SAI Senate, Presentation at The Regional Conference, July 2012, Podgorica

²⁰⁷ EC Progress Report Montenegro 2011, SEC(2011) 1204 final, Brussels, 12 October, 2011, p. 6.

TV Broadcasting of the Parliamentary Sessions

One of the most important forms of publicity is TV broadcast of the plenary sessions. The Rules of Procedure of the Parliament in Article 214 stipulate that *“The Parliament shall provide conditions for the television and other electronic media to broadcast sittings of the Parliament.”*

Direct TV broadcasting of parliamentary sessions was for a long time an issue for political disputes between parliamentary majority and the opposition in Montenegro. A few times opposition parties boycotted parliamentary work, requesting direct TV broadcasting of all sessions on the public broadcasting service Radio and TV Montenegro. Almost a year ago, half million Euros was disbursed for the introduction of “internal television” in order to allow private television stations to directly broadcast from the building of the parliament, without use of their own human resources. Since its introduction, no private TV has used this opportunity.

According to RTCG standards and principles²⁰⁸ some parliamentary sessions shall be directly broadcast because of their importance. These sessions include those where constitution is adopted, constitution of the assembly is discussed, the issue relates to the election of the President of the Government, the election and dismissal of the Government, Government confidence motions and motions of censure, times when the President of Montenegro and the President of the Government address Parliament and, following discussion, the adoption of the spatial plan for Montenegro, budget and final account, adoption of (systemic) laws which require a majority of an overall number of MPs, as well as ceremonial sessions.

The relation between the Parliament and the Public Service (RTCG) regarding the broadcasting has been a source of frequent strife among the MPs, with RTCG sometimes conditioning the length and schedule of the plenary sessions or discussions on certain topics with the decisions regarding the amount of air time it has willing to broadcast.

Parliament started TV broadcasting with its own technical and administrative capacities in 2010. The TV signal from the plenary sessions is available to interested broadcasters and cable operators for distribution. 340 hours and 15 minutes of program were realized in 2011. Plenary sessions of the Parliament of Montenegro can also be broadcast live over the Website. More than 49,732 live streaming site visits from 35 countries have been registered since the introduction of the service in June 2010. All the premises where committee sessions take place have been equipped with technical means of audio and video recording, but the direct broadcasting of the committee sessions is not available.

A group of members of parliament from among all parliamentary parties in June 2012 submitted a draft law on changes of the Law on public broadcasting service Radio and Television Montenegro, which in essence aim to establish a parliamentary TV channel as a separate channel of the Radio and Television of Montenegro. MPs adopted the Amendments to the Law on Public Broadcasting Services of Montenegro on July 26, 2012. Amendments provide the basis for the establishment of the parliamentary channel. All political parties in Parliament agreed that the establishment of a parliamentary channel is essential. Legislation will come into force as of October 2012.

²⁰⁸ See: http://www.rtcg.me/images/biblioteka/dokumentacija/principi_i_standardi_rtcg.pdf

Parliamentary Website

The parliamentary website (www.skupstina.me) provides most information regarding the composition and responsibilities of the Parliament, parliamentary committees alongside with contacts of MPs (e-mail addresses)²⁰⁹ and calendar of events. Also, the website consists of information about the draft-adopted legislation and additional official acts and documentation.

In addition to the regular publication of reports and financial statements, for the first time data on individual voting of MPs are available at parliamentary web site (from December 2011), as well as answers to MPs questions.²¹⁰ Voting of MPs is now available for the past three years. Still, presentation of Q and A is not well organized. The same conclusion refers to the placement of the individual voting.

The Parliament is currently working on establishment of an E-Parliament platform, that would provide a more interactive approach, better organization of data and improved accessibility.

Activities and Initiatives

A monthly bulletin entitled "Open parliament" has been published. This is the product of a project implemented by NGO Center for Democratic Transition (CDT) in recent years with foreign funding. Parliament took over this activity at the beginning of 2012 and is trying to make it sustainable as its own on-going product. The bulletin covers information on activities of parliament conducted in the previous month.

Part of the "Open Parliament" is also the Internship program started in September

2004. The Parliament conducts the program with the support and cooperation of CDT and the University of Montenegro for final year students of faculties. Within the program students were able to learn about activities of the Parliament and to gain practical knowledge for future work. More than 70 students have participated in the program up to now. In 2011 five students participated in the research activities of the Section for Research, Analysis, Documentation and Library.

In cooperation with the European Movement in Montenegro and with the support of the Ministry of Foreign Affairs of Slovakia and SLOVAKAID, the Parliament held the First Conference of the National Convention of the European Integration of Montenegro in April 2011. Recommendations of the four working groups were presented in the Parliament during the session chaired by the Speaker of the Parliament. The project is continued during 2012 with the session in June.

In January 2012, the Parliamentary Service addressed the NGOs that it cooperates with or are interested in the work of the Parliament with a questionnaire, asking for suggestion on how to make the work of the Parliament more transparent and information more accessible.

Cooperation With the Civil Society Organizations

In March 2011, representatives²¹¹ of the Network of NGOs for Democracy and Human Rights signed a memorandum of understanding with the President of the Montenegrin Parliament. The agreement entails a commitment on the part of parliamentary committees to invite NGO representatives, via the network, to take part in sessions of parliamentary committees relevant to their work.

²⁰⁹ It has to be noted that the great number of MPs do not regularly respond to official correspondence.

²¹⁰ The parliamentary service also began to issue semi-annual reports on legislative activities.

²¹¹ The Network is led by the Center for Development of Non-governmental organizations (CRNVO)

Moreover, in the same period, March 2011, the Parliament posted on its website a form for civil society organization and individuals. This form can be filled in in order to provide opinions, suggestions and recommendations to the authorities or units in the Parliament. The parliamentary administrative staff established a data registry of NGOs interested in cooperation.

When it comes to participation of NGOs in the work of the committees, there are several modalities: some NGOs monitor the work of the committees, having their representatives present at the sessions, in certain occasions; NGOs file a request to take part in the work of the committee when a legal proposal is on agenda that they are interested in; additionally, NGOs are sometimes invited to participate in consultative hearings that committees organize.

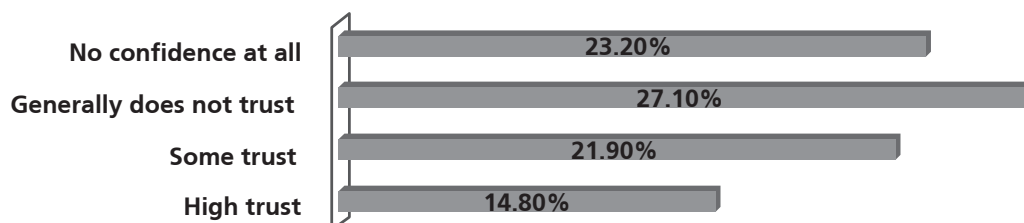
Cooperation between Parliament and nongovernmental organizations (NGOs) increased in 2011. During the last year it registered 100 participations of 60 NGO organizations in committee sessions, including participation in consultative hearings. Also, 100 remarks were started by CSO representatives

(amendment proposals, requests for free access to information submitted directly to the committees, comments on draft legislation, recommendations, appeals, petitions, etc.).

The institutional and legislative changes in Montenegro which have taken place over the last year intensified monitoring within all the levels and parts of the society, as well as Parliament. Civil society supervision contributed to raising the awareness of parliamentary leadership on the need for greater transparency.

The Public Perception of the Parliament in Montenegro

According to recent public opinion poll²¹², 36.7% of citizens show trust Parliament, where 14.8% show “high trust” and another 21.9% show “some trust”. On the other hand, 27.1% “generally do not have confidence”, and 23.2% have no confidence at all. The total percentage of respondents who have confidence in the case of the Parliament is significantly lower than the percentage of trust in the Government (46.7%) or in the President of Montenegro (48.6%).



²¹² Centre for Democracy and Human Rights (CEDEM), Political Public Opinion, July 2012, See: <http://www.cedem.me/sr/programi/istraivanje-javnog-mnjenja/politiko-javno-mnjenje/viewdownload/36-politiko-javno-mnjenje/341-politicko-javno-mnjenje-jul-2012.html>

On the other hand, confidence in Parliament is higher than confidence in the “political parties in Montenegro”, which stands at 32.1%, where highest confidence is shown in regard to “the health system” with 60% and “the educational system” 59.4%.

Compared to 2009 a marked decline in confidence was recorded in case of a large number of institutions - the afore-mentioned education system, then President of Montenegro (from 49% to 38%), the Prime Minister (from 45% to 30%), the police (from 35% to 28%), local authorities (from 35% to 28%), the Speaker of the Parliament (with 40% to 26%), the judiciary (from 33% to 25%) and Parliament (with 39% to 24%). Therefore, most political institutions today enjoy less confidence than in 2009. The institutions that represent the pillars of any democratic society - the Parliament, the Speaker of the Parliament and the Judiciary enjoy low confidence from citizens.²¹³

It seems to be that an initiative by the parliamentary Collegiums in 2011 to increase the MPs' salaries by 900 per month, almost twice the average salary in Montenegro at a time, contributed to lowering of public trust. At the same time, in the second half of 2011, administrative staff of the Parliament went on strike, due to inadequate salaries. Under public pressure, MPs gave up on their planned bonuses, and the administrative staff received a modest wage increase.

The above-mentioned initiative followed the perception of MPs as highly privileged and those who use public position to ensure more private privileges. Namely, the Law on income of public officials initiated and adopted by MPs of both majority and opposition

prescribed that MPs with less than two terms and 15 years of service, the age limit of 55 for women and 60 for men, was sufficient to acquire the right of officials to the national pension. National pensions represent significantly higher amounts than those pensions available to the majority of citizens.

The Constitutional Court in 2009 declared unconstitutional a provision of the Law on earnings and other income of state officials, but 115 former MPs continued to receive national pensions, as interpretation of Constitutional decision was that those who have started using this right could not lose it as it is an established right.

During 2012 one MP is fated in the first instance to three years in prison for criminal act of public abuse. It is the President of the Committee for Human Rights and Freedoms and MP from the leading Democratic Party of Socialists. He did not resign after first instance verdict as of June 2012.

Conclusions

The Parliament of Montenegro has a crucial role in the political system of Montenegro, providing legitimacy for executive, judiciary and numerous independent regulatory and supervisory bodies. Parliament's performance is strained within the context where regular changes of parliamentary majority and government are not happening. The legislative and supervisory function of Parliament has been improving, year by year, according to overall figures. In recent periods, overall openness and transparency has been improved, as individual nominal MP voting is available. Several other initiatives to improve the transparency of Parliament have been implemented. A legal framework ensured a reasonable level of transparency. A parliamentary service answers requests for

²¹³ Public Opinion Pool, Center for Monitoring (CEMI) and IP-SOS Strategic Marketing, April 2012, See: <http://www.cemi.org.me/images/istrazivanje/korupcija%20u%20crnoj%20gori%202012.pdf>

access to information to a great extent. Still, there is low public trust in Parliament. The parliamentary service may improve transparency making nominal voting in parliamentary committees available. Parliament has a lot to improve with regard to cooperation with civil society organizations, in particular with more invitations and consultative hearings involving NGOs, university, trade unions, business associations, independent experts, etc. The

supervisory function remains a huge space for more efficient performance of parliamentary committees. The media should pay more attention to the work of parliamentary committees in addition to important plenary sessions. MPs should improve their performance, with a more proactive approach and put additional efforts into ensuring high ethical and professional standards, in order to gain more public trust.

OPEN PARLIAMENTS BULLETIN 2012

Romania

Violeta Alexandru

1. Introduction

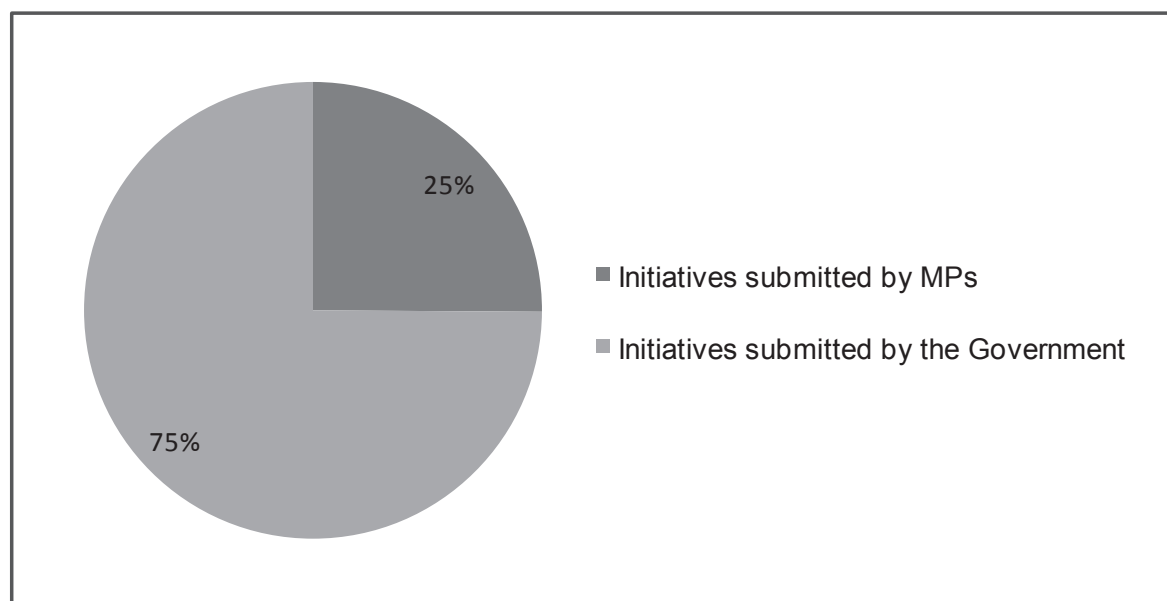
The Parliament of Romania is a bicameral body, formed of the Chamber of Deputies and the Senate. The Romanian bicameral system is based on the principle of balancing decisions between the two Chambers, based on split competences into areas of decision, provisioned by the Romanian Constitution. According to the Constitution, Parliament is the supreme representative body of the Romanian people and also the only legislative authority of the country.

Its role mainly consists in adopting the laws while at the same time appointing and revoking several public authorities' representatives,

an activity whose importance has increased in recent years, due to the media attention to the subject. At the same time one other role that the Parliament has is to exercise the parliamentary control in relation to some public authorities and powers (president, the government, intelligence and some others), a role which often proves to be performed rather formal.

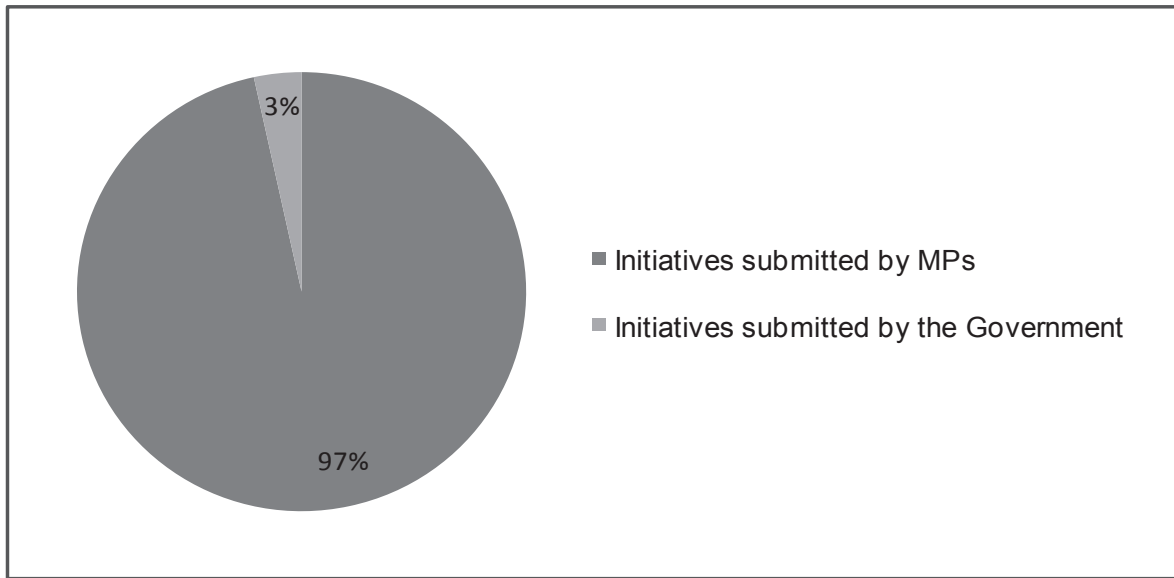
Despite the Constitutional provisions, the Parliament actual work of initiating bills is not as effective as expected in this context, most of the adopted bills being initiated in fact by the Government. The graphs below are relevant from this perspective²¹⁴.

Adopted initiatives from all debated initiatives



²¹⁴ Information included in the Graphs covers the period of 2008 - 2011 (three years of the current mandate of Parliament).

Rejected initiatives from all debated initiatives



The mandate of the MPs is of four years. The work of the two Chambers takes place in two annual ordinary sessions, the spring one that usually starts at the beginning of February and ends at the end of June and the fall one that starts at the beginning of September and ends in mid-December. The Chambers or the reunited sessions of the parliament can also take place in extraordinary sessions, during official holidays. Over recent years, it has frequently happened that Parliament has organized extraordinary sessions to debate critical decisions mainly related to internal policies.

The work of the plenary sessions of the Chamber of Deputies, of the Senate as well as the joint sessions are recorded in stenographic records and published in the Official Gazette. The Official Gazette has a special part in which all this information is published, specifically Part II. The laws adopted by the Parliament are published in the Official Gazette, Part I. Besides the traditional means of information, dissemination related to parliamentary activity through the Official Gazette which dates back to 1832, the work and results of the

Parliament Chambers, standing committees, permanent bureaus, investigation committees, as well as the work of the individual MPs, are recorded and reflected, to a large extent, through the websites of both Chambers. With the exception of the Steering Committees, whose work (minutes of the meetings, reports, etc.) is not as fully covered as necessary, the activity of Parliament has been more and more displayed on internet over recent years in Romania. The Romanian Parliament Chambers also benefit from an internal TV Channel that broadcasts the plenary sessions as well as other meetings of the committees (CCTV). The sessions are also webcasted live on the internet. News about the specific work of the members of Parliament is largely covered in the media, every day when the Parliament is in session. The contribution that NGOs such as the Institute for Public Policy have had over recent years, by scrutinizing the contribution of each deputy/senator to the parliamentary work (one of the latest developed projects of IPP is www.alesii-voteaza.ro, a freely - accessible application that displays information about MPs' performance in Parliament in real time), has

directly contributed to increasing the accountability and the visibility of the parliamentarians' individual performances.

Parties have a very tumultuous life in the Parliament, with a widely spread phenomenon of political migration²¹⁵, which makes political stability a real issue for the Government. Later developments within the Romanian Parliament were marked by the shift of power in this spring and, as a result of the local elections in June 2012, a reshuffle in the parliament that led to changes on the level of the Presidents of both chambers. Those recalls of the presidents were part of a wider plan of the Social Liberal Union to oust President Traian Băsescu that included a blitz-action plan aiming also, among other measures, to change the Ombudsman, to narrow the powers of the Constitutional Court or to transfer the Official Gazette under the authority of the Government.

In the end, it is important to mention that the credibility of the Romanian Parliament is extremely low. A recent public survey questioning the citizens about the trust in Parliament clearly shows how disappointed the general public are (the percentage of voters' trust in Parliament varies from 14%²¹⁶ to even 9%²¹⁷), which raises a serious problem of credibility for this important institution in Romanian democracy.

2. The Legislative Framework

At the level of the general Constitutional provisions, there have been no recent developments that concern parliamentary openness since the last Review Report. The last amendment of the Romanian Constitution was in 2003. Since then, the only significant activity in this respect was some recent activity concerning how the Constitutional Court's decisions impact upon the work of the Parliament. Latest developments meant that the decisions of the Chamber of Deputies, Senate and those adopted by the Parliament in joint sessions could no longer be challenged in the Constitutional Court, this competency being removed through a Government emergency ordinance. Decisions are the kind of rules that stand on the foundation of the rules of working of the Parliament. The standing orders are adopted as such, not as laws. So in the future, though not yet used till now, we cannot see a ruling of the Constitutional Court on the matter of the certain decisions on procedures that can infringe also upon transparency.

With some of the most advanced legislation on disclosure of assets and liabilities, one can easily notice that the same legislation is not effectively applied at the level of the Romanian Parliament. Recent modifications of the law on functioning of the National Agency for Integrity (ANI), which suggests that members of the Parliament fear that the general public will learn about their assets, were hardly accepted by the legislators. Over recent years, there has been tension between MPs and the leadership of this National Agency that is in charge of monitoring the assets and liabilities of the State officials, with the ultimate purpose of shaking its credibility and making it less effective. Depending on the political interest (be it that of preserving the majority in the Parliament), similar de-

²¹⁵ MPs changing parties, some of them several time during the mandate

²¹⁶ <http://www.gandul.info/news/topul-increderii-populatiei-in-institutii-presedintia-parlamentul-guvernul-pe-ultimele-locuri-jumatate-dintre-romani-ar-vota-pentru-reintroducerea-pedepsei-cu-moartea-7438503> - public survey of the Company for Sociological Research and Branding (October 2010)

²¹⁷ <http://www.europarl.europa.eu/aboutparliament/ro/00191b53ff/Eurobarometer.html> (December 2011)

cisions of the ANI about conflict of interests of some MPS have been differently enforced or not enforced at all by Parliament (a former Minister of Culture resigned after being called incompatible by the Court based on the ANI decision, while two other MPs who have also been found incompatible are still in Parliament, despite a final decision of a court of law on their incompatibility. The two declarations of assets and liabilities (mainly the one disclosing assets, as it is more accessible by default) that a State official shall submit at least when entering the public position and when leaving it, remain the most important sources of information about the potential interests of public figures, including MPs.

The credibility of Parliament remains extremely low, amplified by the recent cases of MPs being brought to Court for allegations of corruption. Former Prime Minister Adrian Năstase was prosecuted for a case of corruption of illegally financing his electoral campaign in running for the presidency back in 2004; a former officer in the secret service for protection of the President during Iliescu Iliescu's Presidency years ago, now the Senator Cătălin Voicu, was accused and actually arrested for influence peddling (in the same case a judge from the Supreme Court for Cassation and Justice was also accused). In the same context, it is worth mentioning the case of Marian Boldea - an MP belonging to the Coalition in power at that time accused of a number of charges including corruption and ultimately arrested, after fleeing from the country. Also, Virgil Pop - an MP who created another premiere - since, by the time of the electoral campaign in 2008, he was arrested and released just in time to take his mandate in the Parliament where he was elected. The trial went on and the MP was found guilty and picked up by the police from the hotel where all MPs are accommodated.

The former Prime Minister and some other members of Calin Popescu Tăriceanu's Cabinet of years ago, who are currently acting as MPs, are accused of stock exchange manipulation and the trial is under way. Another Senator from Giurgiu County is accused of being involved in an organized crime group that is involved in tax evasion and tax fraud both on customs and within the country. The general public reached a point where nobody was even able to keep up with the pace of these scandals.

In what concerns the law on financing of the activity of political parties and electoral campaigns, Law 334/2006, although it stipulates that parties receive an annual subsidy based on the electoral performance in the last elections, this sum goes directly to political parties' accounts rather than to those of MPs and it is spent for regular day to day funding of the party. The money received by the MPs from their respective Chamber, besides their salary, covers the spending on their constituency office. This amount of money, 1.5 times the amount of their salary, is designated to cover the rent of a constituency office, payment of their staff for this office and other expenses related to it.

With regard to the legal framework for elections of MPs, lately we have had a change in the law in order to replace the 2008 election system, which was a single seat constituency election with a compensation scheme. The 2008 system was to give seats directly to those getting 50%+1 votes cast in a single seat constituency. For the rest of the constituencies there was a proportional system of allocation of the mandates based on the votes obtained by all candidates at the level of each county²¹⁸ and later on at national level. That meant in some instances that candidates

²¹⁸ Romania has 42 counties plus Bucharest.

placed on second, third or even fourth place in a constituency were given the mandate rather than those that actually came first, although they did not reach 50%+1 votes. There was a lot of criticism of this system, so the new one proposed was meant to be very simple by adopting the rule of first past the post. After the adoption of this law, initiated by the Social Democrats (PSD) that are in coalition with the Liberals (PNL), the Liberal Democratic Party (PDL) challenged the legality of the system in the Constitutional Court, based on the idea that this new system would create a profound discrepancy between the popular vote and the allocation of the seats. Unofficially PDL was also shaken by the potential impact of this system that virtually threatened them with being left outside of Parliament, despite the fact that their political support was, at that point a few months ago, around 20%. The Constitutional Court has found the law unconstitutional. The detailed decisions with its explanations are still pending being made public in the Official Gazette.

In the field of the Standing Orders governing the activity of Parliament, there has been an improvement in relation to the consultation with the practices of citizens. As Romania has a sunshine law/transparency in law making process that was binding for Government, line ministry, other governmental bodies, and local and county councils, the only institution that was not subject to this provision of announcing a reasonable time in advance the intention to initiate a bill and also to allow those interested to consult the text and send feedback, was Parliament. At the same time, no law opposes Parliament's willingness to organize internal mechanisms of consultations with the citizens on draft bills. Until legislation is eventually changed, both Chambers agreed to introduce, as the necessary administrative consultative means as a best practice, an elec-

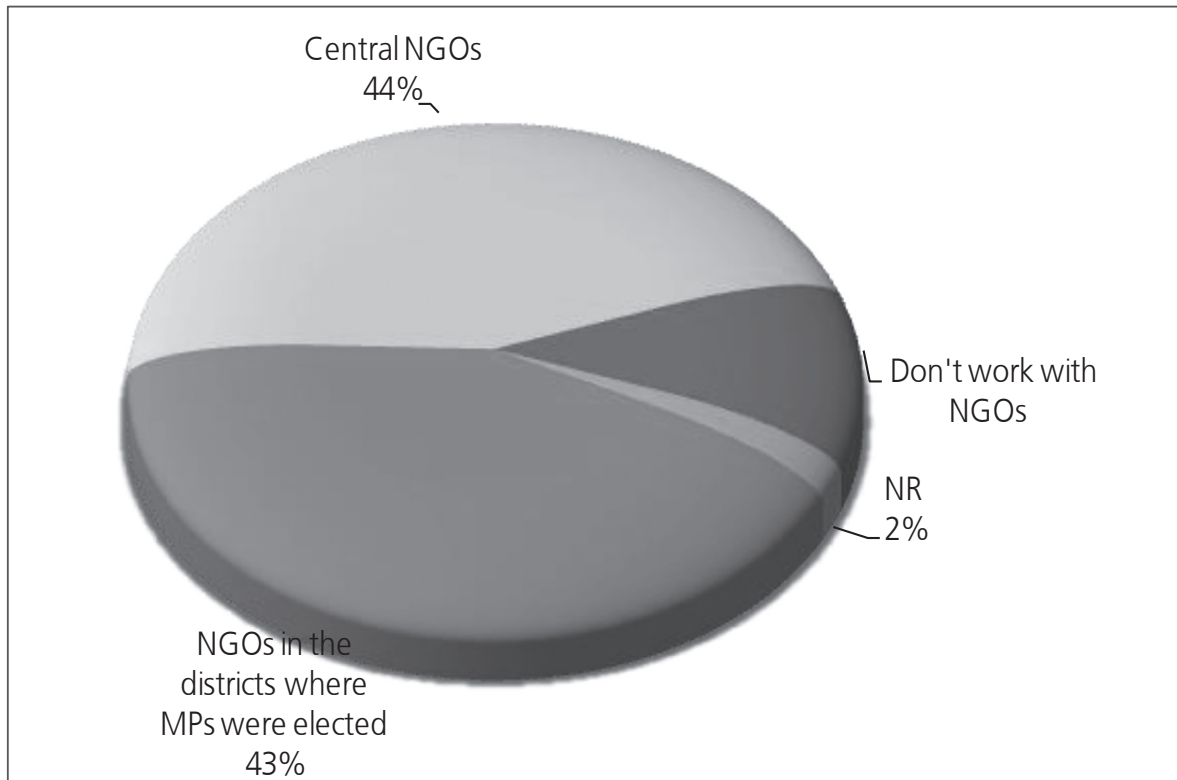
tronic facility for debating the bills initiated by the MPs being developed within each Chamber website. The IPP has been an active part of this Parliament Chamber decisions, working closely with both the technical staff and lobbying the Standing Bureau's members to approve this initiative. It consists in a section of each of their websites that allows citizens, NGOs and businesses send online amendments to bills that they are interested in, while also tracking the later changes. The facilities that allow citizens' commentaries on specific bills are accessible at

http://www.cdep.ro/pls/proiecte/upl_pck.lista?cam=2&std=DZ - for the Deputies Chamber and at <http://www.senat.ro/LegiProiect.aspx> for the Senate.

3. Changes in Practice

In terms of practice, few changes have occurred during the last two years in the Romanian Parliament. The Parliament is still, together with the political parties, amongst the most distrusted institutions. Still, according to the latest survey coordinated by the Institute for Public Policy at the level of the current members of Parliament²¹⁹, it is seen that deputies and senators are unquestionably interested in communicating with the civil society.

²¹⁹ The survey was implemented in January 2011 on a statistically relevant sample of Senators and Deputies. The full survey included in the study *Involving civil society in the legislative process*, in Romania, is available at: <http://ipp.ro/pagini/implicarea-societ259539ii-civile-i.php>

As an MP, you rather collaborate with:

In the last few years the debates of some bills have raised additional interest at the level of some civic groups that attended the plenary sessions when those were debated. They have requested to be allowed to stand in the balconies for visitors, watching the debates and following when final votes in the plenary sessions were cast. Some of those groups displayed banners, shouting at politicians who were either expressing views or announcing and casting votes. During another plenary debate full of tension, when the Prime Minister was speaking in Parliament, a man, later discovered to be a technician from the State television crew that covers the Parliamentary sittings, jumped from the balcony over the MPs benches in an attempt to protest against the cuts of the salaries in the public sector by 25%.

As a result of those incidents, although no clear rules to impose on visitors that are present at plenary session exist, access to the plenary sessions has become more difficult

with heightened security checks and more security personnel to guard those in balconies as well as not allowing them to sit in the first row of seats.

The media covers Parliament on a daily basis when sessions are held, with major TV news channels also installing mini-studios in Parliament and broadcasting live between 1 and 6 hours from the site, having MPs invited to comment on daily developments of their work. Parties' voting attitudes around some key bills are highly covered by the media as well as changes in MPs' parties that affect the parliamentary quorum. One constant source of information when preparing the news about the concrete activity of deputies or senators is the Institute for Public Policy internet application, www.alesiivoteaza.ro. In Romania, the media is very active in questioning the members of the Parliament about their specific activity in Parliament and very incisive when it comes to broadcasting irregularities such as multiple voting. In fact,

some years ago, in 2006, when a relative of a Senator was filmed while voting with the electronic individual voting card on behalf of the MP, the leadership of that Senate did everything to cover the situation claiming that that had not happened. A few days later, an internal administrative decision of the Senate stated that journalists would no longer be allowed to enter the plenary hall, meaning the area where MPs' tables are positioned. Nevertheless, journalists who are asked to sit in balconies watching the plenary sessions from the distance, do their best with very performing cameras, and have done so even more ever since, to broadcast all MPs who are sleeping, watching movies on their laptops, voting on behalf of other colleagues. Furthermore, they have also discovered several cases of MPs voting on behalf of more colleagues, a situation which has been challenged by the IPP with the Presidents of the Chambers and also with the Prosecutor's offices, but with no result so far.

Finally, it is important to mention that the legislation in Romania that represents the legal framework based on which citizens question institutions for public information (law no. 544 from 2001) refers to distinctive procedures that authorities should undertake in relation with the journalists in the sense that they should provide answers faster than in any other circumstances. In general both Chambers respond very promptly to media inquiries about the activity of the Parliament, in line with the provisions of Law No. 544/2001, the law on citizens' access to public information.

In the last few years, as a response to an increased demand from NGOs, both chambers have developed and updated the system of access in the building of Parliament specifically for the representatives of NGOs. Both chambers are in the same building; those

who have accessed the inside, can easily visit almost all the key places they may need: offices of the MPs, offices of parliamentary fractions, offices of permanent committees and their staff as well as their session rooms, plenary halls and so on. NGOs have demanded to receive passes that will grant them free access to the building during the work of Parliament. These procedures allow the NGO representatives to save time in the processing of their access to the building compared to general visitors.

Specific remarks have to be made with regard to the accessibility of the work and documents of the Steering Committees. As the legislative framework differs from one Chamber to another (in the sense that access to the committees in the Deputies Chamber is free, while in the Senate a written inquiry of participation has to be approved by the committees' leadership), in practice the transparency of the Deputies' committees is far greater than in the Senate. Few steps have been made for those people, mainly outside of Bucharest, who are not able to attend the committees' meetings which, in fact, are not held on a regular basis (despite the rules of Internal Regulations). Webcams that are already in place in the Deputies Chamber broadcast the debates and people can watch them in real time on the internet. A serious issue has remained the access of the public to the Minutes and Reports of the Committees, documents that are drafted very late and which often prove to be almost inaccessible to the general public.

In *Annex no. 1* to the report, a list of documents available on the internet, at the level of each Steering Committee explains why accessing the documents of these structures, particularly if required in a real time, remains a serious advocacy objective

for the civil society. Fortunately, the media covers the activity of the Steering Committees closely, especially the most active ones (Juridical Committee, Financial Committee, etc.). Due to the internet platform of the Senate, the upload of such information is extremely slow.

4. Conclusions and Recommendations

In recent years, some improvements in the field of transparency have been noticed in the Romanian Parliament. Most of the changes are a result of the advocates of transparency. NGOs as well as media correspondents prompt the problems and bring them to the public agenda and later push for required changes in order to set in motion the administrative or legal changes needed. Still, the resistance that the politicians holding important positions in the Parliament demonstrate when it comes to transparency of decisions/financial aspects etc., is still obvious. As a general observation, the Senate is far less transparent than the Deputies Chamber and this is explained by different logistics but also by a simply different type of management of the respective chambers.

Compared with other Parliaments with a long history of existence, having a Parliament that is 22 years old from the moment it was reinstated, actually gives an edge compared with earlier mentioned one where sometimes the long lasting traditions can act as a weak-

ness when it comes to reforms - especially when it comes to electronic management of data and more generally accepting the use of new and fast developing technologies in the field of keeping records of the attendance, tracking votes, putting in place a flow of documents, recording the sessions and so on.

At the level of the Romanian Parliament, a bigger step forward can be a unified structure of administering the plenary sessions, as well as the IT staff. At the moment each of the Chambers acts as a separate legal entity, and "Parliament" does not have staff or any employees. When in joint sessions the Chamber of Deputies' staff is in charge of most of the administrative work. It is worth mentioning that the facilities and management of the Palace of the Parliament belongs to Chamber of Deputies. The Senate administrative staff have jurisdiction on the direct work of the senators and their staff and controls only some entrance areas in the building that are designated as spaces for the work of the Senate. That leads to two IT departments, two structures for the management of sessions, two administrative staffs and so on, each of them with the subordination to Chamber of Deputies for one and to Senate for the other. With a lack of or no coordination between them, some procedures, software used, and so on, are creating delays in the legislative process but also generally speaking in almost all the fields of their activities. One major step would be either to have a joint leadership or to unite them under one leadership.

Annex no. 1

Availability of documents / degree of access to information on the internet

Chamber of Deputies

No.	Standing Committees	Availability to the Minutes of the Committees	Availability to the Committees' Reports on bills	Duration of loading the information on website
1.	Committee for Economic Policy, Reform and Privatization	Yes	Yes	2 - 5 days
2.	Committee for Budget, Finance, and Banks	Yes	Yes	2 – 5 days
3.	Committee for Industries and Services	Yes	Yes	2 - 6 days
4.	Committee for Agriculture, Forestry, Food Industry and Specific Services	Yes	Yes	2 – 3 days
5.	Committee for Human Rights, Cults and National Minorities Issues	No	Yes	2 – 5 days
6.	Committee for Public Administration Territorial Planning and Ecological Balance	Yes	Yes	2 – 7 days
7.	Committee for Labor and Social Protection	Yes	Yes	2 – 3 days
8.	Committee for Health and Family	Yes	Yes	2 – 4 days
9.	Committee for Education, Science, Youth and Sport	Yes	Yes	2 – 4 days

10.	Committee for Culture, Arts and Means of Mass Information	Yes	Yes	2 – 7 days
11.	Committee for Legal Matters, Discipline and Immunities	yes	Yes	2 – 5 days
12.	Committee for Defense, Public Order and National Security	No	No	2 – 5 days
13.	Committee for Foreign Policy	Yes	Yes	2 – 5 days
14.	Committee for the Investigation of Abuse, Corrupt Practices and for Petitions	No	Yes	2 – 5 days
15.	Committee for Standing Orders	No	No	7 days
16.	Committee for Information, Technologies and Communications	Yes	Yes	2 – 5 days
17.	Committee on Equal Opportunities for Women and Men	Yes	Yes	2 – 7 days

Annex no. 1 - Availability of documents / degree of access to information on the internet**Romanian Senate**

No.	Standing Committees	Availability to the Minutes of the Committees	Availability to the Committees' Reports on bills	Duration of loading the information on website
1.	Committee for Economic Policy, Reform and Privatization	No	Yes	6 days
2.	Committee for Budget, Finance and Banks	No	Yes	5-10 days
3.	Committee for Industries and Services	No	No	Unavailable
4.	Committee for Agriculture, Forestry, Food Industry and Specific Services	No	Yes	2 – 5 days
5.	Committee for Human Rights, Cults and National Minorities Issues	Yes	Yes	2 – 5 days
6.	Committee for Public Administration Territorial Planning and Ecological Balance	Yes	Yes	2 – 5 days
7.	Committee for Labor and Social Protection	Yes	Yes	2 – 5 days
8.	Committee for Health and Family	No	Yes	2 – 5 days
9.	Committee for Education, Science, Youth and Sport	No	Yes	2 – 5 days
10.	Committee for Culture, Arts and Means of Mass Information	Yes	Yes	5 – 7 days

11.	Committee for Legal Matters, Discipline and Immunities	Yes	Yes	2 – 5 days
12.	Committee for Defense, Public Order and National Security	No	No	Unavailable
13.	Committee for Foreign Policy	Yes	Yes	2 – 5 days
14.	Committee for Standing Orders	No	No	Unavailable
15.	Committee for Information, Technologies and Communications	Yes	No	Unavailable

Conclusions

Daniel Smilov

Introduction

Transparency is not the ultimate value of governance: it is rather an instrument for the achievement of more accountable, effective and efficient government. It is also a tool, which is designed to enhance the quality of democracy. The countries in South East Europe have gone a long way towards the establishment of open and democratic government over the last twenty years. In Eastern Europe in general there is a strong ambition to catch up with the established democracies. For this reason, often what are considered “best practices” are hastily “borrowed” or “transplanted” in the East European context. As a result, on paper Eastern European models feature elaborate legal frameworks, novel institutional devices, and state of the art regulation of specific areas. For instance, in the field of freedom of information most of the countries in the region have adopted sophisticated laws empowering their citizens to seek public information. The same is largely true in terms of parliamentary transparency.

However, the “legal transplants” do not always perform as intended because of certain specificities of the context, and because of the lack of certain background factors. For instance, freedom of information acts require a developed civil society and free and efficient media for their efficient application. Consultative procedures in parliament require strong interest from public-interest-oriented civil society groups. Without the existence of such background factors even the best regulation might remain dormant. Therefore, there is an obvious discrepancy in many areas between the law, and the books and the actual practices which

have developed under this law: a problem reported virtually by all our contributors.

Further, there is a general tendency of falling trust and confidence in the representative institutions of democracy: parliaments and political parties. This is not a tendency confined to the Balkans, but it is in this region that parliaments seem to have been affected quite dramatically. At different points in time, confidence in the parliament in countries in the region, even EU members such as Bulgaria and Romania, has fallen below ten per cent. The established political parties face ever stronger competition from populist newcomers, or need to yield to populist pressures in order to remain in power. It is sometimes suggested that greater transparency and openness of the parliamentary process and the political parties is to be considered as the main vehicle for the restoration of the trust in the institutions of representative democracy.

There are reasons to doubt such a strategy, however. The roots of distrust could be deeper than anticipated: they could relate to problems of representative democracy, which transcend the lack of transparency. This is important to note, since it would be pointless and counter-productive to assume that increased transparency would automatically lead to more confidence in parties and parliaments: such unfounded expectations may undermine the legitimacy of transparency programmes by simultaneously increasing public cynicism and scepticism.

Transparency and openness are indeed useful and instrumental in democracy, despite the fact that they might be unable to provide a remedy for all of the troubles of con-

temporary representative government. Thus, there is a *prima facie* argument in support of transparency and openness: only when these values are trumped by superior considerations of democracy should they be compromised. In all other cases, it should be assumed that transparency and openness contribute for better accountability and for more efficient governance in a democratic setting.

From this general perspective, it is quite obvious that more sustained efforts are needed in the region in order to improve the transparency of all aspects of the work of Parliament. As a general rule, all information about Parliamentary activities (legislative initiatives, work in the committees and in the plenary sittings, as well as the work of individual MPs in their constituencies) which does not constitute a state secret or other classified information, the decisions taken (with records of the nominal votes), their finances – private and those of their parties, should be available to the public. In fact, in the era of electronic communication and the Internet, most of this information, and especially that which is of serious public interest, should be accessible electronically for free or at a modest cost.

And finally, a word on the impact of the financial crisis which started in 2008 is in order. Greece has been particularly affected by these developments, and there have been profound changes in the political process of the country as a result of the economic crisis. Parliamentarism has faced challenges from the rise of new political players, some of which are of a strong populist and nationalist bend. Similar developments are visible in other countries in the region, and are likely to spread more widely. In short, parliamentarism is going to go through a turbulent period, which makes the institutionalisation of Parliament, the improvement of the effectiveness and openness of its work of special importance.

Parliamentarism in Context

The discussion of parliamentary openness and transparency should take into account the relative loss of parliamentary authority in contemporary representative democracies. Even in strong parliamentary regimes, there have been shifts of power from the legislative to the executive branch. Even in the paradigmatic British (Westminster) model Parliament is dominated by a very powerful executive, turning the legislature into a “rubber-stamp” institutions. Similar developments (albeit to varying degrees) can be observed in continental parliamentary regimes. In a similar vein, there has been a certain decline of Parliament as the expression and representation of the full diversity of society’s groups and interests. The reasons for these developments have been complex: for instance, it has been argued that the increased regulatory functions of the social welfare state have shifted the balance of power from parliament to the government, resulting in a corresponding decline in the power of the former to control and hold the latter accountable. In the US context the “regulatory revolution”, which started with the New Deal marked the beginning of the phenomenon: this phenomenon was transferred to Europe after the end of WWII. In a European context, the supranational regulation produced by the EU has arguably reduced further the importance of national parliaments.

These developments have considerable significance for the discussion of openness and transparency. Even in the strongest parliamentary regimes, for instance, we have to expect relatively weak legislatures, whose democratic legitimacy has been progressively undermined. Therefore, there may be a need for a much more extensive set of institutional reforms and innovations capable of restoring

the importance of the role of parliaments. This understanding, i.e. that broader and deeper institutional reforms are necessary in order to achieve meaningful transparency and openness, informs most of the case studies in the present publication. These involve changes in the electoral legislation and the regulation of political parties, the creation of a level playing field between the government and the opposition, the creation of working federal arrangements, etc. Without such deep and far-reaching reforms, one could hardly expect that trust in parliaments will be restored only on the basis of the increase of the openness of their work.

The regulation of political parties seems to be of special importance. Two issues stand out in this regard. First, this is the issue of party financing. The complexity of party and campaign finance is well known and it deserves a lengthier, special discussion. However, for the purposes of this paper it needs to be noted that parliamentary openness and transparency cannot be achieved in environment in which political parties are seen as corrupt and non-transparent. Secondly, the issue of internal party democracy appears to acquire special importance: again, parliaments can hardly become transparent if they are populated by secretive and opaque political players.

In this regard, a general point of caution and concern is necessary. In most of the countries discussed, the political party systems are not well-established. Political parties are exposed to constant challenges from newcomers, or to pressures for fragmentation from within. In such a volatile atmosphere it is difficult to establish lasting practices of openness and accountability. Therefore, general strengthening of the party systems – as a background factor – could be presumed to have beneficial effects on the transparency and openness of parliament.

Freedom of Information as Applied to Parliamentary Transparency

As mentioned above, Eastern Europe in general is an enthusiast for novelties in regulation. In the area of access to information, all of the countries discussed have elaborate acts on public access to information. The devil, however, is both in the details and in the underlying practices. In terms of a general recommendation it needs to be mentioned from the outset that the general law on access to information is not sufficient in terms of regulation when it comes to the workings of Parliament. Parliaments are generally considered autonomous self-governing institutions, which often adopt special rules for their proceedings. So, it is generally commendable to treat access to information issues not only in laws on access to information, but also in the specific rules applicable to Parliament (like the constitution and the standing orders of Parliament).

Secondly, rules on access to information often include restrictions on specific classes of information. These should be construed narrowly, so as to include only truly sensitive types of information (state secrets) or information protected by privacy and human rights concerns. In this area, the practices which have developed in the countries reviewed are not without serious problems. The most typical complaint is the relatively low level of intensity of the usage of the instruments of freedom of information. Due to the relative novelty of the access of information tools, and to the inertia in public administration, very often officials tend to read restrictively the existing legal provisions, so as to minimize their costs in providing information (both in terms of money and time).

Therefore, it needs to be stressed that the adoption of an act on access of information is by no means sufficient for the establishment of

open and transparency parliamentary practices. What is further needed are essentially two elements. In the first place, this is a vibrant civil society, which actively seeks to utilise the available legal instruments. The cases of Bulgaria and Romania are good cases illustrating the point. There, the NGO-driven effort to use the access of information act has produced significant results in a relatively short period of time.

Secondly, there is a need for a more radical change in the attitudes of the administration. The last twenty years in post-communist Europe have not eliminated the understanding of the state/public administration as essentially power-executing rather than as service-providing. In many places state officials provide services grudgingly, seeing this as a secondary part of their official duties. The experience of Greece and Turkey suggests that this is not exclusively a post-communist phenomenon: although important steps to overcome it have been taken, it is blatantly clear that more efforts are needed.

Openness of Plenary Sessions

In terms of openness and transparency, the most important steps throughout the region have been taken regarding the plenary sessions of Parliament. Further, it is already a matter of standard that the most important sessions of Parliament are broadcast on radio and TV. Usually, parliamentary control is broadcast on national radio, and sometimes on national TV: the same is true of important sessions on votes of no confidence and other situations. With digitalisation, it will become increasingly possible to have a special TV channel covering all the sessions. One could add here that internet-based TV channels could also be involved in transmission, although it should be borne in mind that access to the Internet is by no means universal in the region. There is another argu-

ment which is to be seriously considered: the existence of special channels should not lead to the disengagement of national TV and radio main channels from the coverage of parliamentary activities. If these main channels disengage, the result will be the creation of sectarian interests in the workings of Parliament, and general public ignorance about it. Therefore, important sessions should be covered by main public channels regardless of the existence of other channels (cable, Internet, etc.) specifically covering Parliament.

Of particular importance is the availability of information for the voting patterns of individual MPs and parliamentary factions. This information is essential for the instrumentalizing of the mechanisms of accountability in democracy. In the era of the Internet, all such information should be easily accessible through parliamentary websites. It is true that in this regard important strides have been made, and a lot of information can currently be obtained electronically. However, the standards in the countries reviewed vary, and there are important areas in which the legislatures in the region have remained at a very rudimentary level. In terms of legislative initiative, these are not always available or, if available, the draft laws are not regularly updated to introduce edits between readings, etc. Individual voting records are often unnecessarily difficult to obtain: this is information which should be available on the parliamentary website. Romania is very advanced in this regard, considering programmes for reporting of voting patterns in real time.

As to the access of citizens (i.e. attendance) to the plenary sessions, the problem again is not so much in terms of regulation, but of practices. On one hand, parliamentary officials often create unnecessary hurdles to citizens' access. On the other hand, civil societies in the region have not imple-

mented consistent monitoring of plenary sessions; in other words, the right to access has not been fully used.

Openness of Commission Meetings

While the level of openness of plenary sessions is reasonable, the transparency of the committee aspect of parliamentary work in the region is rather rudimentary and needs to be improved. In the first place, public participation at the committee stage remains problematic. Very often the public is excluded or access is granted on the basis of a discretionary and arbitrary invitation process. In the first place, even where procedures of access do exist, they need to be advertised and popularised. The level of knowledge of civil society of the procedures recorded by our study is very low.

Secondly, apart from access to committee meetings, the issue of transparency requires that the minutes of the discussions there, and the voting record of individual MPs needs to be disclosed. Practices vary among the countries reviewed, but the general level of disclosure is characteristically low and inconsistent. Given the lack of publicity through electronic media of the proceedings at the committee level, the disclosure of minutes is of crucial importance. Of course, some of the sittings of the committees could be closed, especially of committees supervising the secret services, national security, etc. Yet, the general principle should be one of disclosure, while exceptions to the principle should be construed narrowly, in order to cover truly sensitive matters of the state or individual privacy rights.

With the advent of digitalisation and internet-based TV and radio, parliaments should make special efforts to provide live coverage of the committee meetings. Given the fact that often the fate of legislation is decided at the committee stage, transpar-

ency of committee meetings (which is a generally neglected area) should be turned into a priority issue.

Parliament and the Internet

As mentioned several times already, contemporary electronic means of communication have lowered dramatically the cost of disclosure of information. There are no longer good prudential arguments for withholding information, unless it pertains to sensitive areas of state secret and security or raises concerns regarding privacy. Therefore, the main finding of our study is that a general principle of disclosure of information should be applicable to the activities of Parliament at the level of plenary sessions, committees, or the work of individual MPs in their constituencies.

The individual work of the MPs warrants special attention – including their individual voting record, their legislative initiatives and other activities in the standing committees and in the plenary sittings, as well as their work back at their constituency. All these should be documented and made public. No matter how simple and natural, these requirements are not commonly met. Further, often information on the individual activities of MPs is withheld on erroneous and manipulative grounds.

Another direction for improvement of the transparency of our Parliament concerns another aspect of the work of MPs - their activities back in their constituencies. Even though MPs are usually obliged by law to meet and work in their constituencies, they are still not required to submit any report on their activities there, nor is a record of these kept. Again, the Internet could provide a relatively cheap solution to this problem. Usually MPs receive a small amount for maintaining their personal websites. Where those exist, they contain just a photo and a very brief bio note.

- The MPs' sites could be used much more effectively, with information posted there as to the office hours of the MP in the capital and in their constituency, a list of the staff working for the respective MP, a list of the legislative initiatives, a list of draft laws they are working on, the questions they have raised at the parliamentary control over the Cabinet sessions, etc.
- More transparency in the work of the MPs – a public register of their experts and staff, for example, would shed more light on it. Public reports for the activities of the MPs in their constituencies would also help.

The Importance of Civil Society

As pointed out several times already, the success of transparency and requirements for openness depends both on the quality of the regulatory framework of access to information and the capacity of civil society to make use of this framework. In countries where active civil society organisations exist, the level of disclosure of information has been generally higher and more sustainable.

Even in settings where the legislative framework is considered advanced by regional standards, consistent practices of public participation and *prior consultations* in the legislative process have not been developed.

Implementation

The single most important problem that is universally listed by our contributors is the problem of implementation. Even where good legislation exists, it is often blocked by administrative officials or secretive practices. This rare consensus of opinion suggests a deep problem: the change of institutions seems to have outpaced the change of mentalities in the region. Therefore, there is an

urgent need for vigorous advocacy of normative standards of disclosure, combined with international pressure from the EU and other organizations for the *implementation* of standards which, even when adopted, have been seriously confined to the books.

Conclusion: Transparency and Public Trust in Parliament

In order to put accountability mechanisms into practice, there needs to be an agent. In the case of Parliament, this could only be the sovereign. Obviously, if the agent has no interest in exercising its agency to make use of the accountability mechanisms, there is little sense in talking about the openness and accountability of the Parliament. There may be a direct causal link between the low interest in politics and the low quality of the democratic institutions in many countries: when not monitored, they tend to degenerate, become less open, less accountable and less responsive. Yet the quality of the institutions may itself be part of the explanation for the declining interest in politics: secretive practices, formalistic bureaucracy, cumbersome or altogether lacking procedures may discourage some of the less active citizens from being interested in the decisions of such institutions. Certainly, to understand the present situation, one should work from both ends.

Yet *opening up the Parliament*, making the work of the MPs more transparent, seems to be a *first necessary step* towards bringing people back to politics by winning their trust in the main representative institution of the country. This step might not prove sufficient since, as argued above, distrust in Parliament could have deeper and more diverse roots. Nevertheless, transparency is and remains a key virtue of representative democracies and, as such, should be taken seriously.

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(In order of appearance)

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Relevant publication: Škrabalo, Marina (2009), "Hrvatski sabor u procesu pristupanja Hrvatske Europskoj Uniji", in *Stranke i javne politike: Izbori u Hrvatskoj 2007* (Petak, Zdravko (ed.), [Croatian parliament in the accession process of Croatia in the EU]. Zagreb: Fakultet političkih znanosti, pp. 159-222

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