

Assessing the quality of democracy: Consultation process in pre-legislative stage in North Macedonia

Research Article

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Abstract

In the consultation process of the pre-legislative stage the relevant stakeholders are involved by bringing new ideas and receiving timely information on the process of adoption of new laws. Macedonian Government started to implement regulatory reform and supporting the consultation process by adapting relevant regulation and creation of National Single Electronic Register of Regulations – ENER. However, certain draft-laws, such as those adopted in urgent procedure are not visible on this database, thus not subject to consultation process. The aim of the study was to assess that “invisible” part of draft legislation. The results of the research identify that laws adopted under urgent procedure in 2014 represent 58% of the total number of the passed laws, whereas in 2017 this percentage is 43%. This could be interpreted as insufficient stakeholder’s consultations. In addition, the results of the research were compared with the neighbouring countries. The comparison research shows that the percentage of the laws adopted in an urgent procedure in Macedonia compared to those with the neighbouring countries is similar. Nevertheless, further research on this issue is necessary in order to be analysed from different viewpoints such as: whether the criteria for adopting laws in urgent procedure stipulated in the regulation were really satisfied in the practice as well as comparison with the practice in the countries with more developed institutions and democracy.

Keywords: Consultation process, Draft laws, Regulatory Reform, National Single Electronic Register of Regulations, Parliament’s Rules of Procedure, Urgent Procedure, Regular procedure.

1.Introduction

The process of debating the laws prior to their adoption in the Parliament is important democratic feature of the society. In this consultation process the relevant stakeholders are involved by bringing new ideas and receiving timely information on the process of adoption of new laws. Macedonian Government started to implement initiatives focused on regulatory reform and supporting the consultation process by adapting relevant regulation and creation of Single Electronic Register of Regulations – ENER.

However, some of the draft-laws, such as those adopted in an urgent procedure in the Parliament are not available on ENER. This means that their consultation process is skipped which makes them “invisible” to the public and the stakeholders. I found very challenging to shed light on that invisible part of the draft bills, i.e. to assess how big it is in order to have the true picture of the quality of the consultation process in Macedonia. The research was also extended by comparison with neighbouring countries.

2. Consultation process upon preparation of regulation

The Laws are general rules that are binding for the whole community. The process of debating the laws prior to their adoption in which the relevant stakeholders are involved is important democratic feature of the society. Consultation process prior to adoption of the laws, i.e. debates during a phase when a bill is proposed, improves transparency and a quality of the laws since a relevant feed-back shall be received from the stakeholders, such as chambers of commerce, legal entities, NGOs, citizens, etc. The strengthening of relations between the government and the NGO sectors a key principle of good governance and is a necessary investment in the process of creating high-quality policies. Through the participation of stakeholders, the government has access to new sources of ideas, information and resources that are important in the process of policy-making and decision-making. Consultations contribute to building mutual trust, developing the quality of democracy and strengthening the capacity of civil society.

The North Macedonian Government as of 2006 started to implement initiatives focused on regulatory reform. With this regards the support of the consultation process have been developed by adopting: Methodology for Assessing the Impact of Regulation (MAIR), the Guidelines on how to proceed in the work of the ministries in the process of conducting an assessment of the impact of regulation, Code for public consultation during the preparation of regulation and Handbook for application of MAIR. These materials explain the consultation process and what the public can expect from the government in conducting consultations.

Based on the above-mentioned it could be concluded that the Government become dedicated to effective consultation with stakeholders and that the consultation is clearly and effectively targeted to those directly concerning regulation. One of the most pragmatic tools in this process that support this commitment represents a Single Electronic Register of Regulations – ENER.

3. Creation of a National Single Electronic Register of Regulations - ENER

Single Electronic Register of Regulations - ENER is an electronic system that in addition to the existing regulations in the country includes the notices for beginning of preparation the bill, draft reports of Regulatory impact assessment (RIA), draft laws in preparation by the ministries, revised texts of the laws, Annual plans to implement MAIR by the ministries, relevant documents produced by the analysis conducted by the ministries and comments, views and opinions of the interested parties on the specific draft legislation.

ENER is a tool primarily intended for electronic information to the citizens of North Macedonia, as well as representatives of non-governmental organizations, chambers of commerce, legal entities, government officials, as well as the individual ministries. Through the process of Regulatory impact assessment – RIA, which implies the implementation of appropriate and timely coordinated public consultation through proposals, opinions and comments it could be possible stakeholders to be timely engaged in the creation of regulations. Thus, achieving greater predictability of the same and improving the transparency of the entire process.

Basically, it could be concluded that Single Electronic Register of Regulations - ENER is an electronic system that contains the existing regulations, bills of ministries in preparation and report assesses the impact of regulation - RIA.

The purpose of ENER is:

- Electronic information of citizens and non-governmental organizations, businesses and ministries;
- Support the process of Assessing the impact of regulation (RIA);
- For public involvement in the improvement of the bills when they are created;
- Greater transparency in decision-bills by the government and encourage public participation in the preparation of regulations
- Through membership of ENER, stakeholders can:
 - Give comments, suggestions and opinions;
 - Select their area of interest in getting timely information on new developments in ENER;
 - Find out what regulations are the most interesting and most comment received from users of ENER;
 - Keep insight into the regulation and reviews of users ENER;
 - Follow the 10 most recent proposed regulations that have not yet been set by the Government and involved.

4. Legal framework of the consultation process

In accordance with the Rules of Procedure of the Government and the Methodology for Assessing the impact of regulation, proposals to introduce legislation, drafts and proposals of laws, must be announced to ENER and be available for public comment, except the laws that are passed under the emergency procedure, the law on the ratification of international treaties, laws performed interventions of a normative-legal character. Any interested party may submit to ENER their opinion, comments and suggestions regarding the published proposals for a law, drafts and draft laws within 10 days from the date of publication.

5. Assessing the quality of the consultation process: are all the draft laws visible to the public?

The fact that laws that are passed under the emergency procedure and the laws which perform interventions of a normative character are not published at ENER and are not subject to the consultation process, makes them “invisible” to the public and the stakeholders and their consultation process is skipped. I found very challenging and important to shed light on that “invisible” part of the draft regulation, in particular bills, in order to have the true picture of the quality of the consultation process and in this regard to assess the quality of the democracy and the capacity of civil society in the country.

Passing laws in urgent procedure is also a pragmatic issue since recently many stakeholders in Macedonia (such as students, freelance workers, etc.), have expressed their disagreement with the process of passing laws in urgent procedure in a form of demonstrations. Most of their arguments were that laws which brought fundamental changes for them (such as reforms in high education

and introduction of mandatory payment of social contributions for freelance workers) should have been passed in regular procedure and not in urgent one. Also their arguments were that prior consultation with interested stakeholders should have been done before passing the laws.

In order to perform the task of assessment of the quality of the consultation process in Macedonia it is very important to assess how big is the portion of so called “emergency bills” in the total number of bills passed true the Parliament. Thus it is necessary to undertake an inquiry into Parliamentary and the Legislative Process from where it is possible to identify prescribed ways in which bill becomes a law.

6. Adoption of legislation- legislative procedure in North Macedonia

The North Macedonian Parliament (Assembly) is the legislative power in the country. It adopts and amends the Constitution and adopts laws and gives authentic interpretation of laws. Parliament adopts law on meetings, and the required majority for the adoption of the laws is established by the Constitution.

The right to propose adoption of a law is every Member of Parliament (MP), the Government and at least 10,000 voters (authorized bodies). Initiative fora law to authorized proposers can give every citizen, group of citizens, institutions and associations.

The procedure for the adoption of laws is governed by the Parliament’s Rules of Procedure (Rules). Accordingly, the Rules bill authorized proponents have submitted to the President of the Assembly who immediately, but no later than three working days after the submission is submitted to Parliament, in written or electronic form, starting with the legislative procedure.

a. *How does a bill become an Act in North Macedonia: a three-step procedure*

According to the Rules legislative procedure takes place in three readings in the Parliament.

First reading begins by discussing the draft law in the working bodies in the Parliament, whereby the relevant working body and the Legislative Committee in the first reading held a general debate on the law proposal. Prior to the draft law is discussed at the session of the Parliament, it is primarily considered and discussed by the relevant working body and the Legislative Committee of the Assembly. In the first reading after the discussion is completed, Commissions assess whether the proposal is acceptable and should be given further reading. In the first reading, after a general discussion is completed, the Assembly decides whether the bill is acceptable and may give further reading.

If the Parliament decides that the draft law is acceptable and can be further discussed, its reading continues with the legislative procedure, in the second reading of the proposal.

The second reading begins in the relevant working body and the Legislative Committee and is made within seven working days after the session of the Parliament of First reading on the proposal. In this reading of the proposal is submitted. Amendment may be submitted by each MP, Parliamentary Group and Task Force. The amendments are submitted to the President of the Parliament, no later than two days prior to the meetings of the working body or the Legislative Committee. Relevant working body and the Legislative Committee discuss each amendment and vote separately. Relevant working body and Legislative Committee after completion of the discussion the bill within five days preparing the text of the draft law incorporating the adopted amendments (amended proposal) and explanation and submit it to the President of the Parliament.

The second reading of the meetings of the Parliament held discussions only on those provisions of the bills that are modified with amendments and only on the articles amendments could be submitted. Amendment may submit parliamentary group, every MP and the applicant, within three days prior to the session of the Parliament.

If the second reading of the session of the Parliament adopted amendments to less than one third of the provisions of the amended draft law, the Parliament may decide the third reading of the draft law to be held at the same session. If the second reading in Parliament does not adopt any amendment to the amended draft law passes to vote on the proposal of the same session. If the amendments are adopted to more than one third of the provisions of the amended draft law, following the completion of the second reading preparations are started in terms of legal-technical preparation of the text for the third reading.

The third reading generally is held at next session after the second reading. Amendments may be made only to articles which have been subject to amendments during the second reading of the session of the Parliament. An amendment may be submitted by the draft law initiator and MP later than two days prior to the session of the Parliament. At this stage the working bodies are not making discussions. Parliament debate and decide only those provisions to which amendments have been submitted to the revised draft law on third reading and decide on the bill as a whole.

b. Urgent procedure for adoption of laws

Notwithstanding to the above-mentioned regular three-step procedure, the law can be adopted by urgent procedure, which is prescribed by the by the Parliament's Rules of Procedure. According to these Rules, a law may be passed in an emergency procedure when:

- it is necessary for the prevention and removal of major disruptions in the economy; or
- for the interests of the security and defence of the Republic; or
- in cases of major natural disasters, epidemics or other emergencies and urgent needs.

The initiator of the draft law may propose to the Parliament to discuss the draft law in an urgent procedure when: the draft law is not a complex and extensive, in case of termination of the validity of any law or certain provisions of any law or are not in question complex or extensive coordination of laws with the European Union regulation.

If Parliament decided to discuss the proposal to adopt the law in an emergency procedure, it obliges the relevant working body and the Legislative Committee to discuss the proposal of the law. The justification of the proposal to adopt the law in urgent procedure, Parliament decided without a debate. The second and third readings are held at the same session. In this case begins the procedure laid down for second reading and amendments may be submitted to the end of the debate.

Parliament decides whether a law proposal to bring in a short procedure. If Parliament decided to debate the draft law to be passed in a short procedure, the Speaker immediately engage the relevant working body and the Legislative Committee to discuss the proposal of the law. When the draft law is debated in a short procedure, Parliament held a general debate. The second and third readings are held at the same session, which immediately starts and amendments may be submitted up to the beginning of the session for second reading

Laws are declared by a decree signed by the President of the Republic and the President of the Parliament. President of the Parliament, upon adoption of the law, submits it to the President of the Republic for signing the decree declaring the law.

The President may decide not to sign the decree declaring the law. In that case, Parliament reconsiders the law under the third reading, within 30 days of the adoption of the law. In such case if the law is adopted by a majority vote of all the MPs, the President of the Republic is obliged to sign the decree. The President is obliged to sign the decree and to proclaim laws passed by a two-thirds majority.

Before entering into force the laws are published in the "Official Gazette". Laws are published within seven days from the date of their adoption.

7. How often the North Macedonian Parliament applies the urgent procedure for adoption of laws?

Taking into account the abovementioned criteria about application of urgent procedure for adoption of laws (such as: interests of security and defence, natural disasters, epidemics or other emergencies, etc.) it could be expected that this procedure is applied very rare and in isolated cases. But whether this is a case?

Since the laws passed under the urgent procedure are not presented at the Single Electronic Register of Regulations – ENER, they are not visible for previous discussions of the public and the stakeholders. In order to examine this “visibility of the laws” it is important to assess how much of the passed laws have been adopted under the urgent procedure. Since no such information could be found on ENER, the only source of information could be the Parliament.

The Macedonian Parliament does not publish official information about the number of laws passed in a regular procedure and vice versa the number of laws passed in an urgent procedure. This information could be found indirectly by taking insight in the content of each session of the Parliament. I made this research and the results are the following:

- In 2014 Macedonian Parliament adopted in total 336 laws
- In 2014 under urgent procedure are adopted 195 laws

This means that laws adopted under urgent procedure represent 58% of the total number of the passed laws. The results of this research are presented in the figure 1 below:

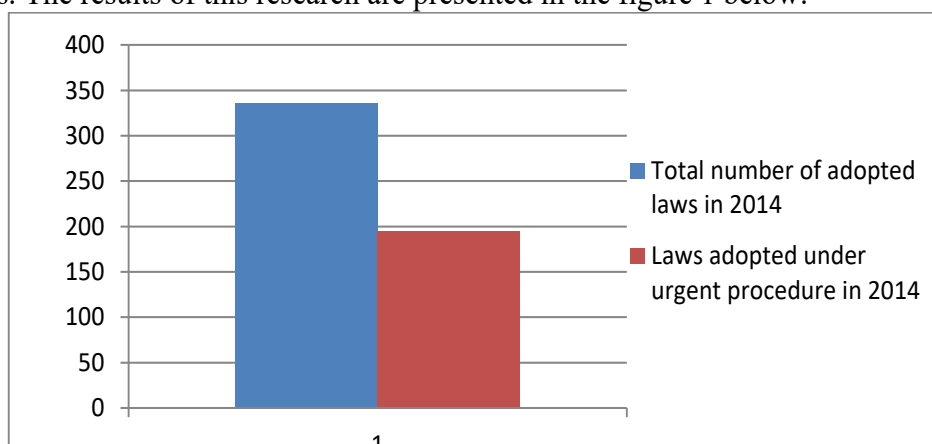


Figure 1. Number of laws passed by North Macedonian Parliament under urgent procedure and laws passed under regular procedure in 2014

Source: Own research based on information found on Macedonian Parliament web site: <http://www.sobranie.mk/home-en.nspx> and Register of Acts published in Official Gazette in 2014

The situation in 2017 is the following:

- In 2017 Macedonian Parliament adopted in total 108 laws
- In 2017 under urgent procedure were adopted 47 laws

This means that laws adopted under urgent procedure in 2017 represent 43% of the total number of the passed laws. The results of this research are presented in the figure 2 below:

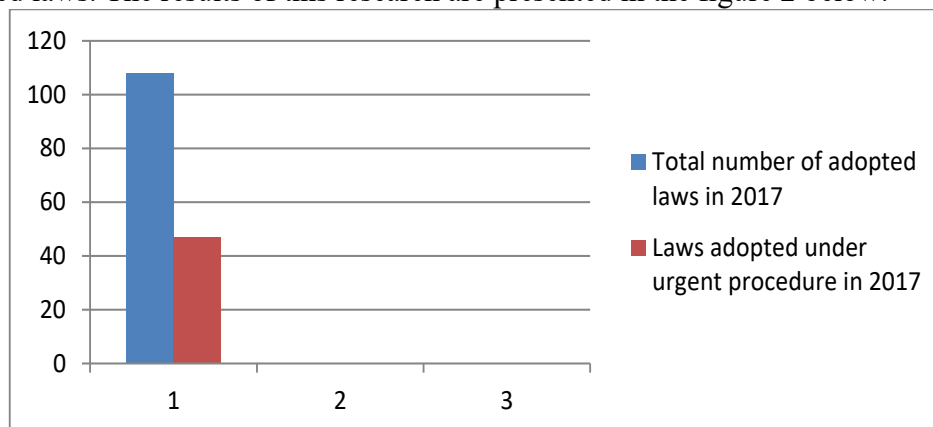


Figure 2. Number of laws passed by North Macedonian Parliament under urgent procedure and laws passed under regular procedure in 2017

Source: Own research based on information found on Macedonian Parliament web site: <http://www.sobranie.mk/home-en.nspj> and Register of Acts published in Official Gazette in 2017

8. Extension of the research: comparison with neighbouring countries

The research could be extended further by comparing the same data with the neighbouring countries, which have similarities with Macedonia, such as historical connections and level of socio political and economy development.

Namely, the mere absolute numbers about the number of the laws adopted under urgent procedures, i.e. number of “urgent- bills” by the Macedonian Parliament are not enough to make substantive and well-grounded conclusions. Although the fact that 58% of the laws were adopted in an urgent procedure in 2014 and 43% in 2017 does not seem to be expected when someone reads the criteria for passing urgent bills in the Parliament Rules.

Table 1. Number of laws in urgent and in regular procedure by country in 2014

Country	Total number of adopted laws	Laws adopted in urgent procedure	Laws adopted in regular procedure	Laws adopted in urgent procedure (%)
Serbia	444	229	215	51
Croatia	726	591	135	81
Macedonia	336	195	141	58
Bulgaria	80	No information	No information	-
Montenegro	113	No information	No information	-

Source: <http://www.parlament.gov.rs/upload/documents/statistics/cir/2014%20godina.pdf>

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https://infodok.sabor.hr/report.aspx?Format=HTML&VrstaReporta=ZakAkt& saz_id=19&sje_min_id=-1&sje_max_id=-1
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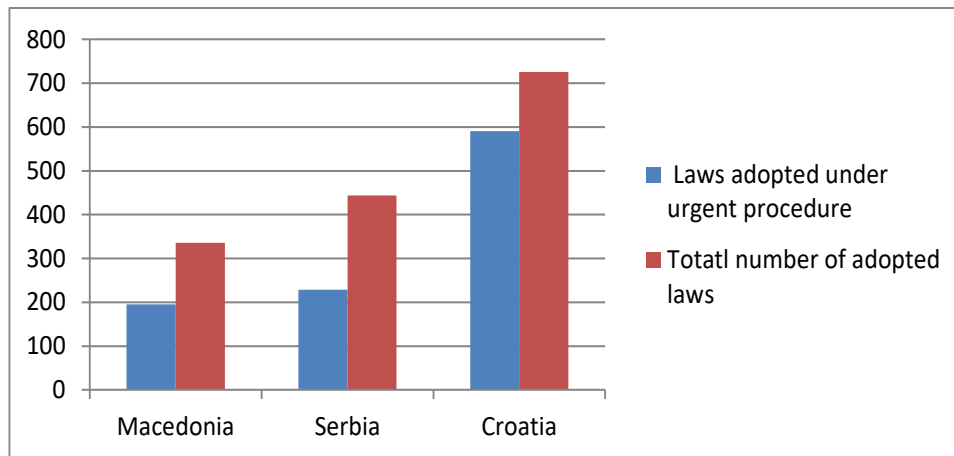


Figure 3. Laws adopted in urgent procedure by country in 2014

The information gathered from official web-sites of the Parliaments in neighbouring countries shows that the percentage of the laws adopted in an urgent procedure in Macedonia compared to those with the neighbouring countries in the same period is similar.

However, the percentage of 58% in 2014 and 43% in 2017 (which is the portion of the laws adopted in urgent procedure in the total number of adopted laws in Macedonia) does not seem to reflect the criteria stipulated in the Rules regarding the application of urgent procedure, which are: prevention and removal of major disruptions in the economy, interests of security and defence, natural disasters, epidemics or other emergencies.

It seems that the practice of passing laws in urgent procedure is more complex issue that it looks at a first glance. I found that this issue should be subject to more deep further research in order to be analysed from different viewpoints. The additional research should shed light on questions like: whether the criteria stipulated in the Rules were always the real reasons for adopting the laws in urgent procedure; whether the absence of the major opposition party in the Parliament during 2014 had influence on this issue; what is the practice in other countries with more developed institutions and democracy, including EU – countries, etc.

9. Conclusion

This research assessed the quality of the consultation process at pre-legislative stage in North Macedonia by assessing the portion of the laws that are adapted under urgent procedure in the Parliament and which are not available on the Macedonian Single Electronic Register of Regulations.

The North Macedonian Parliament does not publish official summary about the number of laws passed in an urgent procedure. This information was found indirectly by taking insight in the documents for each session of the Parliament as well as through analyses of the Register of Acts published in Official Gazette for the respective year.

The results of the research identify that laws adopted under urgent procedure in 2014 represent 53% of the total number of the passed laws, whereas in 2017 this percentage is 43%. This could be interpreted as insufficient stakeholders' consultations. In addition, the results of the research were compared with the neighbouring countries. The information gathered from official web-sites of the Parliaments in neighbouring countries shows that the percentage of the laws adopted in an urgent procedure in Macedonia compared to those with the neighbouring countries in 2014 is similar.

Nevertheless, further research on this issue is necessary in order to be analysed from different viewpoints such as: whether the criteria for adopting laws in urgent procedure stipulated in the regulation were really satisfied in the practice; comparison with the practice in the countries with more developed institutions and democracy, etc.

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