

**South-East Europe**

Regional Studies

# Open Parliaments

Transparency and Accountability of  
Parliaments in South-East Europe

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Regional Secretariat  
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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 Foundation, 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 in 2009 and the first half of 2010. Its main goal was, firstly, to study the norms and practices of seven 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, seven countries were covered by the project: Albania, Bulgaria, Greece, Macedonia, Romania, Serbia and Turkey. 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 relevant 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.

After preparing a first draft of the case studies in June 2009, the team of experts had a meeting in Sofia, where together with the CLS methodological and other research-related problems were discussed with the aim to improve the quality of findings, and debate

common trends and possible recommendations for policy makers and politicians. After this meeting, the contributors had time to review the drafts and prepare a case study by the end of November 2009.

On the basis of the case studies and the discussions during the first meeting of the team of contributors, the CLS elaborated a comparative analytical and policy paper, which serves as a substantive introduction to the present volume. More than 40 representatives of civil society and the respective parliaments from 12 countries of the region discussed the findings during a conference, held on 21 April 2010 in Sofia. A summary report of this is included as final chapter in the publication.

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.

I wish to sincerely thank all the contributors of the seven country studies, Vladimir Danchev from the RSPC in Sofia for his support, but most of all Daniel Smilov and the CLS for its excellent academic work and coordination of the whole project.

Sofia, April 2010

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## Policy Paper: Open and Transparent Parliaments

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. This is the context in which the issue of parliamentary openness is discussed in this policy paper, which is based on a comparative analysis of seven case studies. These case studies cover countries from the Balkans, all of which have adopted some form of parliamentary government. In Albania, Bulgaria, Greece, Macedonia, Serbia and Turkey, a prime minister elected by parliament and responsible to parliament is the main holder of executive power. Despite the existence of presidents (directly elected in the case of Bulgaria, Macedonia and Serbia), the regimes in these six countries could be classified as parliamentary, because of the heavy bias in favour of the parliament and the cabinet in terms of separation of powers. In Romania, a relatively stronger popularly elected president checks the legislature and the cabinet: this fact has given ground to scholars and analysts to describe the Romanian model as semi-presidential, as in the case of the French Fifth Republic.

For the purposes of this paper, it is important to note that in all of the studied countries representative democracy has already taken roots, although admittedly the *quality of democracy* varies from country to country, and even from period to period within the same countries. In the selection of seven, there is the consolidated Greek democracy – an older EU member state. Bulgaria and Romania are

the newest EU member states, which have already met the strict political Copenhagen criteria for membership: yet, in both of these countries there are residual problems, often mentioned by representatives of the EU in monitoring reports and in negotiations with the governments of the countries. Problems of corruption and general lack of transparency are pointed out in both cases, as well as law enforcement deficiency, especially in relation to the fight against serious crime. The other four countries are vibrant democracies aspiring to become EU members: each of these countries is at a certain stage in the EU accession process. All of them seem to have more serious problems related to the consolidation of their democratic government, and especially the quality of democracy than the first three. Yet, in all cases under consideration we could speak of working, real democracies in which power is exercised under the supervision of representatives of the people.

The case studies in this volume have been prepared on the basis of common questionnaires and guidelines. The field research was done in 2009, and consisted of documentary analysis, analysis of practices and interviews with parliamentarians, politicians, journalists and others. The methodological guidelines and the first drafts of the reports were discussed at a workshop held in Sofia in June 2009. The research was co-ordinated by the Centre for Liberal Strategies, Sofia, with the help of the sponsor and initiator of the project – the Friedrich Ebert Foundation, Sofia.

The main findings of the case study are discussed in detail below, but it is necessary to start with a few preliminary observations.

Firstly, the countries in the region 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 is considered „best practices“ is hastily „borrowed“ or „transplanted“ in 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. As it will be seen below, the same is largely true in terms of parliamentary transparency.

Secondly, 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 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 regulations 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 by virtually all our contributors.

Thirdly, 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 (such as Serbia and Bulgaria, for instance) has fallen below ten per cent. Further, 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 open-

ness 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 will be pointless and counterproductive to assume that increased transparency will 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 the contemporary representative government: this is the position which this paper will endorse. 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 to better accountability and 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 parliament's work. As a first step in the ensuing analysis, we suggest the following general Principle of Openness:

*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 state secret or other classified information, the decisions taken (with records of the votes of MPs), 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.

Finally, some of the case studies below and the Greek one in particular raise a very deep and interesting question. Transparency of parliamentary work cannot be confined only to what is happening in the parliamentary building. If the principle of openness is applied in this spacially restricted manner, the expected result will be that controversial deals, lobbying, pressure from interest groups, etc. will happen outside the parliament. If this happens, parliamentary activities might become just a facade, a dramatic presentation for the electorate of political deals and decisions adopted elsewhere. Therefore, the openness of the parliamentary process should be broadly understood, to include all the activities of parliamentarians, political parties, etc. Of course, for the sake of brevity in the reports below we have focused on some of the most important aspects of these activities, and have left out others: for instance the issue of the financing of parliamentary represented parties, the asset declaration of politicians, etc. Nevertheless, it is worth pointing out from the very beginning that a full assessment of parliamentary openness would require even more detailed and probing research.

## **1. General Institutional Reforms Facilitating Parliamentary Transparency: the Importance of the Background**

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 the Parliament is dominated by a very powerful executive, turning the legislature into a „rubber-stamp“ institution. Similar developments (although 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 accountable the latter. In the US context the „regulatory revolution“, which started with the New Deal, marked the beginning of the phenomenon: this phenomenon was later transferred to Europe after the end of WWII. As argued by the Greek report „...this has been even more pronounced in the context of the EU, in which national administrations and governments are assigned primary responsibility to implement EU laws and policies. In so far as this has been taking place, the authority of parliament as the preeminent institution of popular representation, from which it draws its power to endorse and legitimate, or conversely control and reconfigure government policies, is bound to decline.“

These developments are significant 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. Thus, in Greece “the nature and extent of transparency, openness and accountability in the Greek Parliament cannot be understood

and assessed outside this context of a party polarized and government-dominated institution. While they depend on constitutionally and legally guaranteed rights such as the right to information and procedures to ensure publicity of parliamentary activities and access of citizens to the latter, these rules are not in and of themselves sufficient to guarantee transparency and openness. As a result, they are not in and of themselves capable to uphold the democratic legitimacy and accountability of parliament... Transparency above all presupposes the existence of a serious parliament, with serious political parties and serious representation.

Based on the analyses of this study, guaranteeing transparency and openness presupposes fundamental and multifaceted reforms of parliament and the institutions connected with it, at least in three different directions.

In the first place, they require improving transparency and effectiveness in the financial affairs and broader management of the parliament itself (i.e. by reforming the process of hiring its staff, rationalizing the expenses of MPs, etc.)

Secondly, promoting transparency and openness is linked to the ability of the parliament to perform more effectively and authoritatively its legislative functions. Achieving this requires bolstering both its structures and resources in order to improve its capacity to engage effectively and substantively in law-making, instead of being entirely superseded or side-stepped by the government and the administrative departments of the ministries. Among other things, this would require greater competences of and input from the scientific services of the Greek parliament, the role of which is currently marginal, as well as bolstering the role of specialized committees.

Finally, improving transparency and openness also requires reforms that open up the parliament to societal input simultaneously

with standardizing, institutionalizing and rendering transparent the processes of consultation with social and economic interests (which now take place informally inside ministries)...

The recently installed socialist government of PASOK has vowed to pursue reforms in all these directions as well as to upgrade the national parliament in order to establish "a political system that guarantees transparency and improves the quality of representative democracy." In particular, it has vowed to institute a mandatory stage of public consultation for all government bills, which will be recorded and posted on the website; to have government bills accompanied by a quality control report that assesses the implementation of the law and its impact on society, the economy and the environment, among others; and finally, to regularly update parliament and the public about European affairs, the issues that the government discusses at EU level and the positions that it takes."

This understanding, i.e. that broader and deeper institutional reforms are necessary in order to achieve meaningful transparency and openness, informs the Turkish case study as well. Here, it is argued that the authority and the democratic legitimacy of parliament have been eroded by the uneven playing field created by the electoral system:

"Political Parties Law and the Electoral Law should be revised. First of all, the 10% threshold, which hinders a healthier representative structure in the parliament, should be removed or decreased as soon as possible. Besides this, the Political Parties and Election Laws amendments must be made; they should put an end to identifying candidates by senior managers of parties in the elections; democracy should be established within the parties. Thus, the will of the voters will be reflected in a healthy way in the Parliament and more accountable structures will be established."

Similar concerns have been raised by the Serbian contributor. In the Serbian case

study, it is argued that the tight control of party leadership over the selection of candidates undermines the authority of some of the individual MPs, which in turn affects the legitimacy of parliament. Thus, the more general argument is that lack of transparency at the level of political parties could create an unfavourable environment for parliamentary openness as well:

“The quality of the Serbian Parliament is a direct consequence of the quality of the electoral system and the overall level of the political culture in Serbian society.”

Furthermore, the Turkish report argues that the authority of parliament could be eroded by unjustified rules on parliamentary immunity. This is an important problem from the point of view of transparency: the public can hardly be convinced that the MPs are open if they are unwilling to subject themselves to checks and inquiries to which other people are subject:

Thus, an “important point is the revision of the “Parliamentary Immunity” of MPs; at present it is too extensive and this affects negatively the confidence of the electorate in parliament. Parliamentary immunity needs to be limited to functional “Bench Immunity”. A revision of “Parliamentary Immunity” will increase the esteem of MPs and Parliament. The list of the deputies whose parliamentary immunity was requested for removing and their alleged crimes and also the publication of the general assembly and commission absence of the deputies are important steps which need to be taken. Moreover, in order to make MPs more accountable, their attendance in plenary sessions and committees should be announced as well.”

The finding that the behaviour of individual MPs in parliament affects the perception of the public of the openness of parliamentary work is corroborated by the Romanian experience:

„...the fundamental importance of institutionalising accountability mechanisms that shall prevent negative phenomena such as chronic absenteeism should be realised: proper sanctions should be imposed, as a rule, to all those members of the Parliament who miss parliamentary sittings or do not care to express their vote on a frequent basis and access to such information is vital for an efficient combat against these malpractices”. Furthermore, the Romanian report suggests that not only the behaviour of MPs within parliament could affect its authority, but their behaviour in the constituencies as well:

„...there is need for a more coherent, clear regulation of all aspects regarding MPs’ duties and specific activities in constituencies...”.

General performance issues could also affect the state of openness and transparency of parliamentary work:

“One of the other important problems is the fast speed of the legislative processes. This speedy tempo which is hard to catch up with even by the MPs, MPs’ consultants or TGNA’s bureaucrats, is a problem for an open system, because it is difficult to follow and monitor the legislative process. It also affects the effective participation and control mechanisms within the Parliament. As a result, amendments to regulation remain unfamiliar for the people.” (Turkey)

Finally, the Serbian case study raises the important issue of the available remedies in case of problems with lack of openness and transparency of parliamentary work. Generally, it is a better practice when citizens have more avenues to obtain information: this will lower the cost and will guarantee access even if one of the institutional channels proves to be temporarily blocked. We should also comment on the availability of the remedies for possible non-transparent attitude of the Parliament. Thus in Serbia it is a very unfortunate legal solution to exclude all the key public institutions from the competence of the Commissioner

for Human Rights, especially when in the case of the Parliament the Civic Defender also does not have monitoring prerogatives. The only way for a person (when they are denied the right to access the information of public importance at the disposal of the Parliament) is to initiate administrative litigation, but there is no jurisprudence in that respect. The controversies related to the amendments to the Law on Information and the proposed Law on the Confidentiality of Information suggest that in Serbia the transparency and accountability of the work of the public authorities and their officials will be at stake again in the days to come.

Thus, this section has argued that for the creation of transparent and open environment of parliamentary work sometimes deep and comprehensive institutional reforms are necessary, which reach into the regulation of the electoral process, parliamentary immunities, the ombuds-institutions, financial issues, etc. Of special importance seems to be the regulation of political parties. Two issues stand out in this regard. Firstly, this is the issue of party financing. The complexity of party and campaign finance is well known and 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 an 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 could 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 discussed countries, 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 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 the parliament.

## ***2. 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 discussed countries 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 the 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, access to information rules often contain restrictions on specific classes of information. These should be construed narrowly, 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 reviewed countries are not without serious problems. The most typical complaint is the relatively low level of intensity of the usage of the freedom of information instruments:

“Right to Information was established legally in Turkey relatively late and it is hard to talk about a tradition of using this right. Nev-



ertheless, the Law on Right to Information is being used. However, the limits of the Right to information should be reconsidered and defined more clearly in the Law.”

Due to the relative novelty of the access to information tools, and to the inertia in the public administration, very often officials tend to read restrictively the existing legal provisions, as to minimise their costs in providing information (both in terms of money and time). Thus, in Macedonia:

“In the case of the Law on Free Access to Information often those responsible for applying the legal provisions act abusively and deny citizens/civil society access to public interest-related information. Therefore, we believe that the elaboration of specific legislation should be always accompanied by sufficient training of responsible staff/officials, in order to have a consistent enforcement. It is equally important to constantly monitor the latter, as they tend to ease their strictness in enforcing the law once the general public’s perception becomes a positive one on the overall environment.”

The common official attitude seems to be well illustrated by the Serbian experience:

“Serbian Parliament respects the black letter of the Law on the Access to Information of Public Importance, but does not respect the spirit of the Law. There is no much pro-active behaviour and initiatives to facilitate citizens’ access to information.”

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 transparently parliamentary practices. What is further needed are essentially two elements. In the first place, this is 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 to information act has produced significant results in relatively short period of time.

Secondly, there is 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.

### **3. 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. The Bulgarian experience is revealing of the median standard, while Romania is much more advanced in terms of transparency. In Bulgaria: “most meetings of the Parliament are open, the working agenda is posted on the site (though access to some of the standing committees is not easy, because publishing the agenda is delayed; one needs to send a request for attending a meeting 7 days in advance, and often does not have enough time to react, when information is lacking on the program of the committees, etc.; according to an expert working for the Parliament... very rarely do ordinary people participate in the meetings, because of the unclear, often hostile procedures. The vote is open (rarely a secret vote is taken) and nominal/personal (though standing committees that are not leading with respect to a legislative act, are not obliged to keep detailed record of it), it is archived, yet access to the printouts of the electronic voting is difficult. There is also detailed information on the legislative activity

of the Parliament, with a database, where all draft laws could be searched by several criteria – keyword, date of filing, who filed them, reporting committee and code number. There is also summary statistics on the legislative activity of each of the Parliamentary sessions: how many draft laws were filed, how many were adopted.”

Further, it is already a matter of standard that the most important sessions of parliament are being broadcast on radio and TV. Usually, parliamentary control is broadcast on the public radio, and sometimes on the public TV: the same is true of important sessions on votes of no confidence and others. With digitalisation, it will become increasingly possible to have a special TV channel covering all sessions. The view of our Serbian contributor is that:

“It is very encouraging that there is high level of respect for the media representatives, because of their special role in the democratic formation of a society. We believe that the idea of a special parliamentary channel is very good, particularly if it will include something more than broadcasting of the plenary sessions. Citizens need to know more about their representatives, and about the process of the formation of the laws.”

One could add here that Internet-based TV channels could also be involved in transmission, although it should be kept in mind that access to the Internet is by no means universal in the region. There is another argument, which is to be seriously considered: the existence of special channels should not lead to the disengagement of the public 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 them. Therefore, important sessions should be covered by main public channels regard-

less of the existence of other channels (cable, Internet, etc.) covering parliament specifically.

Of particular importance is the availability of information for the voting records of individual MPs and parliamentary factions. This information is essential for the instrumentalising of the mechanisms of accountability in democracy. Thus, the Macedonian report suggests that:

“The work of the members of the parliament needs to be put under more public scrutiny. Their legislative initiatives and other activities in the standing committees and in the plenary sittings, and their work back in their constituencies need to be available to the citizens. Often the mere presence in the Parliament’s meetings is not reliably recorded – deputies register and leave almost immediately, mandating a colleague to vote with their electronic voting cards. Therefore, publicly available records of the electronic parliamentary voting should be used as a rule for all structures of the Parliament, including the Steering Committees, in order for citizens to be able to track the entire process of legislation, from the bill to the law adopted by the plenum. Furthermore, in order to increase the transparency and civic participation in the work of the Macedonian Parliament, the access of citizens to the Parliamentary Committee Meetings should be made more open. Moreover, the legislative activity of each deputy is insufficiently known. Information concerning the Parliament’s budget spending, the travel expenses of the deputies, the earnings of the deputies should be posted on the website of the Parliament, as well, including: the Parliament’s budget, the annual reports and budget execution, the travel expenses of each deputy, announcements on public procurement made by the Parliament etc.”

As pointed out earlier, most advanced in terms of disclosure of the voting record of MPs is Romania:

“During plenary sessions, as a rule, the vote shall be open. The open vote shall be cast by electronic means. “If the vote by electronic means is open, it should be posted on the website of the Chamber of Deputies/ Senate for each member of the Parliament”. In this way the vote is displayed nominally, and any person can track the vote of each deputy/ senator. As a rule, the vote is secret each time it is cast on a person: election, nomination and demission, etc. The confidence and non-confidence vote for the Government and the recall are as well secret, as a rule. More recently, some of the Steering Committees in the Deputies Chamber have started to use electronic display of their work: the Committee for Budget, Finance, and Banks, the Juridical Committee and the Committee for Public Administration currently track and publish the individual votes of MPs on the Standing Committees’ reports on debated bills. The sessions of these three Committees are video recorded and posted on the web page of the Chamber of Deputy at [www.cdep.ro/calendar](http://www.cdep.ro/calendar). The aim is to further expand these practices to all committees upon logistical arrangements without which such attempts are impossible.”

As a general recommendation, it should be stressed that in the era of the Internet, all relevant information should be easily accessible through the parliamentary websites. It is true that in this regard important strides have been made, and a lot of information could currently be obtained electronically. Yet, the standards in the reviewed countries 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 (attendance of) to the plenary sessions, the problem again is not so much in terms of regulation, but of practices. On the one hand, parliamentary officials often create unnecessary hurdles to citizen access. On the other hand, civil societies in the region have not implemented consistent monitoring of plenary sessions; in other words, the right to access has not been fully used.

#### **4. 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 in 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. Thus, as noted by the Turkish report, further steps of opening up the committee stage are necessary: especially regarding possibilities for public participation at the committee level in the workings of parliament. Steering committee meetings should be participative and monitored very closely by the public.

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. Therefore, the Bulgarian report suggests that: firstly, these developments are not sufficiently popularized, secondly, they do not go deep enough.

Further, 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 need to be



disclosed. Practices vary among the reviewed countries, 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 exception 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, transparency of committee meetings (which is a generally neglected area) should be turned into a priority issue.

### **5. 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 privacy concerns. 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 individual MPs' work in the constituencies. As argued in the Bulgarian case study: "all information, concerning the Parliament's activity, which does not concern state secret and other classified information, should be available on the site for easy expectation by the general public. Arguments to the effect that this is technically

a very ambitious and expensive task cannot be taken seriously in 21<sup>st</sup> century, especially when at stake is the popular trust in the main representative and legislative institution of the country."

Special attention warrants the individual work of the MPs – both 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. No matter how simple and natural, these requirements are not commonly met – consider, for instance, the Bulgarian practice:

"At present, even MP's mere presence in the Parliament's meetings is still not reliably recorded – often MPs register and leave almost immediately, mandating a colleague to vote with their electronic voting card. The new provision in the Rules of the Organization that explicitly prohibits such irresponsible behaviour on the part of the MPs (by attaching a monetary sanction to it in addition to the moral blame) have been largely ineffective, despite the resolute efforts of a series of Parliamentary Speakers to terminate this practice."

Furthermore, often information on the individual activities of MPs is being withheld on erroneous and manipulative grounds:

"The access to information about the Parliamentary activities of individual MPs is also yet limited, though some improvements in this regard were introduced by the 2008 Law on Prevention and Disclosure of Conflict of Interests. Prior to the adoption of this law, journalists from a central media in vein attempted to obtain official information from the National Assembly's administration on the income of an MP, infamous for his absence from the Parliament. The negative response to their official request for access to this public in principle information was motivated by the administrative head of the Parliament thus:

“personal data of a third party is involved.” Nevertheless, as a rule the salaries of the MPs in Bulgarian Parliament are determined by the internal Rules and depend on the rate of the salaries in the public sector, i.e. they are in principle public and known.”

As argued further by the Bulgarian case study, “another direction for improvement of the transparency of our Parliament concerns a special aspect of MPs’ work – 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, Internet could provide a relatively cheap solution to this problem. Usually MPs receive a small amount for maintaining their personal web-sites. 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.”

Again, it should be stressed that practices in this regard differ among the reviewed countries. Romania seems to be most advanced both in terms of present use of the Internet, and in terms of existing pressure for future reforms. Consider the Romanian recommendations:

- “The need for *ex officio* publication on the web pages of the Parliament and in general, of all public institutions/ authorities,

of as much public interest information as possible, in order to ease citizens’ access to such information and to avoid perceiving unreasonable taxes for copying documents. The more inquiries are submitted with regards to one issue or another, the faster should the institution be in displaying that information *ex officio* for a further similar request.

- Electronic means for voting should be used as a rule for all structures of the Parliament, including the Steering Committees, in order for citizens to be able to track the entire process of legislation, from the bill to the law adopted by the plenum.”

## 6. The Importance of Civil Society

As pointed out several times already, the success of transparency and openness requirements 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 like Romania, Bulgaria and Turkey, where active civil society organisations exist, the level of disclosure of information has been generally higher and more sustainable. Problems exist throughout the region, however. Consider the Turkish report, which states that:

“There are various problems of civil participation in the legislative process more generally. A legal arrangement is not available for civil society participation in the legislative process. Firstly, creating the standards regarding the civil society participation in the legislative process should be a priority. Secondly, the civil society should be informed about the legislative processes for providing an effective participation. A unit should be created within the Parliament, ensuring and facilitating NGO participation, so that active participation can be provided. Moreover, from the beginning of the legislative process the civil society

views need to be taken into account. Debates on draft laws should be done in the public sphere and the consequences of regulations should be discussed from several aspects. It is important to create a feedback mechanism for civil society in order to inform them about the consequences of their contributions to the legislative processes. This is likely to provide a reliable, open and transparent mechanism for participation of civil society in Parliamentary activities. Thus, it is important to establish a participatory mechanism which is sustainable. Another significant point in the enhancement of civil society is the financial contribution from the state to the NGOs. Many of the NGOs are not able to afford to attend activities.”

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. In this regard, the Romanian proposals for making such consultations legally obligatory merit special consideration:

“Institutionalizing functional consultation mechanisms at the level of the Romanian Parliament (based on the principles of the *sunshine law*) which shall allow for interested groups/ citizens to express their opinions, concerns etc. *before* the law is adopted. There are numerous examples of laws being passed today in Romania without any *ex ante* impact assessment, which are not only unpopular, but raise serious problems when enforced (e.g. the recent example of an “electoral charity” law increasing teachers’ salaries with amounts exceeding the economy’s potential).

The list of interventions may continue, yet the core point of this initiative is that there is a constant need of involvement of all civil society actors in order to “move” institutions and practices which tend to postpone reform for an indefinite term. While a transparent

legislative body is a facet of the democracy coin, the other one should be represented by a participatory civil society. We can “open” the Parliament through several instruments, what is important is to have the conscience that such endeavour should make us an integrating, and not an auxiliary part of the decision making process.”

## 7. 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. Our Romanian contributor has concluded that: “reviewing the main aspects analysed above with regard to the legislative and institutional framework regulating transparency of the legislative, as well as perceived “openness” at the level of civil society, we may generally appreciate that continuous efforts are further needed for improving especially *the practice* of transparent disclosure of information from and about the Parliament.

While at a general level it is quite obvious that officials have formally assumed to guarantee unrestricted access to information, by explicitly regulating it in several legislative acts – including here the fundamental law (the Constitution), the true challenges appear when it comes to enforcing all these regulations. Several deficiencies were signalled both by civil society representatives and could have been inferred from the author’s own experiences, such as: abusive/ arbitrary interpretations of some information as *personal data* (such as signatures of MPs on presence sheets in the Parliament) or *classified information*, excessive bureaucracy and deliberate tergiversation in providing information on request, lack of real consultation between MPs and the civil society in the decision making process etc. To all these problems,

we envisage a general solution which could be synthetically encompassed in the need to build continuous civic pressure onto the legislative process as a *checks and balances* democratic mechanism which is fundamental for concretizing concepts such as “transparency” and “accountability”. We do hope that, with the change of the electoral system, things will start evolving in that direction.”

In most of the countries, despite obvious legislative deficiencies, the contributors are generally satisfied with the level of regulation. Thus, in Albania:

“The analysis of the legal framework on transparency of the Parliament indicates that a reasonable level of transparency is guaranteed. It should be noted that all the legal changes have occurred in a range of almost two decades in the country, considering that before 1990 the work of this institution was transparent only when this was decided for political and ideological reasons.

Today legal rules guarantee direct democracy, including referendum and legal initiative of 20,000 voters. Also, other specific rules on the right to access to official documents, as well as the Regulation of Parliament indicate that the law is generally in place. However, NGOs have raised the issue that there are many difficulties with the filing of a request to receive official documents.

Apart from the generally good legislative rules on transparency, the practices regarding the transparency and accountability of parliamentary work, as indicated by media, individuals and NGOs, are problematic in certain cases. This is due to the non-observance of rules in force. Interviewees indicate cases of difficulties even in receiving the permission to attend a session. Artificial and non-founded requests from the parliament damage the transparency aimed at by the legal rules.

The study was mainly focused on the parliamentary documents. However, it is im-

portant to understand that other aspects related to MPs, such as declarations of assets, or salary, remuneration, benefits, observance of ethical rules/ requirements by the MPs and reports on ethical aspects are important elements to be considered when analysing transparency as well.”

Similarly, in Macedonia the implementation of the rules has proven to be the main obstacle:

“Opening up the Macedonian Parliament, making the work of the MPs more transparent, is the first necessary step to bringing people back to politics by winning their trust in the main representative institution of the country. Even though at a general level it is quite obvious that Macedonian officials have formally assumed to guarantee unrestricted access to information by explicitly regulating it in several legislative acts, including the Constitution, the true challenges appear when it comes to enforcing all these regulation. Alike other countries in the region, the existence of the legislation does not always mean that there is proper enforcement in Macedonia.”

These inconsistencies between formal requirements and actual practices and attitudes have been well-confirmed by our Serbian contributor as well:

“The openness of the Serbian Parliament is a textbook example of the development in the consolidating democracy. There is an avalanche of adoption of the legislation conveying good European standards, most often initiated, supported or motivated by the activism and funds of the international organisations and the NGOs dedicated to the spreading of the best practices.

We introduced new institutions and mechanisms but still most of them tend to fail or underachieve. Is that only because our public officials are not sincere in their reforming or are we just not able to reform and transform overnight? I would suggest that both are true.

The Serbian Parliament is relatively open, while the deputies are relatively closed towards the public, unless they are guests in some TV show campaigning for the forthcoming elections, which place in Serbia much more often than the regular political cycle is. That is why deputies always have to run campaigns, while remaining distant from the voters who could ask them for past promises and concrete measures taken.”

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 organisation 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 in practice, there needs to be an agent. In the case of the Parliament, this could only be the sovereign – the citizens, who are the source of all political power in the country. Obviously, if the agent has no interest in exercising its agency to make use of the accountability mechanisms, there is little sense in discussing the openness and accountability of the Parliament. That is why we have to start our analysis in this last section by addressing the issue of the public interests in parliamentary activity.

Consider some of the data for the Bulgarian parliament. The results from a series of representative surveys, conducted by the sociological agency Alpha Research in 2002, 2006 and at the end of 2007<sup>1</sup> show, that the levels of trust in Parliament are critically

low. Thus just 1% declared to fully trust the Parliament in 2002, and this figure declined to reach 0,5% in 2007. No trust at all in the main representative institutions of the country declared almost half of the Bulgarian citizens (46%, 42% and 49% for the respective years). On a scale from 1 to 10, where 1 is no trust at all, and 10 – full confidence, the averages are again critically low – 2,31, 2,48 and 2,29, respectively.

Interestingly, this lack of trust in the Parliament is not accompanied by readiness to abandon the parliamentary democracy in the country and substitute it with stronger president, stronger leader, one-party rule, or dictatorship. On the contrary, support for such proposals is steadily decreasing, which warrants calling the state of development of the representative democracy in the country – consolidated yet frustrated democracy.<sup>2</sup>

Although representative democracy has become “the only game in town” not only in Bulgaria, but in the other covered countries as well, the quality of democracy is rather low. The explanations for this fact should be sought at least in two directions. The first is the very low and declining popular interest in political decisions. Thus in 2002 only 10% in Bulgaria declared they are *not interested in the decisions* of those that govern the country, yet in 2006 it was already 18%, to reach by the end of 2007 the alarming 27%. One should not be lulled by arguments that this is the natural effect of normalisation and that this passivity is a sign that people have gained considerable autonomy in their life from the encroachments of the state and need not constantly monitor its activities and performance.

There may be a direct causal link between the low interest in politics and the low quality of the democratic institutions – when not monitored, they tend to degenerate, become

<sup>1</sup> Within the Framework of the Projects of CLS “State of Society” I, II and III, supported by OSI-Sofia.

<sup>2</sup> Smilov, Daniel (2008) ‘Partii i frustrirana demokratziya’, in *Sustoyanie na obshtestvoto III*, OSI-Sofia.

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 to be 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* to bringing people back to politics by winning their trust in the main representative institution of democracy. This step might not prove sufficient, since as argued above, distrust in parliament could have deeper and diverse roots. Nevertheless, however, transparency is and remains a key virtue of representative democracies, and as such should be taken seriously.





## Open Parliaments: The Case of Albania

*Elira Zaka, Eralda Cani*

*Legislation will be drafted and approved as a result of an open process that reflects the will of people, directly and through their elected representatives.*

Moscow Document of 1991, OSCE

### 1. Introduction

The fall of communism in Albania brought changes in the composition and functioning of the Parliament – the legislative body and bearer of sovereignty of the Albanian people. It also brought changes to its *modus operandi* by introducing transparency, open discussions and debates in its work. At the same time, parliamentary discussions became the focus of media attention on a daily basis. In fact, there were periods when media were directly covering on a daily basis the work of the Parliament; such was the case of the coverage by TVA – a national private TV.<sup>3</sup> At present, such coverage happens only with regard to important decisions of the Assembly, such as: discussions and voting of the electoral code or the lustration law, visits of high-rank figures of the international arena,<sup>4</sup> elections of President, nomination or dismissal of judges or heads of constitutional bodies, including removal of immunity of a member of parliament. Overall, the life of this institution has become open and transparent to the public through diverse means and not only through the electronic media, which is the most obvious instrument. An

evaluation of all these elements and mechanisms will indicate the level of openness, democratic accountability and encouragement of civic participation in this democratic body of the country.

### 2. The National Assembly in the Albanian Constitutional Model

The role of the Parliament is defined by the Constitution of 1998,<sup>5</sup> in force at present.<sup>6</sup> The current Constitution replaced the Main Constitutional Dispositions of 1991.<sup>7</sup> It was approved after a long process of open discussions among different interest groups, and followed several draft-Constitutions prepared during the years. The Constitution was ratified by a referendum,<sup>8</sup> bestowing high legitimacy upon this document.<sup>9</sup> Two amendments<sup>10</sup> to the Constitution were introduced – based on political consensus without a popular vote. The second amendment was supported by a limited consensus of only the two main political parties, disregarding the opposition from other political parties.<sup>11</sup> A request for a refer-

<sup>5</sup> Law No. 8417, dated 21.10.1998 "On the Constitution of the Republic of Albania"

<sup>6</sup> Entered into force with a Decree of the President – No. 2260, dated 28.10.1998 "For the proclamation of the Constitution of the Republic of Albania."

<sup>7</sup> Law No. 7491, dated 29.4.1991 "On the Main Constitutional Dispositions"

<sup>8</sup> The referendum is one of the two main ways of exercising democracy in the country: representative – through the Parliament and direct – through referenda (Art. 2 of the Constitution).

<sup>9</sup> Decree of the President No. 2241, dated 21.10.1998, "For the proclamation of the Referendum for the final approval of the Constitution of the Republic of Albania"

<sup>10</sup> First amendment was introduced with Law 9675, dated 13.1.2007, changing the local governments mandate from three to four years. The second amendment – with Law No. 9904, dated 21.4.2008, concerned several issues, including the electoral system in the country – changing it to a regional proportional one, the procedure of electing the President and the vote of no confidence procedure. Last amendments strengthened the executive power.

<sup>11</sup> A request from an interest group and from the Socialist Movement for Integration was first filed with Central Election Commission to submit to a referendum the approval of the second series of amendments. This request was rejected, due to a lack of competence on the part of this organ to deal with such a request. The amendment is a constitutional one and in such cases the Constitution requires that any request for referendum be considered by the Constitutional Court.

<sup>3</sup> <http://www.kkrt.gov.al/sq/operatoretradio-televizionet-kombetare>

<sup>4</sup> An example



endum regarding the constitutional changes was rejected by the Central Election Commission, the body vested with the power to approve such requests.<sup>12</sup> The request filed with the Constitutional Court to declare anti-constitutional the decision of the Central Election Commission was rejected as ill-founded.<sup>13</sup>

The country is a parliamentary republic. According to the Constitution, the power is divided into three branches: executive, legislative and judicial. The Assembly has the legislative power. The system of separation of powers is drafted with a strong emphasis on the Assembly, even though the executive is strong as well. Amendments to the Constitution have further strengthened the position of the executive in the country. The President is the head of the state, the Prime minister – the head of the executive. The President is elected by the Parliament for a 5-year term. The president chooses the prime minister, who is a representative of the party or coalition with the most seats in Parliament. The prime minister, as the head of government, nominates the ministers who are appointed by the President.

The parliament is unicameral, composed of 140 members elected by direct, universal and secret vote.<sup>14</sup> The mandate of the MPs is four years. Elections are held through a regional proportional election system: voters vote for the political parties registered with the Central Election Commission, which had declared and registered the electoral list. Seats are distributed on a regional proportional basis. The current system substituted the previous mixed one, which was based on the formula of 40 seats elected by a majority voting (in single-member districts) and 100 – by a proportional one. The current system was first used dur-

ing the June 2009 elections and in addition to strengthening the position of the two main political parties – the Socialist Party (SP) and the Democratic Party (DP) – in the Parliament, it eliminated several of the small political parties in the country, which had been part of the Parliament for several terms.

Either a member of the parliament, the Council of Ministers, or 20,000 voters have a legislative initiative. The law is the most common normative act in the country, approved by the Parliament and promulgated by the President of the Republic. Once decreed by the President, the law becomes effective when published in the Official Gazette.<sup>15</sup> If the President does not sign the bill and sends it back to the Parliament for re-consideration (suspending veto), the Parliament can override the veto, and the statute then becomes a law and is effective after publication in the Official Gazette. Usually laws are proposed by the Council of Ministers, ranging from 92% to 97% of all the laws passed by the Parliament. Cases of voters or even of MPs proposing a law are quite limited. See *table 1*.

<sup>12</sup> Decision No. 47, dated 5.6.2008 of the Central Election Commission. See <http://www.cec.org.al/2004/legjislacion/Legjislacion2008/vendime.htm>

<sup>13</sup> Decision of the Constitutional Court No. 25, dated 24.7.2009.

<sup>14</sup> Art. 1 and 45 of the Constitution.

<sup>15</sup> All the laws and any normative act that must be published in the Official Gazette can also be electronically found at: [www.qpz.gov.al](http://www.qpz.gov.al)

Table 1: Legal initiative as exercised by the Council of Ministers, MPs and 20,000 voters in Albania from 1999 – 2007.

Year	Laws in total	Proposed by the Council of Ministers		Proposed by MPs		Proposed by 20,000 voters	
		Normative acts with the power of a law and laws in total					
		<i>nr.</i>	%	<i>nr.</i>	%	<i>nr.</i>	%
1999	126	120	95.23%	6	4.76%	0	0.0%
2000	158	148	93.67%	10	6.33%	0	0.0%
2001	121	112	92.56%	9	7.43%	0	0.0%
2002	137	122	89.05%	15	10.95%	0	0.0%
2003	178	166	94.94%	12	6.74%	0	0.0%
2004	175	162	92.57%	13	7.43%	0	0.0%
2005	121	114	92.6%	9	7.4%	0	0.0%
2006	198	197	98%	3	2%	1	0.5%
2007	182	179	97.3%	5	2.7%	0	0.0%

The Constitution in its Art. 2 provides for the right of the people to exercise power directly or indirectly. More specifically Art. 81 grants the right to exercise a legislative initiative to 20,000 voters, a right which from 1999 through 2009 has been exercised only once in 2006 in order to provide a legal framework on a sensitive social issue for any society – domestic violence.<sup>16</sup> Also, the people (50,000 voters) can initiate a referendum to repeal a law, and to request the

President of the Republic to call a referendum on issues of special importance.<sup>17</sup> Further, the Assembly as well (on the proposal of no less than 1/5 of the deputies or on the proposal of the Council of Ministers) can decide that an issue or a draft law of special importance should be submitted to a referendum.<sup>18</sup>

The Council of Ministers, headed by the Prime minister, is the main body vested with

<sup>16</sup> Law No. 9669, dated 18.12.2006, "On the measures against domestic violence".

<sup>17</sup> Art. 150 of the Constitution.

<sup>18</sup> See above for a referral to a case on a request for a referendum.

executive power. It drafts laws and is responsible for the execution of national general policies, while ministers are responsible for specific fields. Over the years, on average 94% of the laws have been proposed by the Council of Ministers (see Table 1). The government was formed by Socialist Party coalitions from 1997 to 2005. The Democratic party has been in power since 2005 until present. The DP coalition was re-elected at the 2009 elections, this time in a coalition with the SMI, a left-wing party.<sup>19</sup> Even though the country is a parliamentary republic, the government dominates the political life and the life of the state institutions,

including Parliament. The last amendments to the Constitution in 2008 strengthened the position of the government and especially of the Prime Minister vis-a-vis the Parliament.

The Constitution decrees that the transparency of the public administrative organs is both a positive and a negative right. It provides that state institutions are to be transparent and accountable, while guaranteeing the right to freedom of expression and opinion. Thus, transparency is considered a human right, with a high level of protection. A summary of the key features and articles in the Constitutions on transparency and freedom of information is provided in Table 2 below.

*Table 2: A summary of the Albanian Constitution main features regarding human rights and transparency*

Main guarantees	Rights/freedoms related to transparency	
	Personal Rights and Freedoms	Political Rights and Freedoms
<p>All are equal before the law; no discrimination on grounds of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage</p> <p>No discrimination without a reasonable and objective justification</p> <p>Equal rights to Albanians and foreigners, unless the law regulates differently</p> <p>Rights enjoyed by juridical persons for as much as it is possible</p> <p>Rights grouped into three main categories: Personal Rights and Freedoms; Political Rights and Freedoms; and Economic, Social and Cultural Rights and Freedoms</p>	<p>Freedom of expression</p> <p>Freedom of the press, the radio and the television</p> <p>Right to information</p> <p>Right to privacy</p> <p>Freedom and protection of privacy of correspondence /communication</p> <p>Inviolability of residence</p> <p>Right to be rehabilitated and/or indemnified because of an unlawful act, action or failure to act of the state organs</p>	<p>Everyone, alone or together with others, may address requests, complaints or comments to the public organs, obliged to answer within the time limits and under the conditions set by law</p> <p>Right to information on the environment and its protection</p>

<sup>19</sup> <http://www.keshilliministrave.al>

The Constitution also provides the procedural rules of parliamentary openness. Its Article 23 clearly requires that the meetings of the collegial organs are open, and Art. 79 specifically that Parliament meetings are open:

*Albanian Constitution, Article 23:*

*The right to information is guaranteed. Everyone has the right, in compliance with law, to obtain information about the activity of state organs, and of persons who exercise state functions.*

*Everyone is given the possibility to attend meetings of elected collective organs.*

*Article 79:*

*Meetings of the Assembly are open.*

*At the request of the President of the Republic, the Prime Minister or one-fifth of the deputies, meetings of the Assembly may be closed when a majority of all its members have voted in favour of it.*

### 3. The Legislative Process in Albania

The legislative process in Albania includes three main phases:

- Legislative initiative
- Approval of the law
- Proclamation and publication of the law

This process is regulated in Chapter IV of the Constitution. Other laws regulate related aspects, such as the Law on the Organization and Functioning of the Ministry of Justice, Law on the Council of Ministers and more specifically the regulation of the Council of Ministers, as well as the rules of Parliament. All these normative acts comprise the legal grounds of the legislative process in Albania.

The majority of the laws, as already mentioned, are initiated by the Council of Ministers – since the most important and efficient way of drafting a law is via the Council of Ministers. This practice also reveals that even when

MPs did exercise their legislative initiative, the role of the Council of Ministers is indispensable: it has substantial and qualified structures for drafting legislation and it is always important to gain its political support for the passage of a law through Parliament. There is also a constitutional rule provided in Article 82.2, which requires the opinion of the Council of Ministers on laws that exert financial impact.<sup>20</sup>

The process of drafting a law in the Council of Ministers follows a clear procedure, provided by the Law on the Council of Ministers. According to the Regulation on the functioning of the Council of Ministers,<sup>21</sup> the draft law is prepared by the legal department of the responsible Ministry, and the latter organizes consultation sessions with the relevant civil society structures. Thus the drafting process does not require transparency with regard to the drafts, even though it does reflect a level of transparency when the process is finalized. Compared to the transparency rules followed by the Parliament,<sup>22</sup> the drafting process at the governmental level is rather closed,<sup>23</sup> a characteristic feature of non-elected collegial organs.<sup>24</sup> During this phase, it is an obligation of the Cabinet to inform the media on the decision taken.<sup>25</sup>

Once the Council of Ministers approves the draft, it deposits it in the Parliament. It is the internal procedural rules of the Parliament that should be followed at this stage. The Par-

<sup>20</sup> Article 82.2 of the Constitution states: "No non-governmental draft law which requires necessary an increase in the expenses of the state budget or diminishes income may be approved without hearing the opinion of the Council of Ministers, which must be given within days from the date of receiving the draft law".

<sup>21</sup> Approved with Decision No. 584, dated 28.08.2003.

<sup>22</sup> Examples of a similar consideration by the public are found in a study of ZMQ in 2008, where only 17% of the persons asked answered that they want to see more transparency during the process of drafting laws. <http://www.shekulli.com.al/news/49/ARTICLE/37562/2008-12-10.html>

<sup>23</sup> TRANSPARENCA DHE PJESËMARRJAE PUBLIKUT NËPROCESIN LEGJISLATIV – Sokol Berberi, a publication of Centre for Parliamentary Studies, supported by SOROS, Open Foundation for Albania, published by "albPAPER".

<sup>24</sup> Article 9 of Law 8480 "On the functioning of the collegial organs of the state administration and public entities".

<sup>25</sup> Law No. 9000, dated 30.01.2003 "On the organization and functioning of the Council of Ministers."

liamentary Bureau decides and schedules the debate of this draft at a Plenary. A draft can only be debated at a parliamentary plenary session after it has been thoroughly debated at the parliamentary commissions. Parliament may approve a law with the majority of the deputies present at the plenary session, unless it is a law that needs to be approved with a qualified majority according to Article 81<sup>26</sup> of the Constitution. The President of the Republic must then promulgate the approved law, if he does not exercise his right of veto, according to Article 85<sup>27</sup> of the Constitution. The thus promulgated law enters into force 15 days after being published in the Official Gazette, unless otherwise foreseen by law.

With regard to the MPs, the process of drafting does not follow a specific procedure: once drafted and submitted to the Parliament, the above-mentioned rules are followed. Further, there are no specific rules on how the 20,000 voters can use their right to legislative initiative. In 2006 on the occasion of the law against domestic violence, Zyra për Mbrojtjen e Qytetarit (Office for the Protection of Citizens), the NGO that initiated the process, collected signatures of 20,000 voters – all supported by identification documents, in order to be verified.<sup>28</sup> Once in the Parliament, the normal internal rules are respected.

<sup>26</sup> Article 81.2 of the Constitution states: There are approved by three-fifths of all members of the Assembly:

- A. the Laws for the organization and operation of the institutions contemplated by the Constitution;
- B. the Law on citizenship;
- C. the Law on general and local elections;
- D. the Law on referenda;
- E. the Codes;
- F. the Law on the state of emergency;
- G. the Law on the status of public functionaries;
- H. the Law on amnesty;
- I. the Law on administrative divisions of the Republic

<sup>27</sup> Article 85 of the Constitution states:

1. The President of the Republic has the right to return a law for re-consideration only once.
2. The decree of the President for the re-consideration of a law loses its effect when a majority of all the members of the Assembly vote against it.

<sup>28</sup> <http://lajme.shqiperia.com/media/artikull/iden/144623/titulli/Dhuna-ndaj-grave-e-femijes-pret-firmen-e-20-mije-qytetareve>

### ***A Legal Analysis of the Right to Information and Transparency***

Transparency and access to public information, considered as key elements in a democratic society and necessary tools to oversee state power, have received special attention in the Albanian legislation. As mentioned above, this right is regulated directly in the Constitution. There,<sup>29</sup> the right to obtain information on the activity of state organs is declared one of the fundamental rights. It is also decreed that everyone should be allowed to attend collective organs' meetings.

In addition, any international regulation of this right in international treaties/conventions ratified by the country is part of the Albanian legislation, and is thus obligatory in the country.<sup>30</sup> The regulation of the right to information of international documents such as:

- the *Universal Declaration of Human Rights (UDHR)* – ratified by Albania. Its Article 19 sets out the fundamental right to freedom of expression, including the right to seek, receive and impart information and ideas through any media, regardless of frontiers;
- the *International Covenant on Civil and Political Rights (ICCPR)* – ratified by Albania in 1991. Its Article 19 guarantees, similarly to the UDHR, the right to information;
- the *European Convention on Human Rights (ECHR)* – ratified in October 1996 by Albania. In its Art. 10 it guarantees the right to seek, receive and impart information, including the right to access information held by public authorities, as a core element of the broader right to freedom of expression,

<sup>29</sup> 1998 Constitution of the Republic of Albania, Art. 23.

<sup>30</sup> Article 5 of the Constitution provides that the Republic of Albania applies international law that is binding upon it. Art. 116 of the Albanian Constitution considers ratified international agreements as normative acts effective on the entire territory of the Republic of Albania, while Art. 122 of the Constitution provides that the rights guaranteed in ratified international treaties take precedence over any Albanian laws or practices that are incompatible with them.

are part of the Albanian legislation, since the country has ratified all these documents.

This right is further guaranteed and regulated by a specific law on the Right to Obtain Information about Official Documents (Law on Information).<sup>31</sup> This law provides that everyone has the right to request information without explaining the reasons for the request and that public authorities shall be organized in ways that facilitate the provision of information in a speedy manner.<sup>32</sup> The person requesting information has the right to obtain copies of the document in full or, if the applicant accepts it, information about the document in another, including oral, form.<sup>33</sup>

Law No. 8503, dated 1999 "On the right to information on official documents" is the most specific law regulating the access to information. The law has been widely discussed and many projects have been developed either by the Albanian civil society, or the intentional community. The People's Advocate, the institution entrusted with the implementation and monitoring of the law, has been very active as well. People use it, and a rich jurisprudence has developed under it.

The law requires that the information is accessed by paying a fee equal to the administrative cost of providing the information, except for several documents mentioned in the law as free of charge information (Art. 8 and 9 of Law 8503). In addition, the general principle of free services to the public provided in the Administrative Procedure Code, Art. 17, applies. According to this principle all services are free of charge except when a law regulates otherwise. In any case, when the individuals are not able to pay, on the basis of sub-legal acts, they may be exempted from the obligation to pay.

There is no general definition of the concept „public information“. There is a definition of "Official document": these are documents, open to the public according to Law 8503. Such documents include: any document, in any form and format, kept by the public authority according to the existing rules and related to the exercise of a public function." The definition, obviously, is very general and leaves it to the discretion of the public administration organs to determine what an official document is.

In contrast, confidential documents and information (i.e. such that cannot be accessed freely by the public), are confidential and state secret information. Law No. 9887, dated 10.3.2008 "On the protection of personal data" regulates personal data as sensitive or confidential, while Law No. 8457, dated 11.2.1999 "On the information classified as state secret" regulates that information classified as state secret is owned by the state and cannot be accessed by the public.

More specifically:

- "*personal data*" is any information for a physical person, that is used for identification purposes. The elements with which the identification of a person is related, directly or indirectly, are the identity numbers or other specific physical, psychological, economic, social or cultural, etc. factors;
- *Sensitive data* is every information for the physical person, related to their racial or ethnic origin, political opinion, membership in trade unions, religious belief, criminal condemnation, as well as data for their health or sexual orientation/life;
- *State secret* is information (every knowledge that can be communicated or identified, regardless of its form, and is under state control), which if exposed may put at risk the national security, including independence, territorial integrity, consti-

<sup>31</sup> Law No. 8503, 30 June 1999. The law has been commented on by Art. 19 at the request of OSCE, see [http://www.osce.org/documents/html/pdftohtml/3760\\_en.pdf.html](http://www.osce.org/documents/html/pdftohtml/3760_en.pdf.html)

<sup>32</sup> Law on Information, Art. 3 & 6

<sup>33</sup> Art. 7 of Law on Information



tutional order and foreign affairs of the Republic of Albania.

State secret information is classified as:

- *Top secret*: unauthorized exposal can cause *especially serious damage* to the national security;
- *Secret*: unauthorized exposal can cause *serious damage* to the national security;
- *Confidential*: unauthorized exposal can cause *damage* to the national security.

According to the Administrative Procedure Code (Art. 19) information, classified as state secret or confidential information, cannot be provided to interested parties. The same is confirmed in Art. 47 – Communication with interested parties - of the Administrative Procedure Code.

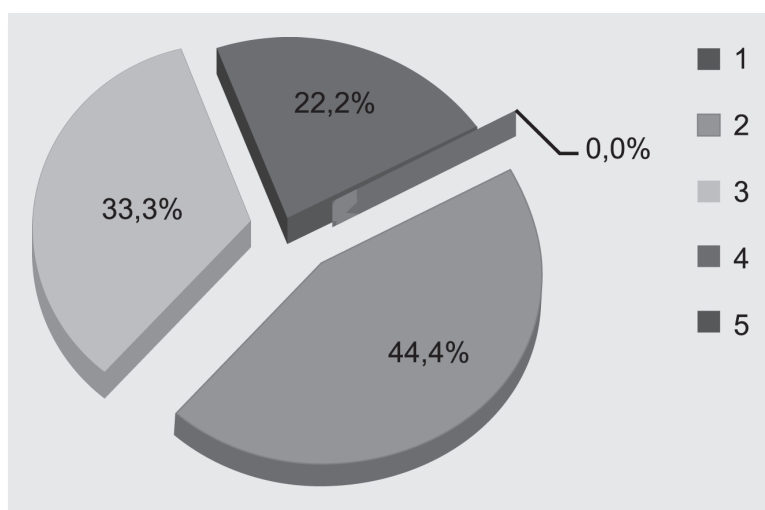
The Constitution in its Article 79 regulates that the meetings of the Assembly are open as a rule. Thus, not only the right to information is guaranteed to anyone who wants to receive such information on the work of the Parliament through the above mentioned law, but it is even easier in the case of Parliament activity to receive information: the doors of this institution, when it meets, are open to anyone. Only at the request of the President of the Republic, the Prime Minister or one-fifth of the deputies, upon approval by the absolute majority of MPs, these meetings may be closed.<sup>34</sup> The regulation of this issue is further detailed in the internal regulations of the Assembly. According to Article 75 of the Constitution, “the Assembly is organized and operates according to regulations approved by the majority of all its members.” These require that the assembly meetings be open. It was approved with Decision No. 166, dated 16.12.2004 “On the Approval of the Regulation of the Assembly of the Republic of Albania” (for details see item 4 below).

Leaving aside the purely legal analysis, the practice is markedly different. There are obvious efforts to make the work of the Assembly transparent, but problems persist. This is mostly felt by NGOs who when working on projects on parliamentary-related issues, feel that the institution is not transparent and open enough. A questionnaire aiming at understanding the transparency of the Parliamentary works was sent to 15 NGOs, and 9 answers were received. Also individual interviews have taken place. For a full list of interviewees please see Annex 1.

In a scale 1 through 5, with 5 indicating the highest level of transparency, 9 organizations who answered the question “Considering the organization’s experience in working with the Parliament, score the transparency of the Parliament”, indicated that there is a problem with the transparency of the legislative body. 44.4% of them answered 2, less than average transparency; while 33.3% answered that the Parliament has an average level of transparency. Only 22.2% answered that the level of transparency is moderately good. See *Graph 1*.

<sup>34</sup> There have been no more than five occasions since 1991, when parliamentary sessions took place under closed doors.

*Graph 1.* Question: Considering the organization's experience in working with the Parliament, score the transparency of the Parliament (on a scale from 1 to 5)



### ***Internal Rules of Parliament: Regulation of Transparency***

The Constitution, in its First Part – organization and functioning of the Assembly – requires that the organization and functioning of the Assembly be regulated via its internal rules. The current Regulation of the Assembly was approved with Decision No. 166, dated 16.12.2004, amended with Decision No. 15, dated 27.12.2005 and Decision No. 193, dated 7.7.2008. The regulation does include specific articles on the openness and transparency of the functioning of the Assembly.

The internal regulation of the Assembly is a normative act in the Republic of Albania, thus the Constitutional Court can review its constitutionality just as it does with respect to other normative acts (Art. 131 of the Constitution). There is no such decision: there has been one request by the Social Movement for Integration Party to the Constitutional Court to repeal as unconstitutional a decision of the Assembly, amending the approved Assembly

Regulation. The case was dismissed on procedural grounds.<sup>35</sup>

According to the internal regulation of the Assembly and the Constitution, the public is free to attend meetings and sessions – i.e. both the plenary sessions and the meetings of the standing committees. The procedure mandates that at least an hour before the plenary session begins, an attendance form is to be filled in and a valid identification document is to be presented.<sup>36</sup>

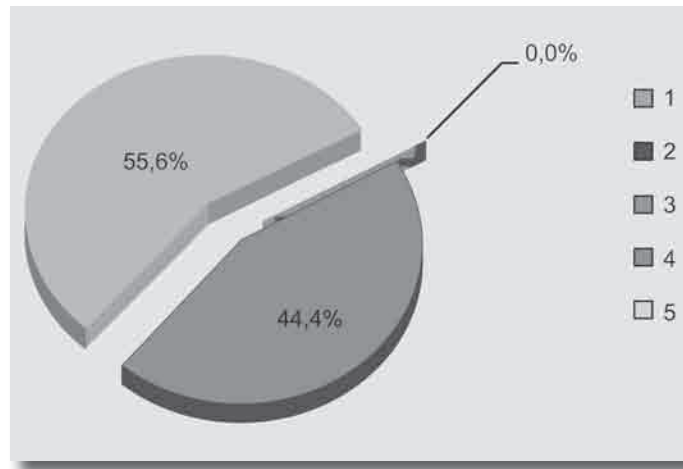
Usually the media, both electronic and print, as well as persons with special interests (related to their work as members of civic society organisations, etc.) attend sessions of the Parliament. The organizations interviewed during our study answered that they do have high or relatively high interests in the Parliament activities. Out of 9 NGOs that answered the questionnaire, 55.6% answered that their interests are 5 (in a scale 1 to 5, 5 being the highest (see Graph 2).

<sup>35</sup> See Decision of the Constitutional Court No. 7, dated 28.04.2006. Decisions No. 14, dated 19.12.2005 and 15, dated 27.12.2005 of the Assembly of the Republic of Albania "On an amendment of Decision No. 166, dated 16.12.2004 "On the Approval of the Regulation of the Assembly of the Republic of Albania" were required to be declared unconstitutional. However, the request was retreated, thus the Constitutional Court decision was to dismiss the case.

<sup>36</sup> See <http://www.parlament.al/>



Graph 2: Question: Describe your general interest for the Parliament's activities



- *Secret votes/closed door sessions*

Voting of the MPs is usually open, personal and cannot be delegated. This is regulated by Art. 57 of the Internal Regulations. Art. 60 provides that the voting is secret only when personal issues are being voted on. Also, the same article provides that the voting is secret when requested by at least 7 MPs and the Assembly decides so. A secret vote means either casting a vote in the ballot box or voting electronically. Additionally, voting for the President of the Republic<sup>37</sup>, removal of the immunity of an MP,<sup>38</sup> election of the speaker of the Assembly,<sup>39</sup> are all cases, when voting is secret.

The Parliament Regulation provides that the discussion on the draft-budget, or other financial related draft laws, cannot be held in secret. Similar regulations are in force in other European countries.

- *Process-Verbal (minutes of proceedings)*

Each meeting of the Assembly is recorded in a procès-verbal (minutes of proceedings). Art. 23 of the Internal Regulation provides that the procès-verbal is kept by the secretary of the meeting. Arts. 34, 39, 44, and 54 of the

Internal Regulation regulates in detail how to keep the procès-verbal. Art. 39 requires that the procès-verbal of the Assembly Commission includes:

- date of the meeting,
- issues discussed,
- participation of MPs and invitees,
- summary of discussions,
- opinions of the MPs, including the minority opinions, and
- result of voting.

The procès-verbal is approved in the following meeting: MPs can make corrections or clarifications in the procès-verbal. In case the issue discussed is of special interest, the meeting is registered and made entirely public. A summary of the procès-verbal is made public and distributed to the media and other persons. The minutes are also published on the web-site of the Parliament on a regular basis.<sup>40</sup> The procès-verbal is a parliamentary document and is deposited in the Assembly Documentation Archive.

Art. 44 of the Internal Regulation provides the same for the plenary session, while Art. 54 requires that every discussion is recorded in a summary procès-verbal that is placed on

<sup>37</sup> Art. 109, amended, of the Parliament Regulation.

<sup>38</sup> Art. 118 of the Parliament Regulation.

<sup>39</sup> Art. 6 of the Parliament Regulation.

<sup>40</sup> <http://www.parlament.al/>, at "Dokumenta Parlamentare".

the official Assembly webpage. The procès-verbal can be reviewed by every MP before the upload. Also, the same articles require that the discussions are published in full, in more controversial discussions.<sup>41</sup> Discussions in the plenary sessions are published entirely. Procès-verbal, discussions and audiovisual recordings of the closed sessions are archived and administered according to the rules on state secret. OSCE Presence in Albania supported the Albanian Parliament to establish an electronic internal recording system. Currently, each meeting is recorded and the tapes are public documents to which the public has access. The tapes, except for those of closed discussions, are in the Assembly Library and can be accessed as every other document there.<sup>42</sup>

The archive of the Assembly Documentary does exist and is kept by the office for the Archive and Library. Access to the Archive is regulated through a specific law on Archives in the Republic of Albania.

The procès-verbal (including both the opinions and the actual votes of the MPs) of the meetings are public. The voting in the plenary sessions is made transparent in the internet as well. Art. 44 of the Internal Regulation requires specifically that voting is made public and archived in the Assembly Archive.

- *Transparency*<sup>43</sup>

With respect to the transparency of the work of the Assembly, the regulation provides a number of measures and procedures. Part 4 of the Internal Regulation provides several ways of realizing such transparency.

According to Art. 105 of the Regulation, these include:

- Public participation in the legislative approval process
- Written and electronic media broadcasting
- Publication of assembly documentation
- Web-site of the Assembly
- Internal audiovisual network of the Assembly

1. The *public participation* in the legislative drafting process and the popular legislative initiative have been discussed in detail above. However, it should also be mentioned that during the discussion of the drafts in the standing committees, another factor adding to the transparency is the active participation of interest groups in these discussions. There are cases when the Assembly has asked for the opinion of different interest groups with regard to the draft prepared. Such are the cases with the participation in the drafts discussions of the Centre for Parliamentary Studies, the Group of Human Rights, The Institute for Contemporary Studies, The Albanian Helsinki Committee, The Tirana Association, The Association of Businessmen, The Centre for Legal and Civic Initiatives, etc. Also, there are a few cases of inviting members of the academia, yet these have not turned into a routine practice.<sup>44</sup>

The journalists are those that usually attend the activities of the Assembly and in general their attitude towards its work is positive.

The Assembly has been open to opinions of the public on draft laws. This is a process that has been related to the activity of the international community in the country, while Albanian interest groups have not indicated a

<sup>41</sup> *Ibid.*

<sup>42</sup> [http://www.osce.org/publications/pia/2009/01/13546\\_12\\_en.pdf](http://www.osce.org/publications/pia/2009/01/13546_12_en.pdf)

<sup>43</sup> "No legislative documents should be kept secret: this must be a basic principle of the reformed policy on access to documents". The transparency of legislative documents was again discussed in the EU Parliament in 2009 and more transparency of access to documents was required, Justice and home affairs - 11.03.2009

<sup>44</sup> Tirana Law School, Public Law Department has received such invitations sporadically and participated in the commission discussions in a few cases.

high level of participation in these processes. This is also due to the fact that there is no procedure of open request to the public to send opinions on draft laws.<sup>45</sup>

Public participation means also participation in the parliament sessions. Any person who wishes so, may attend after obtaining a permission to enter. There is a form to be filled in at least an hour before the session starts. This rule has made participation difficult in a few cases (due to emergencies or lack of proper coordination). Yet, whenever the procedure was respected, access was allowed.

These persons must stay in the gallery, a place specifically set for the public. The capacity of the gallery is 240 people. 66 places are reserved for high state officials and diplomatic bodies. Citizens or groups that wish to attend Parliament discussions must receive permission at least an hour before the session starts. Information on how to receive permission can be found on the Internet-site of the Assembly. However, even though it is said that only a registration after identification is required, attendance also depends on an informal approval from the General Secretary, according to the experience of the Centre for Parliamentary Studies.<sup>46</sup>

2. On a daily basis the *media* are present at the work of the Assembly. Both the press and the electronic media are free to attend the work of the Assembly. Art. 108 – Albanian TVSH broadcasting – provides that the Albanian TV, the public electronic media in Albania, broadcasts entirely several of the Assembly activities:

- Council of Ministers composition and programme approval;
- Questions sessions;

- Weekly question-answer sessions;
- Interpellances;
- Urgent interpellances;
- Motions: motion of confidence and motion of no confidence;
- Reports from the investigatory committees.

The same article provides that upon approval by the Assembly Conference of Chairs, the Albanian TV may broadcast during the peak hours other plenary sessions as well.

Another provision – Art. 105 “Open access to the activity of the Assembly”, guarantees that the access to Assembly work is open. Media representatives, broadcasting the work of the Assembly, are accredited, upon a procedure approved by the Bureau of the Assembly. A list with media representatives entitled to enter the Assembly is prepared and they are allowed access even without prior notification. Thus, their access to the Assembly works is easy. That is the reason why the private electronic and written media do broadcast the work of the Assembly on a daily basis.

There is no specific place for the representatives of the media, which often hinders or makes their work more difficult. Space impedes the work of media as well as the work of MPs, especially when the presence of the latter is high. RTSH journalists do have a special place in two balconies to be used by them only. This is due to the fact that this TV, the national public one, is obliged by law to cover the Parliament activities and broadcast these activities as well.

The Steering Council of RTSH has approved a decision “On the Criteria of Broadcasting in Radio and Television the works of the Parliament”. It is specified in it that in the News program information on the Parliament activity must be broadcast. Alternative opinions must also be presented. A special program “Today in the Parliament” is also envisaged by this decision. Majority and opposition opinions must be transmitted in equal time

<sup>45</sup> Such a procedure is not part of the Albanian Administrative Procedure Code either. The example of the USA Administrative Procedure Code might be a very good model in this respect to be followed.

<sup>46</sup> Source of info CPS.

in such programs. This program has not yet become fully functional.

On the basis of the interviews done for the purposes of this report most of the NGOs indicated that they are most interested in:

- Plenary sessions;
- Steering committee's debates;
- Individual MPs' votes;
- acts and documents issued by the Parliament.

The answers depend on the topics and the project of the respective NGOs and on the focus of their work. Generally, acts and documents of the Assembly are important as these are the decisions of the Parliament which affect people's life.

Interviews also indicate other interests, including:

- The matching of the electoral platforms and laws initiated and voted in the Parliament;
- MPs' compliance with the Parliamentary regulations;
- Law analysis and its impact on the public;
- Tracking MPs' progressive change on their declared accumulated wealth.

These require more demanding elaboration of the data in the Parliament, which the latter does not offer. Such elaborated interests serve as a pressure to the Parliament work at the same time.

3. The Assembly has a *website*: <http://www.parlament.al/>, where important information can be found. The page is detailed. It includes not only general information about the activities of the Assembly, its composition and structure, the legal norms regulating its organization and functioning, but also *procès-verbal* of the meetings, voting process of MPs, as well as voting during the plenary sessions, information on attending the plenary sessions, etc. The page is updated on a regular basis: *procès-verbal* of the meetings are uploaded once finalized.

4. *Publication of documents*: the Assembly has a library where documents of the institutions are prepared for publication. A summary of all the discussions in the Plenary Session is published annually. Also, studies of different types are published. The latter include: *Ligjvënësit Shqiptarë: 1920-2005*. Tiranë, 2005; *Manual: Legjislatura XVI:2001-2005*. Tiranë, 2004; *Gratë në Kuvend*. Tiranë, 2003; "*Legjislatura XVII (2005-2009) - Manual*" Tiranë, 2007, etc.<sup>47</sup>

5. With the support of OSCE Presence in Albania the Assembly has an *internal audiovisual network*. This helps for the faster recording and transmission of the information to the public.

- *Difficulties and impediments for the NGOs and the media to receive information or to attend Parliament meetings.*

As already mentioned, almost 78% of the interviewed NGOs think that the Parliament has an average or low level of transparency (*Graph 1*). They do mention a few impediments to the work of the Parliament. Such impediments according to the answers include:

- Parliament's low responsiveness to officially addressed requests;
- Difficulties in receiving a "monitoring status" for an NGO;
- The fact that many activities occur at the same time: it is difficult for the media and the NGOs to monitor them;
- Lack of flow of information regarding Parliament's general activities (newsletters, bulletins, etc);
- Lack of information about specific topics (e.g. reports of independent institutions are not published);
- Difficulty to attend Standing committees' meetings.

<sup>47</sup> See <http://www.parlament.al/>

### ***Conclusions and Recommendations***

The analysis of the legal framework on transparency of the Parliament indicates that a reasonable level of transparency is guaranteed. It should be noted that all the discussed legal changes in the work of the Parliament have occurred within the last two decades, since before 1990 the work of this institution was 'transparent' only whenever this was considered justified on political or ideological grounds.

Today the legal rules guarantee direct democracy, including referendum and legal initiative of 20,000 voters. Also, other specific rules on the right to information about official documents, as well as the Regulation of Parliament indicate that the relevant regulations and rules are adopted. However, the NGOs have raised the issue that there are difficulties with filing requests to receive official documents.

Apart from the generally good legislative rules on transparency, the practices regarding the transparency and accountability of parliamentary work, as indicated by the media and the representatives of the NGOs, are problematic in certain cases. This is due to the non-observance of the existing rules. Interviewees indicate cases of difficulties even in receiving the permission to attend a session. Artificial and arbitrary requests on the part of Parliament damage the transparency guaranteed by the legal rules.

The study was mainly focused on the parliamentary documents. However, it is important to understand that other aspects related to MPs, such as declaration of assets or salary, remuneration, benefits, observance of ethical rules/requirements by the MPs and reports on ethical aspects are important elements to be considered when analysing transparency as well.

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**ANEX 1: List of NGOs, interviewees, and media*****List of organizations (NGOs/CSOs)***

1. Albanian Helsinki Committee
2. Legal Clinique for Minors
3. Centre Children Today
4. EMA
5. MJAFT Movement
6. Institute for Democracy and Mediation
7. Institute for Public Relations
8. Centre for Economic Studies
9. Centre for Parliamentary Studies

***List of interviewees***

1. Holta Kotherja, Interview made on 9<sup>th</sup> July, 2009
2. Zef Preci, *Interview* made on 3<sup>rd</sup> September, 2009.

***List of Electronic and Print Media***

1. Klan
2. TVSH
3. TOP Channel
4. News 24
5. Gazeta Shqiptare



## Open Parliaments: The Case of Bulgaria

*Ruzha Smilova, Daniel Smilov*

The events around the fall of the communist regimes in Eastern Europe rendered Parliament the most important institution of the transition. Practically the bulk of the symbolic political decisions were taken in or by the representative body (in the most radical cases they were taken in front of it).

The direct coverage of many of the sittings by the mass media turned the assembly into a public forum of the democratization processes. If we are allowed to make the parallel – the 1989 events had the same effect on parliamentarism in Eastern Europe, as the emergence of the mass political parties – on parliamentarism in Western Europe in the early years of the 20<sup>th</sup> century. The immediate result was the dramatic increase of the political weight of the institution. Against these high expectations at the outset of the transition period, a time has come to evaluate what this main institution of representative democracy has delivered in terms of openness, democratic accountability and encouragement of civic participation.

### ***The National Assembly in the Bulgarian Constitutional Model***

The role of the Parliament is determined by the new Bulgarian Constitution, adopted on July 12 1991 after heated debates in the Great National Assembly – the constituent representative organ, supposed to establish the legal basis of the transition from authoritarian rule to a democratic system of government. The Bulgarian Socialist Party (BSP), successor of the former communist party, had an absolute majority in it and an opportunity to dominate the Constitution-making

process.<sup>48</sup> It was decided that the Constitution was not to be ratified at a referendum, which could cast doubts on the “legitimacy” of the document and on its reliability as a foundation of the “rule of law.”<sup>49</sup> Partly due to the heavy amendment procedure, however, this did not prove to be the most important shortcoming of the text – it was rather its incapability to outline a stable governmental system ensuring a functioning balance between the chamber and the cabinet. In this respect Bulgaria is an interesting and illustrative example of the problem concerning strengthening the government. Due to a complex mixture of traditionalism and political inertia, the Bulgarian founding fathers laid the grounds for a system of separation of powers with a strong emphasis on the assembly. The meeting point of these two lines of argumentation was the “Rousseauistic” logic of interpretation, which otherwise the traditional constitutional provisions have received in the Bulgarian basic law.

The first standard doctrine affected by this line of reasoning was the “parliamentarian democracy.” 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 the sovereignty in the State: “All State power comes 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,

<sup>48</sup> For an account of the constitution-making activity of the Grand National Assembly, see *East European Constitutional Review*, 1/1 1992, p.4.

<sup>49</sup> Ackerman Bruce, *The Future of the Liberal Revolution*, New Heaven, 1992.



the Bulgarian electoral law settled firmly on a pure proportional model with a four per cent rationalizing threshold.<sup>50</sup>

The privileged position of the assembly in the Bulgarian Constitutional model is further consolidated by another standard Constitutional doctrine – the separation of powers, which in the Bulgarian Constitution can be found in Art. 8. The generally Rousseauistic rationale behind the Constitutional framework, however, did not produce conditions favorable for outright or repeated violations of individual human rights or any other forms of seriously oppressive majoritarianism. It did have, though, one negative consequence in the first five years of the Bulgarian transition – the concentration of the bulk of powers in the assembly led to distorted legislative-executive relations and to a succession of week cabinets, both in terms of durability and policy making. Yet the privileged position of this body was obvious. Thus legislation was not the only field where the assembly was supposed to be the main actor – its functions expanded to an untypical extent for most of the parliamentary regimes. For example, it practically attained (and still has) control over the electronic media (through a standing committee),<sup>51</sup> it had (yet with the adoption in 2009 of “Law on Direct Participation of Citizens in Central Government and Local Self-government”<sup>52</sup> it lost it – 500 000 citizens can make it *obligatory* for the Parliament to call a referendum) a monopoly to initiate a referendum (Art. 84.5 – strengthening the relations between the “sovereign will” and its only true “interpreter”), and it had and has a monopoly over the right to declare martial law (Art. 84. 12).<sup>53</sup> All these ar-

rangements create the impression that the regime is supposed to operate under majoritarian assembly rule, however, it has functioned in a much more nuanced fashion than a real majoritarianism would imply. Parliamentary government in Bulgaria follows the ideas for strengthening the cabinet and the executive, known under the heading of “rationalized parliamentarism.” The paradigmatic example of such a technique is the German “constructive vote of no-confidence”, which is designed to prevent parliamentary crises by combining the voting of a chancellor out of office with the appointment of a successor.

Most of the techniques are designed to create durable and stable legislative majorities which can form and support a government, through the introduction of rules in areas which have been discretionary before that. “Rationalization” offers very strong institutional incentives for the creation of stable parliamentary majorities and parties in general, even in political contexts where there are no established, programmatic political parties and democratic traditions. At the same time rationalized parliamentarism may create “empty shell” parties, waiting and searching for ideological substance. The comfortable position of the legislative majority and the cabinet, provided by the rigid empty shell of “rationalized parliamentarism”, creates the feeling of institutional omnipotence in the ruling party or coalition of parties. This gradually results in an increasing alienation of the party from the “political reality”, expressed in the political attitudes of the citizens.

### ***The Parliament and the Process of European Integration***

It is often argued that the process of European integration strengthens the government vis-à-vis the Parliament. This hypothesis is, to a large extent, inapplicable in Bulgarian context, be-

<sup>50</sup> 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.

<sup>51</sup> See Kolarova Romyana, Dimitrov Dimitr, *Media Wars in Sofia*, EECR 1993 2/3.

<sup>52</sup> *State Gazette* No. 44/June 12, 2009.

<sup>53</sup> See Elster Jon, *On Majoritarianism and Rights*, EECR, fall 1992, “The system with fewest checks and balances is the Bulgarian one” (among the countries of Eastern Europe), p. 23

cause the Constitutional design anyhow provides for executive domination over the legislative body, as it was already explained.

It is clear from this brief introduction that in the specific Constitutional model of Bulgaria not the Parliament controls the government but vice versa. Of course, possibilities for parliamentary questions, interpellations, votes of no confidence, investigative commissions, etc. do exist and the opposition often resorts to them. Every Friday, Bulgarian ministers report to the Parliament and the proceedings are televised. Quite regularly the opposition uses its right to initiate a vote of no confidence, the debates on which are also televised. None of these measures could seriously threaten the stability of the government and its control over the legislative agenda of the Parliament in routine situations. In nineteen years, no vote of no confidence has succeeded to oust a government. There have been pre-term elections after the resignation of governments and one extraordinary case in which a government fell after a vote of confidence procedure initiated by the Prime Minister (in 1992).

EU integration has not changed this division of power between the legislative and the executive. The adoption of the *acquis* was indeed a Herculean process and no one could expect Bulgarian Parliament to have carefully scrutinized each and every act. Yet the main agent of the legislative-drafting process in Bulgaria is the government: parliamentary groups bring draft laws only when they want to side-step the cumbersome process of coordination and consultation in the preparation of drafts within the executive. European integration did not change much this practice: the dominance of the government was simply confirmed. But it was already deeply entrenched in parliamentary life.

Yet there is one further, very important consideration, which needs to be taken into account at the outset of our analysis. A pro-

cess of undermining of the trust of the people in the representative structures of democracy is under way, related to the rise of political populism (a movement which promises direct action and results to the public, without requiring from them loyalty to coherent party platforms, tedious and ongoing political participation, and sacrifices in the name of the common good). And this process may have indeed been influenced by the EU accession.

### ***Public Attitudes vis-a-vis the 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 paradoxically, however, the 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 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 to the Parliament is not just negative but persistently critical. In April 2007 the Parliament scored 76% distrust.<sup>54</sup>

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

<sup>54</sup> Attitude towards Parliament, Source: Alpha Research Ltd., Nation-wide representative survey, N=1000, St. error: +/-3.2%

Parliament scored the lowest turnout in general elections until present – 28%. These are disquieting facts. Disillusionment with democratic politics may have many sources. “Closed” and unaccountable to society and the citizens Parliament is certainly one of them.

In the following text we will first look for an answer at the Constitutional and legal framework level – does it provide sufficient guarantees for “open” Parliament, 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 of particular interest for the purposes of this report are the right to information and the freedom of the press.

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

The following limits to this freedom are set by the Founding fathers: “(2) An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the Constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours.” (Art. 40. 2).

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”.

Despite the fact that the right to information is constitutionally protected, the text does not explicitly mention any body that is duty bound to ensure the access of the citizens to this information. Surprisingly, in the most authoritative comments on the Constitution, written by the leading constitutional law specialists of the country in 1999,<sup>55</sup> this article of the text is not separately discussed, even though the Constitutional Court already in 1996 was asked to provide authoritative interpretation of this and of other two articles (Art. 39 and 40) guaranteeing the right to freedom of opinion. The Court was asked for interpretation on an initiative by the President of the Republic, the prominent Bulgarian dissident, the philosopher Zhelyu Zhelev. The Decision of the Bulgarian constitutional court (BCC)<sup>56</sup> addressed precisely this issue, stating that „the right to seek and obtain information includes the duty of the State institutions to provide access to significant for the public interest information. The content of this duty should be legislatively determined. It includes the duty of State bodies to publish official information, as well as the duty to provide access to the sources of information.”<sup>57</sup> In addition, BCC

<sup>55</sup> Balamezov, Kirov, Tanchev, Karagyozova-Finkova, Fereva, Nacheva and Stoychev (1999) *Konstitutzija na Republika Bulgariya. Komentar*, Ciela Publishing house, Sofia.

<sup>56</sup> Decision of the BCC No. 7 from June 4/1996, on Constitutional case No. 1/1996

<sup>57</sup> Ibidem.

confirmed the right of each citizen to seek and receive information without the need to prove he/she has a legal interest in obtaining it. It also confirmed the international standard that the right to information is the leading principle, while the limits on this right are the exceptions to this right, to be introduced only in order to defend other rights and interests.

It is important to note that this decision of BCC was also aimed at countering the majoritarian impetus of Parliament at the time, which via its standing committee on the media intrusively interfered in its independent work. In fact, the initiative of the President was prompted by the active campaign of several NGOs and associations of Bulgarian journalists. As a result of the same decision of the Court, a new Law on the Radio and the Television was passed by the National Assembly in 1998, where the independence of the electronic mass media from political and economic pressure is guaranteed (Art. 8), they are granted the right to receive information from the State institutions (Art. 13), their freedom from censorship (Art. 9) is protected, etc. The creation of a special regulatory body – A Council on the Electronic Media – is envisaged in this law. The task of this body is to guarantee that this law is observed by the electronic media. The majority (5 out of 9) of the members of this Committee are appointed by the Parliament.

Understandably, there were complaints that this provision of the Law ensures the control of the National Assembly over the media, even though Art. 20. 2 declares that “in its activity, the Council is guided by public interests, defending the freedom and pluralism of speech and information and the independence of the radio and the television.”

### ***Right to Address Institutions***

A further fundamental human and civil right, characterizing the relation individual – the

state, is guaranteed by Art. 45 of the Bulgarian constitution. “All citizens shall have the right to lodge complaints, proposals and petitions with the 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 was adopted to provide the necessary regulation for the exercise of this right. Rather, the socialist Law on the 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 relic law has been repealed altogether in 2006 by the new Administrative Process Code. Its promulgation is an important step forward in developing 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.

Going a step back, let us stress that, even though the BCC decision from 1996 was extremely important as an authoritative interpretation of the Constitution and of the protected rights of opinion and access to information, it could not by itself produce any real change in the institutional practices of the country. It was not sufficiently popularized in the media, at least not sufficiently popularized to neutralize the natural effects of lack of interest in the complex matters settled by the BCC, especially against the background of the severe economic and political crisis in the country in 1996/ 1997.

### ***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 coalition<sup>58</sup>, other organizations of journalists, lawyers and others, started a strong advocacy campaign for drafting and adopting of a Law on Freedom of Information. As a result of the pressure exerted by civil society, the Law on the 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, conferences in the civil society,<sup>59</sup> were taken into account. Nevertheless, although not perfect, the law provided a procedure to be followed by citizens in exercising their constitutionally guaranteed rights.

Public information is defined as “all information, related to the public life in the Republic of Bulgaria, which allows citizens to form their own opinion on the activity of the obligated by this law bodies” (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 definition of personal information, however, an issue that is separately regulated by the Law on Personal Data Protection, in force from January 2002<sup>60</sup>. 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 lawful inter-

est 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 and obtaining it, defense of personal information and guaranteeing the security of the State and society” (Art. 6.1 of the Law). The access to 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 2002<sup>61</sup>) 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, lead 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 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 the access to information, etc.<sup>62</sup>

The Law on access to public information also determined the duties of the State bodies and the local administration to release public

<sup>58</sup> CLS has sent to all of them the standardized questionnaire, developed within the framework of this project, and they have filled it in, providing valuable information for the purposes of this report.

<sup>59</sup> 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](http://www.aip-bg.org/pdf/aip_10years.pdf).

<sup>60</sup> State Gazette, No. 1, January 4, 2002.

<sup>61</sup> State Gazette, No. 45, April 30, 2002.

<sup>62</sup> 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](http://www.aip-bg.org/pdf/stanovishte_pdi_180608.pdf)).



information that is or could be of public interest, can remove a threat to the life, the health or the safety of the citizens and their belongings, and rectifies a misinformation that affects significant public interests. In all those cases, the relevant authority has to release it not on demand, but has to publish it on its own initiative and to actively ensure it is available to the public (Art. 14. 1 of the Law). The access to such information is open (Art. 17) and free of charge (Art. 20), though some minimal fees, not exceeding the material costs for providing the requested information, can be levied.

The Law also establishes clear administrative procedures for seeking information and sets clear deadlines for the State and local government institutions to provide it – as a rule it is 14 days, though extension is possible for the purposes of obtaining permission for use of information from affected third parties. These institutions are also obliged to set a separate department, or at least mandate an official to deal with access to public information in each of the public institutions, duty bound by this law. In addition, the Minister of State Administration and the Administrative Reform is under a duty to annually publish a summary report on the administrative measures taken and the extent to which the State institutions comply with this law.

Two articles in the law deal with the access of citizens to official information of the mass media. These are aimed to ensure that citizens can form their own opinion, avoiding (attempts of) manipulation and misinformation by the mass media. These provisions are a unique feature of the Bulgarian law. A further strength of the law is that it also sets clear administrative and penal procedures to be taken against administrative bodies failing to provide the citizens access to public information.

Despite these significant achievements, the law had some drawbacks as well – the grounds for the limits on the access to information –

such as national security and protection of individuals, the State and other official secrets were not clearly defined in this law, and their definition and legal regulations were left scattered in diverse legislative acts. This hinders the attempts of citizens to obtain information, since many institutions follow the secretive traditions inherited from the authoritarian State and successfully hide behind the back of such regulations (a much easier task in the case they are numerous and scattered in diverse acts).

The response of the civil society watch dogs such as AIP, accordingly, is to provide legal advice and help citizens find their way through the maze of administrative and legal procedures of obtaining information, as well as to launch lawsuits in cases of illegal denial of access. This and other civil society organizations were thus vigilant after the adoption of the law, providing monitoring for its implementation by the administration and the Courts. One of the measures of AIP in this respect is publishing annual reports on the State of the Access to Information in the country, from 2000 onwards. AIP and its partner organizations are not only monitoring the implementation of the law, providing legal advice and assistance to potential litigants, but are also constantly monitoring the legislative activity related to the right to information, and are launching strong public campaigns against negative developments in the field. Thus in 2007 amendments to the law were discussed in the Parliament, hastily initiated by 3 MPs<sup>63</sup> under the guise of incorporating in Bulgarian legislation the EU Directive 2003/98/EU on the re-use of public sector information. After a strong pressure from civil society groups, the most debilitating of the proposed amendments to the law were not

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<sup>63</sup> An investigation by a leading journalist in the prestigious analytical weekly 'Kapital' revealed, that the amendments were initiated by the Cabinet, but in order to speed up the procedure they were filed with the Parliament by the 3 MPs.

accepted, while some positive improvements (based on the analysis of the practice of law's implementation) were introduced.

In contrast to the general trend in 2007 of attempts to curtail the citizens' right to access of information, 2008 was in general characterized by positive developments. In March 2008 the Parliamentary standing committee on corruption initiated a consultation with the NGOs and the members of civil society with the aim of introducing amendments to the Law on Access to Public Information. One of the aims of the initiative was to introduce provisions into the Law that would regulate the access to information in the cases of commercial secrets. In July 2008 new positive amendments (refining the regulations on commercial secret limitations to access to public information, extending the scope of the duty of the institutions to actively publish information, guaranteeing the availability of the public information on the internet, etc.) were voted in the Committee on civil society and media of the Parliament. On Dec. 5<sup>th</sup> 2008 the new amendments to the Law on Access to Information entered into force.<sup>64</sup> They guaranteed:

- Extension of the list of public bodies and officials, obliged to provide access to PI. This list includes (1) the local authorities, (2) all public and private beneficiaries of EU funds, projects and programs, (3) all commercial enterprises funded or controlled by the state.,
- An obligation to publish the public information online.,
- A narrow interpretation of 'commercial secret' as a ground for withdrawing access to public information to the cases of unfair competition only. This is coupled with an obligation of the body refusing such access to explicitly demonstrate the applicability of this condition to the concrete case.,

- Introduction of a rule, according to which the limitations of the right of access to public information should not apply in the cases of *outweighing public interest*. An obligation to check for the existence of 'outweighing public interest' whenever denial of access to public information is considered on grounds of 'commercial secrets', on grounds of infringement of interests of third parties without their consent, on grounds of access to personal data, with regards to current negotiations or already signed contracts, in the process of elaboration of new laws and ordinances, etc. The importance of this amendment consists in that even when access to public information can rightly be denied, this could only be done once no outweighing public interest is established. Thus the mere 'commercial secret' clause in a contract, for example, is never a sufficient ground for denying such access – no outweighing public interest should also be established. Such interests are: prevention of corruption and abuse of power, increased transparency and accountability in the negotiation and the legislative amendment and adoption process, etc.,
- Partial access to the documents, containing 'protected information', is now guaranteed. Prior to the 2008 amendments, such partial access to documents was in the discretion of the respective body, which often did not allow access to the parts of the documents, not covered by the limitations.

To conclude: the legislation on the access to public information has in general 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.

<sup>64</sup> State Gazette, 104/ 2008.



### ***Parliamentary Rules on Transparency and Openness***

How does the Parliament itself respect the constitutionally protected right of access to public information?

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,"<sup>65</sup> and that "Voting shall be personal and open, except when the Constitution requires or the National Assembly resolves on a secret ballot."<sup>66</sup> The Constitution mandates that "The National Assembly shall be organized and shall act in accordance with the Constitution and its own internal rules."<sup>67</sup> The *Rules of organization and procedure of the national assembly* (of the 40<sup>th</sup> 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 by 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.<sup>68</sup>

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 the Bulgarian National television.

In the Rules of the new 41<sup>st</sup> National Assembly, this provision of access to information on the work of the Bulgarian Parlia-

ment is extended to include *live broadcasts* of the plenary sitting on the web-site.<sup>69</sup> Yet to this moment, no such live broadcasts take place. A live broadcast of the sittings of the Parliament on the National radio and the National television may also be decided by the 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 info concerning the number of licenses (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.<sup>70</sup>

Shorthand (verbatim) minutes from the plenary sittings are drawn up, and they are to be published within 7 days on the Parliament's website.<sup>71</sup> This last requirement was included in the Rules only by the 40<sup>th</sup> 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 rare the case that these minutes are published within 7 days on the site, though in the last session of Parliament there are 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 at-

<sup>65</sup> *Ibidem*, Art. 82.

<sup>66</sup> Art. 81. 3.

<sup>67</sup> Bulgarian Constitution, Art. 73.

<sup>68</sup> Rules of Organization and Procedure of the National Assembly, State Gazette No. 69/23. 08. 2005, Art. 37. 1, 2, 4, 5.

<sup>69</sup> Art 41 (1), Rules of Organization and Procedure of the National Assembly, State Gazette 58/July 27, 2009

<sup>70</sup> <http://parliament.bg/?page=press&lng=bg&id=3>

<sup>71</sup> *Ibidem*, Art. 38. 1, 2, 3, 4, 5.

tend them in compliance with the admission arrangements to the Parliament building.<sup>72</sup> The committees themselves may decide that some of their sessions are held behind closed doors<sup>73</sup>. Three (in the current Parliament – two)<sup>74</sup> of them – the Foreign Policy Committee, the Defense Committee and the Security and Public Order one (and their respective sub-committees) hold closed sessions for the public – though those committees may decide some of their sessions to be public.<sup>75</sup> The 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.<sup>76</sup> 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 are 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 info on the website is only included in 2007, and the proposal by MPs to include this text (which was triggered by advocacy campaign by NGOs) already in the beginning

of the work of the 40<sup>th</sup> National Assembly in 2005 was voted negatively.<sup>77</sup> The records of the closed meetings of the committees are archived and access to them is regulated in compliance with the procedures of the Classified Information Protection Act.<sup>78</sup>

Surprisingly, nowhere in the Rules is 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 obviously should find out for oneself.

One finds information about the procedure for visiting the two libraries of the Parliament (there are two buildings of the National Assembly, with two libraries), but nowhere is 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 the Parliament.<sup>79</sup>

The procedures for the 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 41<sup>st</sup> National Assembly adopted in July 2009.

<sup>72</sup> Rules of Organization and Procedure of the National Assembly, Art. 25. 1. State Gazette No 69/23. 08. 2005.

<sup>73</sup> *Ibidem* Art. 25. 3.

<sup>74</sup> In the 41<sup>st</sup> 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.

<sup>75</sup> *Ibidem* Art. 25. 4

<sup>76</sup> Art. 29. 2,3

<sup>77</sup> 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>

<sup>78</sup> Art. 30. 1,2,3.

<sup>79</sup> In order to check whether it is possible to receive such information, we asked this question using the on-line form, provided by the press-centre of the National Assembly. Indeed, the response we 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 we interviewed on this matter) have little idea about this opportunity.

One used to find information on the Parliament's web-site concerning citizens' access to plenary sittings. However, this info is not available on the site of the current National Assembly. The procedure, however, is not changed, though info about it can be obtained only by sending a mail or calling the PR office of the Parliament. The procedure is: 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 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, though the Rules, as mentioned above, allow such access. Again, one needs to already know 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.<sup>80</sup>

The Rules allowed the participation of civic organizations and NGOs in the work of the Parliament (at the level of the reporting standing committee) with written statements on the discussed legislative act. Yet those rules required 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.<sup>81</sup> The general practice is: access to the meetings of the Reporting standing committees is open just to a handful of more prominent NGOs, active in the respective sphere, with connections to particular MPs – members of the respective committees. Though 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 there are no strict rules concerning the contacts of the citizens with the MPs, greatly hinder 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 the Bulgarian Parliament in terms of its openness to civil society.

The outgoing 40<sup>th</sup> 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".<sup>82</sup> This provision has been also included in the new Rules of Organization and Procedure.<sup>83</sup> However, no additional administrative rules have still been

<sup>81</sup> Just one example: a lawyer – an activist for the Balkan Assist, a Bulgarian NGO involved in campaigning for a Law on direct citizen participation in government and on referenda, claimed regularly to not receive timely info 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.

<sup>82</sup> Art. 25 (3) of the amended Rules.

<sup>83</sup> Art. 28 (3) of the new Rules.

<sup>80</sup> See <http://www.parliament.bg/?page=press&lng=bg&id=2>

adopted. 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 following week's meetings of the standing committees and the plenary sittings on the website, yet these are often posted late. In addition, some of the standing committees do not publish at all the agenda for their meetings. 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, though 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* for the envisaged changes in the legislation. This is particularly important, since the public often has little direct information 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 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, though 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 opportunity been used by the MPs.<sup>84</sup> The open vote may be taken by

<sup>84</sup> The Parliamentary groups of the Bulgarian Socialist Party and the Movement for Rights and Freedoms tried to use this opportunity 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 Cabinet were voted openly

the computerized voting system; by showing of hands; by roll-call, by calling the names of 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.<sup>85</sup> These are available to the public in the library of the Parliament. Yet the access of the public to the library is limited by the lack of info 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.

In the course of the research on this report, we have conducted a series of interviews with stakeholders. One of the main lines of inquiry concerned their experience in accessing information from/about Parliament and the MPs. All the stakeholders mentioned the web site as the main source of such info, followed by the mass media (half of them), personal direct contacts with MPs and the standing committees' experts (around 45%), the press centre of the Parliament, etc.

The respondents were in general critical of the *speed* with which info is updated on the web-site of the Parliament - delayed posting of working agenda, minutes and draft laws. This was stressed as the major problem with the openness of the Parliament by the representatives of the mass media specifically. Many of

<sup>85</sup> *Ibidem* Art. 60. 2.

them admitted that, were they to use the site or the official channels of the PR department and the press center of the Parliament for accessing the necessary for their daily work information, they would be kicked out of work soon because of constant delays and inadequate information. As a rule, journalists use informal channels for gaining access to information, including direct contacts with MPs and experts of the Parliament. Another periodic complaint by the journalists is against the special rules of entry – the accreditation to Parliament. According to our respondents, these rules are often used as an excuse to limit their free movement among the MPs, their access to even the open standing committees' meetings, etc.

Another serious limitation of the access to information is that the *volume of info* posted on the web-site of Parliament is very limited: the working agendas are not posted for all the standing committees, no shorthand minutes of the meeting in all the standing committees are drawn up, even less – posted, not all draft laws are posted, etc.

Access to information using the official procedure according to the Law on Access to Public Info is used by our respondents, yet it is deemed cumbersome, with no settled internal rules and procedures for the implementation of the Law in the work of the Parliament itself. In general, the bad secretive practices and the slow, formalistic and unhelpful bureaucracy were again among the main impediments for gaining access to the Parliament work, according to our respondents.

Most importantly, the *amendments to the draft laws, introduced between their first and second reading in the plenary sittings* are not published at all, nor are they available on request. The shorthand minutes of the plenary sittings are prepared as a rule within 7 days after the sitting, but often this process takes more time. Easy and timely access to this data is critically important for ensuring the open-

ness and transparency, and for encouraging the civic involvement in the legislative process. The archives of all aspects of the legislative activity of the Parliament are also not available on the web-site.

Another major flow of the Parliamentary practice and its openness concerns *the print outs of the nominal votes* from the plenary sittings. As already mentioned, they are in principle available in print form in the Parliament Library, yet access to them is very difficult, if not impossible. It is a norm of contemporary parliamentarianism, that public access to this info is guaranteed. In contemporary terms this clearly means e-access to this info. Whenever the issue of e-access to the vote print-outs is at all raised, the argument of the parliamentary majority for not endorsing typically is – “limited administrative capacity”. Though this may have sounded more plausible in pre-EU accession Bulgaria, in 2009 such arguments, if at all voiced, are utterly misplaced.

What is more startling is that in discussing the new Rules in July 2009, no single voice was raised to introduce this requirement. The majority of the debates were devoted to the issue of whether agents of the Communist secret services should be allowed to hold leading positions in the new Parliament, leaving un-touched many important procedural rules that could guarantee more effective accountability and openness of Parliament.

The out-going 40<sup>th</sup> National Assembly at least considered the issue on e-access to nominal votes: it explicitly rejected a draft amendment that would require the publication of all print-outs of nominal voting (by person/by parliamentary group) within 7 days of the voting.<sup>86</sup> Without an easy access to this info, a basic precondition of democratic accountability is lacking.

<sup>86</sup> This draft amendment was introduced by two independent MPs. It was rejected (most MPs abstained) already at its first reading on March 6<sup>th</sup> 2009.



It is regrettable, that the *new parliamentary majority* has till now failed to remedy the many shortcomings of the Parliamentary Rules in adopting the new Rules for the 41<sup>st</sup> National Assembly. Despite stating the quality legislative process and the cooperation with the 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 monthly published on the web-site, serious monetary sanctions are introduced – and more importantly, it seems both measures are implemented. The further changes concerned the introduction of clear rules against the practices of so-called ‘political nomads’, which rules should prevent the practices of migrations between parliamentary groups – the formation of new political groups and the ‘towing’ of the existing ones. Apart from the above-mentioned new provisions – the live e-broadcast of plenary sittings (which is not yet implemented) and the more open access to reporting standing committees for the representatives of civic organizations on their own initiative (which rule was introduced already by the out-going former Parliament), nothing new pertaining to opening the parliament to the public has been introduced. Though GERB have promised to open the workings of the Cabinet to the public (by publishing all governmental documents not containing classified info on the respective governmental e-sites), it is too early to tell whether they will keep their promise. In the case of Parliament, however, there are clear indications that the promise of openness and cooperation with the civil society is unlikely to be kept. A major opportunity

was missed – the adoption of the new Rules of Organization and Procedure. The parliamentary practice shows that such measures are adopted either immediately after forming the new Parliament, or right before its dissolution. The prospects of recent improvements in these respects thus seem bleak.

### ***Civic Participation in the Legislative Process***

Civic participation in the legislative process is limited by the Bulgarian Constitution. Even though it declares that the people are the source of all State power (which they can exercise directly and through the bodies, set in the fundamental law), it nevertheless gives a right to legislative initiative only to each of the MPs and the Cabinet, and not to any number of citizens. This fact determines the character of the advocacy campaigns for changes in the legislation, followed by civil society groups in the country, which focus their activities on work with the MPs and the Cabinet. A lot of advocacy work is done at the level of experts of the ministries, and it is typically done at the time when a certain legislative act is prepared and/or coordinated between the different institutions.

In a similar vein, according to the Constitution’s Art. 84 (5), it is the National Assembly alone which decides to hold national referendums (where some legislative issues can be popularly voted upon). According to the enacted in 1996 Law on Consulting the People,<sup>87</sup> holding referendum could be initiated by no less than a quarter of the MPs, by the President or by the Cabinet. Thus, a referendum cannot be called on a popular initiative, nor are its results valid if less than half of the eligible voters have participated. Not surprisingly, there have been no national referenda in

<sup>87</sup> State Gazette No. 100/Nov. 22, 1996.

Bulgaria, though in principle and in the books such possibility exists. There have been a few successful local referenda in Bulgaria, the one in the municipality village of Novi Han in 2008 being the most prominent. There have been several failed local referenda, because of lower than 50% voters turnout. In addition, the requirements that ¼ of the local citizens should demand it and it should also be approved by the local municipal council make it unlikely that a local referendum would succeed in a bigger municipality. No referendum was held on the EU accession either.

There are, in sum, serious impediments to bringing Art.1 (2) of the Constitution to life – the entire power of the State shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution.”

An attempt to remedy this situation was made by the draft-law on referenda, which was approved on a first reading in 2002 by the Parliament. It has taken two years for the Law to reach its second reading, where only eight of its articles were read before sending it back to the Reporting standing committee for further adjustments and amendments. It did not make it to the plenary session before the end of the Parliamentary term.

An entirely new draft-law was firstly read in July 2008 by the 40<sup>th</sup> National Assembly – “The Law on Direct Participation of Citizens in Government.”<sup>88</sup> According to this draft, 150,000 citizens had a right to demand a National referendum. Holding the referendum would become *mandatory* – i.e. the National Assembly would be obliged to call a National referendum, were some 350,000 voters to sign a petition demanding it. In addition, 1/10 of the MPs and 1/10 of all municipal councils in the country would also have this right to an

initiative. There was no requirement of quorum for the referendum to be valid. A decision taken by a referendum would also not need further approval by the Parliament to take effect, and does not need to meet the threshold of 50% voter turnout in order to be valid.

In sum, if the new draft-law were to be adopted in these broad outlines (and there seemed to be a consensus in the society and among the ruling elite of the country that this should have happened), this law would have definitely been a leap forward in improving the state of direct democracy and the citizens’ involvement in the government.

Yet the process of the law adoption proved again long and difficult. In October 2008 at the second reading of the Law at the Reporting Standing committee, it became clear that the central texts of this draft law will have to be seriously changed for the Law to be adopted. The main pressure came from the minor partner in the governing coalition – the “Movement for Rights and Freedoms” (MRF).<sup>89</sup> According to it, the draft law was anti-constitutional, an argument that was voiced during its second reading in the plenary session. The main contention was that allowing the citizens (even if the required number of signatures is huge) to make it obligatory for the Parliament to call a referendum is against the Constitution, which explicitly states the Cabinet, the President and the National Assembly only have a right to initiate referenda.

The “Law on Direct Participation of Citizens in Central Government and Local Self-government”<sup>90</sup> was finally 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

<sup>88</sup> There were other three draft-laws, rejected in July 2008, which mainly repeated the older and unsuccessful draft Law on Referenda.

<sup>89</sup> MRF is known as the Turkish minority party, though technically ethnic parties are anti-constitutional in Bulgaria. The Bulgarian constitutional court ruled in a 2003 often contested decision, that MRF is technically not an ethnic minority party.

<sup>90</sup> *State Gazette* No. 44/June 12, 2009.



than initially envisaged. Not only were the requirements for calling a national referendum much 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 the taxes, the 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 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. The 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, representatives of the civil society, the new Law has not lived up to the promise of effectively introducing forms of direct democracy and direct citizen participation in government. Not surprisingly, shortly after the new Parliament was formed, voices of amending the Laws are 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 the Parliament.

### ***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.<sup>91</sup> 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 conflict of interests. A list of types of behavior constituting conflict of interests is provided, a clear mechanism for declaring such conflicts – envisaged, as well as a mechanism for control – 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.

The results of its application were eagerly awaited. Thus in the beginning of January 2009 a large number of state officials filled in and published on-line their declarations, among them the majority of the MPs. By April 1<sup>st</sup> 2009 from the 406 obliged to file such declarations according to the Law, 353 had done so. Yet most of those who had not were MPs – 48, the majority of them being members of BSP and MRF – the major coalition partners.

The back-sliding started already at the end of January 2009, when a number of MPs, mainly from the governing coalition, effectively blocked the application of the Law. They did so by requesting the introduction of amendments. This meant - extending the deadline for

<sup>91</sup> State Gazette No. 94/ October 31, 2008.

the publication of the declarations, and in effect postponing entering into force of the law.

The amendment move was met with hostility. It was opposed by representatives of the civil society and by representatives of the European Commission. This opposition to an extend softened the intended radical revision of the Law, yet even these milder amendments removed much of its sting. Yet the main amendments, adopted hastily in April 2009, did not improve the Law either. According to commentators and legal analysts, it would have been better to wait for the Law to be applied for a period, and introduce amendments only if necessitated by the practice of its application. Moreover, most of the amendments were in the direction of relaxing the tight requirements of the Law, which could hardly contribute to the more transparent work of the Parliament and the MPs.

### **Accountability Mechanisms in Practice. Some Recommendations**

In order to put accountability mechanisms in practice, there needs to be an agent. In the case of the Parliament, this could only be the sovereign – the Bulgarian citizens, who are the source of all political power in the country. 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. That is why we have to start our analysis in this last section by addressing the issue of the public interests in Parliament activity.

The results from a series of representative surveys, conducted by the sociological agency Alpha Research in 2002, 2006 and at the end of 2007<sup>92</sup> show, that the levels of trust in Parliament are critically low. Thus just 1% declared to fully trust the Parliament in

2002, and this figure declined to reach 0,5% in 2007. No trust at all in the main representative institutions of the country declared almost half of the Bulgarian citizens (46%, 42% and 49% for the respective years.) On a scale from 1 to 10, where 1 is no trust at all, and 10 – full confidence, the averages are again critically low – 2,31, 2,48 and 2,29, respectively. Interestingly, this lack of trust in the Parliament is not accompanied by readiness to abandon the parliamentary democracy in the country and substitute it with stronger president, stronger leader, one-party rule, or dictatorship. On the contrary, support for such proposals is steadily decreasing, which warrants calling the state of development of the representative democracy in the country – consolidated yet frustrated democracy.<sup>93</sup>

Though representative democracy is 'the only game in town' in the country, its quality is rather low, and the explanations should be sought at least in two directions. The first is the very low and declining popular interest in political decisions. Thus in 2002 only 10% declared they are *not interested in the decisions* of those that govern the country, yet in 2006 they were already 18%, to reach by the end of 2007 the alarming 27%. One should not be lulled by arguments that this is the natural effect of normalization and that this passivity is a sign that people have gained considerable autonomy in their life from the encroachments of the state and need not constantly monitor its activities and performance.

There may be a direct causal link between the low interest in politics and the low quality of the democratic institutions in the country – 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

<sup>92</sup> Within the Framework of the Projects of CLS "State of Society" I, II and III, supported by OSI-Sofia.

<sup>93</sup> Smilov, Daniel (2008) 'Partii i frustrirana demokratsiya', in *Sustoyanie na obshtestvoto III*, OSI-Sofia.

practices, formalistic bureaucracy, cumbersome or altogether lacking procedures may discourage some of the less active citizens to be 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, is the *first necessary step* to bringing people back to politics by winning their trust in the main representative institution of the country.

This process has begun, as already indicated in the text above. Most meetings of the Parliament are open, the working agenda is posted on the site (though access to some of the standing committees' agenda is not easy, because its publication is delayed; one needs to send a request for attending a meeting 7 days in advance, and often does not have enough time to react, when information is lacking on the program of the committees, etc. According to an expert working for the Parliament, interviewed in the course of our study, very rarely do ordinary people participate in the meetings, because of the unclear, often hostile procedures.). The vote is open (rarely a secret vote is taken) and nominal (though standing committees that are not leading with respect to a legislative act, are not obliged to keep detailed record of it), it is archived, yet access to the printouts of the electronic voting is difficult. There is also detailed information on the legislative activity of the Parliament, with a database, where all draft laws could be searched 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, yet much remains to be desired – *firstly, these developments are not sufficiently popular-*

*ized; secondly, they do not go deep enough.* As a matter of principle, we recommend the following:

- all information, concerning the Parliament's activity, which does not concern state secret and other classified information, should be available on the site for easy inspection by the general public.

Arguments to the effect that this is technically a very ambitious and expensive task cannot be taken seriously in 21<sup>st</sup> century EU-member Bulgaria, especially when at stake is the popular trust in the main representative and legislative institution of the country.

- A special attention warrants the individual work of the MPs – both 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 MPs' mere presence in the 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 prohibits 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 the resolute efforts of a series of Parliamentary Speakers to terminate this practice.

The access to information about the Parliamentary activities of individual MPs is also yet limited, though some improvements in this regard were introduced by the 2008 Law on Prevention and Disclosure of Conflict of Interests. Prior to the adoption of this law, the journalists from a central media in vain attempted to obtain official information from the National Assembly's administration on the income of an MP, infamous

for his absence from the Parliament.<sup>94</sup> The journalists tried to find out what the amount received by him as an MP for a period was, and what the fines for his constant absence were. The negative response to their official request for access to this public in principle information was motivated by the administrative head of the Parliament thus: “personal data of a third party is involved.” Nevertheless, as a rule the salaries of the MPs in Bulgarian Parliament are determined by the internal Rules and depend on the rate of the salaries in the public sector, i.e. they are in principle public and known. There is also a requirement, that all high ranking state officials, including the MPs, each year publicly declare their assets; the register is public and available on the internet starting from 2006. From 2007 the MPs had to also declare that they agree their bank accounts and declarations to be checked and publicly scrutinized. In addition, the publicly available declarations on conflict of interests provide further information on the individual MPs and their potential “dependencies”.

It should be stressed, however, that this series of already regularly implemented measures has not been sufficient to dissuade the general public that “MPs in Bulgaria come to the Parliament poor and leave it very rich,” presumably serving their own partial rather than the public interest.

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 a record of these is kept. It is interesting to note that the MPs receive a small amount for maintaining their personal web-sites. 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 at 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 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.

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 citizens in this central institution of representative democracy. As a general rule, all information about their activities – in Parliament (legislative initiatives and activities in the standing committees and in the plenary sittings) and back in their constituencies, which does not constitute 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 reported to the public and be available on the website of the Parliament.

<sup>94</sup> The MP is Ahmed Dogan, the leader of the Turkish minority party, the longest surviving leader of a party in CEE after 1989. For the last year, Mr. Dogan has been in Parliament only three times, and he has received fines for his absence. Yet during the last 7 years he has purchased considerable assets, and as he claims – from his salary alone.



## Open Parliaments: The Case of Greece

*Dia Anagnostou, Thanasis Xiros*

### 1. Introduction and Overview

The decline of parliament as a preeminent institution of political representation and government control is a longstanding phenomenon that continues to variably beset contemporary politics of various degrees of openness and democratic quality. A dual set of inter-related challenges seems to have been at stake for a long time now: on the one hand, the shifting of the traditional division and balance of power between parliamentary and executive-administrative institutions; and on the other hand, the decline of parliament as the expression and representation of the full diversity of society's groups and interests. For a long time now, the study of parliamentary institutions has recognized that the increased regulatory functions of 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 accountable the latter. Governments and state administrations issue a very large number of regulatory decisions and administrative acts that escape parliamentary deliberation and control. This has been even more pronounced in the context of the EU, in which national administrations and governments are assigned primary responsibility to implement EU laws and policies. In so far as this has been taking place, the authority of parliament as the preeminent institution of popular representation, from which it draws its power to endorse and legitimate, or conversely control and reconfigure government policies, is bound to decline.

The shifting of decision-making and legislating functions outside of parliament is not

only about its declining power and authority. It also raises fundamental issues about transparency and accountability in contemporary parliamentary democracy. How can transparency and accountability of parliament's political and legislative decision-making be ensured if they are largely determined outside of, or before they reach parliament? Transparency and accountability are cornerstones of contemporary democracy. Bearing upon all governing and public bodies carrying official functions, including parliament, it refers to their essential obligation to be open to the public about their activities and conduct. By guaranteeing transparency, representative and government institutions can ensure that they are open and accountable to the individuals and groups of citizens who vote them in power. The need to know what the government and parliament are doing is the basis for any effective accountability. Only through transparent procedures and practices can citizens and various societal groups verify whether parliamentarians perform their proper roles of providing support to, but also exercising control over government policies and actions.

This is a study about the transparency and openness of parliament, focusing specifically on the country case of Greece. Greece has been a stable democracy for thirty five years now. Nonetheless, the country's parliament as an institution has admittedly been suffering from a multifaceted kind of crisis and decay. Polls place the parliament far behind in the list of institutions that the Greek public trusts, an outcome that concurs with a more diffused mistrust towards its elected representatives, which frequently surfaces in the media and surveys. Public opinion distrusts MPs and perceives them as corrupt, while the public also considers political and parliamentary discourse to be superficial and ostentatious (Fountethakis 2003: 99-100). In a survey that assessed the public trust in Greek institutions for 2008, the Greek Parliament was ranked 38<sup>th</sup> out of a list



of 48 institutions.<sup>95</sup> Recently, the deficit of public trustworthiness that appears to beset the Greek Parliament and the general trend of its downgrading was acknowledged by the newly-elect Prime Minister George Papandreou, who has vowed to work towards reversing it.<sup>96</sup>

A central expectation but also a firm obligation is that Members of Parliament (MPs) are accountable to the electorate not only for their performance in office but also for the integrity of their conduct, i.e. by following established reporting procedures to inform their constituents. A central means whereby transparency and accountability are ensured is through robust constitutional and legislative guarantees for accessing information. By contrast, limits to accessing information are a serious impediment to effective civic involvement in the legislative process (*A plea for Open Parliaments*, p. 5). They are also a source of citizens' disillusionment and apathy towards the legislative process, and towards democratic representation more broadly. Access to information is a means of ensuring accountability of parliamentary representatives as it allows citizens to be informed about and monitor their conduct and activities. Both transparency and accountability are also prerequisites for a more open and representative legislature. Unhindered access to information and knowledge about its workings enable individuals and civil society actors to follow more easily and seek to participate and engage in the legislative processes (Szili 2008: 3). In turn, through their lobbying activities or advocacy campaigns, civil society actors such as NGOs, trade unions, business associations or the media exert pressures for greater access to information and transparency more broadly.

This study seeks to examine and assess the transparency and accountability of Greek parliament. Besides a brief historical overview

of its significance in the Greek political life after World War II, the study presents and assesses the existing legal framework as defined mainly by constitutional provisions and the Rules of Standing Orders of Parliament (RSOP, *Kanonismos tis Voulis*) that seek to guarantee transparency and accountability. In particular, it reviews provisions that pertain to public's access to information regarding the functions of parliament and the actions of its representatives, as well as provisions regarding attendance of and participation in the legislative process. The second part of this study discusses how the legal framework functions in practice in so far as its effectiveness in ensuring transparency and accountability is concerned. The third part of the study explores and assesses the views of societal interests and non-governmental organizations (NGOs) regarding transparency, openness and accountability of the Greek Parliament, on the basis of eight in-depth interviews that were conducted with representatives from some of the most important groups. The last part discusses further the findings in reference to the parliament's changing role and declining authority today, and provides a set of recommendations towards improving the parliament's transparency and accountability.

#### A. A brief historical overview of Greek parliamentary institutions

The significance and centrality of parliament in Greece's political system today must be understood in the context of the country's turbulent political history of the past century. After seven years of military dictatorship (1967-1974), Greece underwent transition to a democratic regime in 1974, which shed away the vestiges of the deficient or 'sickly' democracy,<sup>97</sup> which had been established after World War II. Despite the adoption of the 1952 Con-

<sup>95</sup> See "Echoun katarefsei oi thesmoi stin Ellada" [Institutions in Greece have collapsed], *Kathimerini*, 28 December 2008.

<sup>96</sup> See "Anavathmizetai o rolos tis Voulis" [The role of the Greek parliament is being upgraded], *City Press*, 11 November 2009.

<sup>97</sup> See Elias Nikolakopoulos *H Kachektiki Dimokratia* [The Sickly Democracy], Athens 2000.



stitution, the preservation of emergency legislation (enacted during the Civil War of the 1940s) in the Cold War period undermined the enforcement of constitutional guarantees (Tasopoulos 2004: 37-39). It also undermined the functions and role of democratic institutions like the parliament, which was regularly pushed aside and overshadowed by executive prerogative, the king's interference, and military involvement in politics. In 1974 the regime transition was marked by the adoption of a new constitution and the abolition of monarchy, which had regularly interfered with electoral and parliamentary processes throughout the 20<sup>th</sup> century. On the basis of an unusually broad political consensus, a system of presidential parliamentary democracy was established (Art. 1, parag. 1, Const.).

Following its inception in 1974, however, the system of presidential parliamentary democracy (*proedrevomeni koinovouleftiki dimokrateia*) was marked by a fundamental division. The latter was between the centre-right government of Karamanlis and the opposition parties, and concerned the status and powers of the President of the Republic vis-à-vis parliament under the new constitution. The President retained a number of prerogatives such as dissolution of parliament (*Vouli*), the holding of referenda on 'national issues', and even the dismissal of the cabinet which could be exercised without the prime minister's consent. The opposition parties sharply disagreed with the government's position on this and wanted instead a president with only nominal competences and with real powers lying with parliament and the government cabinet.<sup>98</sup> Following the advent to power of the centre-left Socialist government of PASOK in the 1980s, the power balance between the President of

the Republic on the one hand, and the parliament and the government on the other, permanently shifted in favour of the latter. The emergency powers that had remained with the President of the Republic, albeit not used after 1974, were permanently removed with the first constitutional revision of 1985.

In this way, the 1985 constitutional revision strengthened the parliamentary over the presidential characteristics of contemporary Greek democracy. The parliament assumed the dominant role to appoint the prime minister and the other members of the government cabinet. Yet, the chamber's powers to exercise effective control over the executive were not equally reinforced, despite the fact that the government had declared as its main objective to be 'strengthening of parliament'. In the end, the 1985 constitutional amendment was confined to dismantling presidential powers but it also reinforced the predominance of the governing party, and of the Prime Minister (Alivizatos 1990: 134-5; Foundethakis 2003: 87). Proposals to establish permanent committees, to which competent ministers would be accountable, were rejected, and the supremacy of the executive over parliament remained intact. Still the new standing orders that were adopted in 1987 modernized some of the structures and methods of work of parliament, such as reducing the number of standing committees to six and empowering them to decide to hold hearings with extra-parliamentary individuals (Alivizatos 1990: 135; 140).

#### B. *The Greek Parliament (Vouli): formation and competencies*

The Greek Parliament (*Vouli ton Ellinon*, or *Vouli*) is directly elected for a term of four years. The votes of the electorate are translated into parliamentary representation through an electoral system that for most part after World War II has been based on reinforced propor-

<sup>98</sup> The government and opposition parties were not able to reach any compromise on the issue. As a consequence of this, all opposition parties withdrew from the Assembly in May 1975 denouncing the new constitution as authoritarian, which was in the end approved by ND government deputies only.

tional representation.<sup>99</sup> Regardless of the various modifications and changes, its common feature has been the transformation of the relative majority of votes into an absolute majority of representatives in parliament. The Greek Parliament comprises 300 representatives (MPs). Most of them (288 in total) are elected from multi-member electoral constituencies (which for most part overlap with the 52 prefectures of the country), while a small number (12) are elected on the basis of the percentage of votes that each political party receives across the country (*psifodeltio epikrateias*). While the constitution provides for a parliamentary term of four years, from 1974 until present only one out of a total of twelve general elections was held after a full four-year term, while in the remaining elections were held earlier.

The competences of the Greek *Vouli* fall into five categories: it elects the President of the Republic and forms the government, as well as decides about their replacement, when conditions render it necessary; it legislates and votes the annual state budget; it exercises oversight and control over the government; it has certain competences of judicial nature; and finally, it can decide to hold a referendum. The parliament appoints the Prime Minister (PM) who enjoys the 'express confidence' (principle of *dedilomeni*) of the majority of representatives, and who is usually the head of the political party, to which the parliamentary majority belongs. It also gives a vote of confidence to the government cabinet, whose members are appointed by the PM (Art. 84 Const., and Art. 141 of the *Rules of Standing Order of Parliament*, RSOP). The parliament's role of exercising control over the government takes place through a variety of means provided for by

<sup>99</sup> A brief exception was during the year 1989-90, when a more proportional electoral system led to three rounds of general elections as a result of the inability to form parliamentary majority. The centre-right government of New Democracy that was eventually formed had only the slimmest of majorities with 151 deputies out of 300.

the Constitution and the SOP. These include request for government documents, petitions, questions addressed to the government or the PM, the formation of an investigation committee, or debates on the initiative of parliamentarians, among others. The *Vouli* can also decide to hold a referendum on certain matters (i.e. on a crucial national issue), however, in practice this has never occurred after 1974, largely due to the reinforced parliamentary majority (3/5) that is required in order to approve a proposal for a referendum.

By far the most important competence of the parliament is its legislative function (Art. 26, parag. 1 Const.). It votes the bills submitted by the government, the opposition or by individual representatives.<sup>100</sup> The elaboration of the bills is taken on by the relevant parliamentary committee<sup>101</sup> together with the rest of the representatives. They can be voted either in plenary session or by the competent parliamentary committee (in this case they are only ratified by the representatives in plenary session).<sup>102</sup> The 2001 constitutional revision empowered the permanent parliamentary committees with autonomous legislative competences (Art. 70, parag. 2 Const.) except in cases in which the Plenary Session has exclusive competence (Art. 72, parag. 1 Const.). The parliament must also give its approval of the annual state budget. Other competences of the Greek *Vouli* include amending the secondary constitutional provisions (Art. 110 Const., and Art. 119 of RSOP), ratifying international conventions, deciding

<sup>100</sup> In Greek a distinction is drawn between a law proposal (*protasi nomou*) and government bill (*nomoschedio*); the former is submitted by opposition parties, which rarely happens in the Greek system, while the latter is submitted by the government.

<sup>101</sup> There are 6 Standing Committees, a number of Special Permanent Committees, and 4 committees on parliament's internal affairs. The Standing Committees are: Cultural and Educational Affairs, Defence and Foreign Affairs, Economic Affairs, Social Affairs, Public Administration, Public Order and Justice, Production and Trade.

<sup>102</sup> Art. 71, parag. 1 of the Constitution specifies which bills are discussed by and need the vote of parliamentarians in plenary session in order to pass. For instance, these are bills that concern protection of an individual right or the electoral system.

about the country's membership in international organizations, as well as about the salaries and compensation of its representatives (Art. 63, parag. 1 and 2 Const.), and finally the ability to declare a state of emergency (Art. 48 Const., and Art. 117 RSOP).

As a consequence of the system of reinforced proportional representation that has prevailed in Greece after World War II, the legislative functions and initiative of the chamber are overwhelmingly dominated by the governing majority. It is well-known that systems of reinforced representation have the basic advantage of leading to the formation of stable governments with clear and robust parliamentary majorities. At the same time their downside is that in systems, characterized by strong party discipline, the ability to initiate and pass laws is confined to the governing party and its parliamentary majority, excluding opposition parties from this essential function. This is clearly evidenced in the case of Greece. While in principle all political parties with representation in the chamber can introduce bills or draft laws for discussion, in practice this nearly always occurs at the initiative of the party that forms the governing majority. Only twice since 1974 has parliament approved bills and passed laws that had been introduced by opposition parties,<sup>103</sup> and only once, in February 2003, was a draft law, which had been brought by the governing party, defeated and failed to pass.<sup>104</sup> Therefore, given the total dominance of the governing majority at the legislative stage, the earlier processes of draft preparation and deliberation with various interested social actors is of particular importance for en-

suring that parliament remains an open and broadly representative institution.

## **2. Constitutional and Legal Framework Regulating Transparency and Accountability**

If the 1974 constitution laid the foundations for the democratic nature of Greece's political system, its second revision in 2001 (the first one, as already mentioned, had taken place in 1985), gave constitutional recognition to the rule of law (*kratos dikaïou*) (Art. 25, parag. 1 Const.). Even though as a principle the rule of law was deduced from the variety of rights already protected under the 1974 constitution, its 2001 revision bolstered such protection. Among other things, it did so by guaranteeing with the new Article 5A of the 2001 constitution a general right to information (parag. 1) and the participation of individuals in the information society (parag. 2).<sup>105</sup> The latter implied a direct obligation for the state to facilitate access to information that is distributed electronically, as well as its production and communication. While these constitutional provisions do not specifically refer to parliament, they entrenched more firmly the need and obligation of the latter to guarantee transparency. At the same time, the constitution also recognizes certain limitations to the right to information, which must, however, be interpreted restrictively. These are permissible if they are justified for reasons of national security, such as a serious external threat, fight against crime, and the protection of the rights of third parties (Art. 5A, parag. 1 Const.).

Besides the constitution, the workings of the Greek parliament, including issues of access to information and publicity are regulated by the already mentioned Rules of

<sup>103</sup> These bills concerned the approval and establishment of official celebrations to commemorate important historical events.

<sup>104</sup> This concerned a bill that defined some professions to be compatible with holding the office of an MP (most professions are incompatible, and those who are elected in parliament have to suspend their professional activities during their term in office). The fact that this bill determined such compatibility to apply only to a small number of professions led many MPs from the governing party to also vote against it.

<sup>105</sup> The right to information in relation to obtaining official documents is elaborated and defined by the Code of Administrative Procedure (Law 2690/1999).

Standing Order (RSOP), a set of internal rules that is decided by the chamber of deputies. The Rules come in force without the need for approval by any other state body (the *Vouli* therefore enjoys internal autonomy), while no official body outside of it, including courts, can intervene to exercise control over how these rules are applied (external autonomy). The RSOP have the status of constitutional law and they are distinct from regular statutes or presidential decrees. For these reasons, there are no court decisions after 1975 that concern the content or application of the RSOP by the Greek Parliament.

Transparency is centrally determined by two aspects: publicity and control. Applying to all government and official bodies, publicity here refers to guaranteeing for all citizens (or at least those who are expressly interested) the right to be informed about the activities of these bodies and their outcomes. Transparency has not always been such a widely and unquestionably accepted obligation placed upon government or parliament as it is today under modern democratic governance. In non-democratic or semi-democratic systems, public and government bodies have often treated the information that they held as though it were for the exclusive use of their officials and applied to public documents various degrees of classification (Mendel 2005: 15). To be sure, the obligation of the Greek parliament to grant publicity to its workings and activities in a thorough and prompt manner can be subject to certain exceptions. These, however, must be determined restrictively and they must be justified on grounds of public order or national security. Giving regular and unrestricted publicity to the workings and actions of parliamentarians enables citizens to exercise control and hold them accountable by making an informed decision each time they vote to elect their representatives.

Publicity of the Greek parliament's workings and activities is foremost ensured through *open and televised meetings*, most of which are broadcast and immediately reach the media through a variety of means. To begin with, parliamentary representatives (or MPs), whether they meet in plenary session or in the context of committees, must do so openly and in public regardless of the subject matter, on which they are deliberating (Art. 66, parag. 1 and 3, Const.). A certain number of MPs can request to hold a closed meeting when a highly sensitive national issue is at stake. This, however, must be approved by the leaders of most parliamentary groups and some of their representatives, which has never actually happened after 1974 (Art. 56 and 57 of the RoP). Publicity is furthermore ensured through the constant presence of journalists from print and electronic media, who hold special permits (*diapistevmenoí*), and who attend all parliamentary meetings. Throughout the 1990s a good number of TV and radio programs covered various aspects of MPs activities and parliamentary life (Demertzis and Armenakis 1999: 23-26). Since the early 2000s, the *Vouli* has had its own TV station. All meetings of the Plenary Session and most meetings of the permanent committees are also recorded and televised through an internal transmission system inside the parliament building, as well as broadcast live or recorded through the TV station of the *Vouli*, the radio station and the website. The meetings of political leaders and meetings in which a vote of confidence issue is discussed are also broadcast by state radio and TV stations. Some committee meetings and meetings holding hearing of extra-parliamentary individuals, such as interest groups or NGOs, may also be broadcast.

Closed to the public, however, are meetings of permanent committees holding hearings with extra-parliamentary individuals during discussion of government bills or draft laws

(Art. 38, parag. 1 RSOP). The presence of extra-parliamentary individuals is a form of public deliberation and aims at providing clarifications with regard to issues that are legislated. Those who are invited usually come from the leadership ranks of trade union organizations. The initiative for a closed meeting with non-parliamentarians can be taken either by the chair of the relevant committee, who belongs to the governing majority, or by one third of the committee's members (in practice those can come from the opposition deputies). It must be noted that since 1993, when this provision was adopted, a closed hearing with non-parliamentarians has never been requested.

Publicity of parliamentary proceedings is also ensured through *keeping detailed proceeding minutes* that are available to the public upon request or by downloading them from the parliament's website. Given the fact that only a small percentage of the public actually watches live broadcast of parliamentary meetings and that in practice even fewer attend those in person, keeping detailed and systematic proceeding minutes is of utmost importance. Everything that is said during Plenary Session, recess sections (that is, the sections of parliament during the summer holidays, where up to 1/3 of the total number of deputies are present), or committee meetings is recorded in the proceedings. They contain a word by word record of all speeches made by deputies, of any procedural matters that may arise, and, of course, of the results of voting. It must be noted that the process of voting by MPs can be open or secret. Article 73 of RSOP provides for secret voting on issues that concern the election of individuals, or issues, in which individuals (MPs or citizens) are explicitly named. In particular, the ballot is secret when the Speaker of Parliament is elected, when there is a vote of censure against one or more MPs, or when member(s) of the government are committed to trial. It goes without saying that when the

voting is secret, the preferences of MPs are not disclosed, and it is up to the individual MP, if s/he wishes, to make his or her preference publicly known through other means.

In sum, through detailed, systematic and timely recording of what is said in the Chamber, anyone who is interested can get a full picture by reading the proceedings. Once they are drafted following the end of a meeting, they are sent to the deputies who are asked to verify their content (Art. 61 RSOP). They are only allowed to correct phrasal or numerical errors but not to add to or modify their substantive content. In case that they attempt to do so, the Speaker of Parliament is notified and asked to make a decision. Once they go through this verification, the proceedings are subsequently distributed (8 days following the respective meeting at the latest) to the MPs who are asked to give their final approval before they go to print. If there are still objections or if representatives ask for further clarifications, these are discussed and the Speaker of Parliament asks for approval to correct or modify them accordingly. Copies of the proceedings can be obtained from parliament services or from its website. Subsequently, they are also bound in special volumes, which contain a list of speakers in alphabetical order along with an index, and which are kept in the parliament's library.

Since the beginning of this decade, the Greek Parliament has its own website, which everyone can visit at the address [www.parliament.gr](http://www.parliament.gr). It is fully and regularly updated in Greek, but substantial parts of it are also translated in English. Besides a full description of the parliament's history, organization and functions, it contains the daily agenda, news regarding activities organized by the Speaker of Parliament, as well as links to the website pages of political parties, individual MPs and ministries. Perhaps the most important section of the website for the subject of this study is the section on 'Activities' (*ergasies*), through which anyone can be



informed about the daily agenda of the parliament's meetings, legislative work and activities related to parliamentary control, the meeting schedule of the various committees, the plenary session minutes from September 1994 until present, as well as about the list of questions submitted. One can also retrieve the full text of government bills and draft laws, which were submitted in the past or are currently pending, from the beginning of 2000 until present, along with their explanatory report, the report by the Parliament's Scientific Service and the minutes from the related discussions that were held in the respective committee.

Transparency is not only a matter of publicity of and wide access to information regarding the activities of parliament as an institution. It also concerns the conduct of parliamentarians in their political activities. The latter may be revealing about their relations with various constituencies, social groups or influential individuals, as well as about their political loyalties and dependencies. In the Greek electoral system, MPs are elected not from a pre-ranked party list but on the basis of the number of votes that they are able to amass. As a result, candidates' campaigns are driven by a votes' maximization logic that makes them thoroughly dependent on large amounts of funds, as well as on donations by party supporters. Those who donate large sums of money to their electoral campaigns are likely to have and often do have disproportionate influence over the views and actions of parliamentarians. Therefore, a basic parameter of transparency is to *ensure publicity of the finances of a political party and their deputies*, as much during their electoral campaign as during their term in parliament. Publicity of parliamentary work but also of MPs activities presumably contributes towards enabling citizens to exercise control over their elected representatives and hold them accountable for their views and actions.

Since its 2001 revision, the obligation to exercise control over the electoral expenses of political parties and their candidates running for parliament is stipulated in the constitution (Art. 29, parag. 2 Const.) and is assigned to a special body with the participation of high level judicial officials. The details are elaborated in Articles 16-20 of Law 3022/2002. Political parties are obliged to keep special documents, in which they report per each category their revenues and expenses, and in which they explicitly mention the names of those who donate a sum higher than 600 euro annually. Political parties also publish their annual accounts in the Government Gazette (*Efimerida tis Kyverniseos*) and in the daily press (Art. 18 of Law 3022/2002). Parliament deputies but also a certain number of candidates running for MPs must also provide detailed accounts of their electoral revenues and expenses along with the respective invoices (Art. 20). However, contrary to what is required from political parties, the accounts of deputies are not made public, but they are only submitted to the relevant parliamentary committee for review. Finally, Law 3022/2002 also requires from MPs to declare in June each year their assets with detailed references to their movable and immovable property. Following their review by a parliament committee (*Epitropi Eleghou*), these declarations are subsequently published in the daily press.

While constitutional provisions (Art. 9, parag. 2 Const.) and Law 3023/2002 seek to make transparent the finances of MPs, especially those channeled into their electoral campaign, in practice the results are far from satisfactory. Even though undeclared revenues from big donors apparently reach the coffers of political parties and their candidates, such donations have never come to light during the review process. The fact that such a process often takes place with substantial delay, and in a place (inside parliament) that is often far re-

moved from the local party or candidates' offices, must in part be seen to account for such a deficient and ineffective control. It is no surprise that illicit campaign financing of parliamentarians has never been exposed if we also consider the fact that those same deputies are both those who exercise control and simultaneously those who are subject to such control.

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, which can not start earlier than June 2013 and is unlikely to be completed before 2015. Recently, among the announcements of the newly installed socialist government of PASOK is the intent to change the law that regulates donor financing of political parties, and make it mandatory to declare who the donor for any amount of private contribution to parties is.<sup>106</sup>

### **3. Transparency and Accountability in Practice**

It becomes evident from the previous section that with the exception of the political party and MPs' electoral finances, a robust constitutional and legal frame is in place to enable citizens to gain fairly comprehensive information about the activities and functions of the Greek Parliament. Anyone who is interested can gain access to the vast majority of documents and be informed about the activities taking place and the decisions made by the Chamber. While this is a fundamental accomplishment of the country's post-1974 democracy, it does not in practice appear to always guarantee

transparency, or to meet the public's raised expectations about transparency, accountability, openness and democratic participation.

In a survey commissioned by the Greek Parliament and conducted in May 2008, 80% of individuals expressed the view that the *Vouli must be* the centre of the country's political life (emphasis added). At the same time, the majority of respondents also expressed the view that greater and more substantive dialogue should take place in the Chamber, and that they would like to be able to have more detailed information about the Parliament's functions and activities (*Erevna gia tin Vouli ton Ellinon*). Citizens' knowledge about parliamentary functions and processes, however, is insufficient and often inaccurate, i.e. regarding the existence of Standing Committees. Until today, the vast majority of citizens are informed about parliament from the media, while 36.1% of respondents had visited its official website. Notably, 8 out of 10 respondents who have done so believe that while its content is satisfactory, the website should be used as a more dynamic and interactive forum of dialogue and exchange between citizens and parliamentarians.

The results of the survey seem to point to a gap in information but to also confirm a larger gap in the public's trust and esteem towards parliament and its deputies. For instance, the need for distributing more effectively information about the various activities of parliament outside of Athens, and for improving the transmission of its television channel in some of the more remote parts of the country, were noted. More importantly, however, there is an underlying and diffused impression shared by large segments of the public that the legislative and decision-making processes that take place in parliament are not sufficiently open or transparent. Over 80% of respondents endorsed the possibility for civil society actors to submit their views and

<sup>106</sup> "Oute euro anonyimo sta kommatika tameia", *Kathimerini*, 8 November 2009.



opinions to the various parliamentary committees. In this way, the survey clearly highlighted a widely perceived need for greater and more substantive dialogue between the MPs and the society, which would result in better and more representative decisions and legislative output. Overall, respondents' views converged in believing that the role of the Greek Parliament must be upgraded and its effectiveness must be strengthened.

The emphasis given by respondents to the need for opening up to society and social dialogue, as well as the need for more substantive political discussion and exchange possibly suggest an underlying and widely held belief that these are limited or altogether absent from the Greek Parliament. The speeches, discussions and debates that take place in the Chamber are largely shaped by partisan lines, while the substantive content of the government bills discussed has already been determined by officials inside the competent ministries or party leaders through a process that is not accessible to public knowledge. It is indicative that the vast majority of respondents in the abovementioned survey believe that ministers must announce and present in parliament their initiatives and measures that they propose in their area of responsibility, if this institution is to become upgraded and a forum of substantive dialogue. This sounds like a plea to a more open and transparent process, through which government bills are put together. As we shall see in the following section of this study, this also emerges as a major factor that civil society actors see as impeding transparency and openness of the Greek Parliament.

In practice, transparency, openness and accountability of the Greek Parliament are severely compromised by at least four factors that can be identified so far in the context of this study: a) insufficient or ineffective control over the finances of political parties and MPs, as well as over the expenses of parliamentar-

ians, which was already partly discussed, but also over the financial accounts and management of parliament itself; b) the frequent recourse of the government to a procedure that allows for the urgent passing of legislation, bypassing the stages of parliamentary discussion and deliberation; c) the lack of a legal frame and established structures to institutionalize and regulate the participation of social actors in the legislative process; and finally d) the strong partisan nature of the parliamentary legislative process inside the *Vouli* combined with the pronounced lack of transparency characterizing the pre-parliamentary legislative process.

It is clear that control over the annual accounts of parliament, including the expenses of MPs themselves is insufficient and defective. While there is no study on the subject, a series of articles appeared in the press recently, giving a glimpse to what is otherwise widely suspected and well-known to those acquainted with how the *Vouli* is run: it is an excessively and unjustifiably high-cost institution. While the President of Parliament submits the annual budget to the *Vouli*, a number of expenses are arguably not sufficiently clarified and convincingly explained, as it is the case in the most recent 2010 budget.<sup>107</sup> Questions regarding the sound financial management of parliament as an institution are also compounded by the thorough lack of transparency characterizing the recruitment process of parliament employees. They are hired without open calls for applications, and enjoy high levels of salaries and benefits. The new government has also vowed to change the process of recruitment and make it open and competitive.<sup>108</sup>

Another way in which transparency is undermined in practice is through the frequent recourse of the government to provisions that al-

<sup>107</sup> "Kondylia tis Voulis me skoteina simeia", *Kathimerini*, 5 November 2009.

<sup>108</sup> Meso ton diadikasion tou ASEP efeksis oi proslipseis sto Koinovoulio", *Kathimerini*, 5 November 2009.

low for the urgent introduction and passing of laws without discussion. This is permitted under certain conditions, which, however, are not always in place (Art. 74 Const., Articles 109 and 110 RSOP). The urgent procedure does not allow time for parliamentarians to scrutinize and discuss a government bill. Parliamentary discussion and debate are also undermined when they take place under tight time constraints. For instance, one of the most important functions of the Greek parliament, namely, the approval of the state budget, takes place in very tight time frame. This occurs because the government tends to submit the budget with delay, and the 40-day deadline in advance that is stipulated by the constitution in practice is rarely met, allowing limited time for discussion and deliberation (Kaminis 1999: 186-7).

Knowledge about and discussion of the legislative initiatives undertaken by the government in parliament are undermined by widespread practices such as so called 'catch-all' bills. These are government bills that contain additional provisions or amendments appended to a government bill, which, however, are irrelevant to the main subject matter of the bill, contrary to what the constitution stipulates (Art. 74, parag. 5 Const.). Such additional amendments are usually inserted by the relevant minister at the last minute without previous deliberation in the appropriate committee (Alivizatos 1990: 141). Practices as these undermine transparency and escape parliamentary and public accountability. Knowledge and discussion are particularly limited when irrelevant provisions and amendments are introduced by a minister in the chamber in late night meetings, when a large number of MPs are not present (Kaminis 1999: 178-9). Over the past couple of years, however, this practice of submitting so-called 'late night amendments' has been significantly reduced. If the current government of PASOK puts to practice its pre-electoral promise that such amend-

ments will only be submitted to parliamentary committees, the phenomenon of "late night amendments" is likely to fully disappear.

The established legal and constitutional framework allows the public to be informed about the government bills discussed inside parliament. These, however, are already crystallized and largely formed outputs of ministerial processes, possible consultations and deliberations with particular (and most likely influential) interest groups, which have already taken place in a manner that is informal and unknown to the public and most likely to many parliamentarians themselves. Unlike in countries, such as Germany, in Greece the pre-parliamentary law drafting processes are informal and invisible and fall outside the provisions contained in the RSOP or the constitution. The few existing rules that pertain to it merely regulate the composition and functions of the bodies (i.e. ministerial committees, or the Legal Office of the PM) that are involved in this process (Melissas 1995: 74). Yet, they do not clarify or regulate the role of actors such as interest groups, political parties, trade unions, administrative officials, or individuals, who participate in this crucial process of legislation drafting (Kaminis 1999: 182-3).

The pre-parliamentary legislative drafting process that is set by the government and the competent ministries lacks transparency. The interactions and meetings between ministry officials, interest groups and external experts, who can provide specialized knowledge and advice, are informal; they lack publicity and escape parliamentary scrutiny. So are the interactions between political parties and the governing party on the one hand, and social and interest groups on the other (Melissas 1995: 75-76). Once the competent law-drafting committee inside a ministry, which is dominated by government officials and members of the governing party, submits its

draft to the minister, s/he can invite at his or her discretion members from particular interest and social groups, and ask them for their views and position on the subject matter of the draft law. This process ends with the preparation of the explanatory report by the competent minister, which accompanies a bill throughout its subsequent stages before and after its submission to the Speaker of the Parliament. Before it goes to parliament, a government bill is also sent to the parliamentary group of the governing party, so that its MPs are not later caught by surprise when they are asked to vote for it.<sup>109</sup>

The predominant and formative weight that the pre-parliamentary law-drafting process has on the government bills submitted to parliament for discussion and vote is in part a reflection of the executive's dominance in the Greek political system. The dominance of the government over parliament is further reinforced by the dominance of the governing party in parliament and the strong partisan lines and discipline that characterize its activities. The strengthened position of the executive and the administration and the corresponding decline of parliamentary institutions in decision-making and policy-making is not only a Greek phenomenon. Instead, it is a generalized one that has been linked with the development and evolution of the modern welfare state, as already mentioned earlier. It has also been arguably reinforced by the enhanced powers that governments and public administration gain in the context of EU membership. National administrations are responsible for implementing EU legislation in a growing range of sectors, in which the EU now shapes policies and legislates.

Irrespective of its origins and factors that influence it, the lack of transparency and publicity at the pre-parliamentary stages of law-drafting raise another issue of openness that is dealt with in detail in the next section, namely, the far-reaching disparities in the degree of access and influence that different social and interest groups have in the legislative processes.

As a result of the informal nature and opaqueness of the ministry-dominated legislative drafting process before a bill reaches parliament, MPs have deficient information and knowledge about it. This undermines the basis for engaging in substantive dialogue inside the chamber and exercising a constructive control over the government (Melissas 1995: 31-32). Partly with the exception of those belonging to the governing party, MPs are not aware of the complex web of conflicts and compromises that may have taken place at the stage when a bill was being prepared and gestating. Therefore, the subsequent discussions and debates in parliament for most part cannot expose its underlying basis of support and opposition, and are unable to provide to the public reasoned arguments on grounds that stretch beyond party lines. This is a substantive (as opposed to procedural) parameter of transparency in the legislative process, in which there is a critical gap, and it is no surprise that public opinion surveys (such as the one referred to in the previous section) mention the need for more substantive dialogue as shortcoming of parliamentary deliberations. It could arguably in part be addressed by standardizing and clarifying the pre-parliamentary drafting process, as well as by providing in the explanatory reports that accompany the draft laws more detailed information about the different views and positions of actors involved (Kaminis 1999: 184).

<sup>109</sup> For a detailed description of the process of legislation drafting by the government and its competent ministries, see Melissas (1995: 92-95).

#### **4. Assessment of Parliament's Openness by Relevant Stakeholders and Civil Society Actors**

An important role that civil society can play in parliamentary processes, cardinally at the stage of legislative preparation, is the communication of social needs, economic and public interest issues. Its advocates can do so by engaging in dialogue and debate with parliamentary representatives, by participating in specialized committees or by providing advocacy, comments on bills, expert work and assistance in the sector or subject, in which an organization or group has expertise (Szili 2008: 9). Before we present and discuss the findings of this study, it is necessary to describe in brief certain characteristics of civil society in Greece and its relations with state institutions that can also bear upon its relations with parliament. The traditional scholarly interpretation of post-1974 civil society in Greece has been that it is generally weak and subjected to overpowering control of and dependence on the state (Mouzelis 1986). Along these lines, political sociologist Tsoucalas argued that relations between civil society and the state are characterized by "clientilistic corporatism", which entails corporatist arrangements between the state and preferred social groups. These corporatist arrangements selectively promote the interests of the latter (especially those of the urban middle classes) through selective distribution of state subsidies and public employment opportunities to those who are loyal to the governing party (Tsoucalas 1986).

Since the 1990s, however, Greek scholarship has moved away from this traditional interpretation, questioning both the generalized depiction of corporatist patterns of a certain Greek sort (i.e. "clientilistic"), as well as the purported antinomy between a weak civil society and a strong state that controls it (Voulgaris 2006). While the pattern of state

corporatism may apply to a certain category of organized interests (particularly those representing employers and employees of different sectors), it is arguably not relevant for most non-economic or non-material ones representing, for instance, interests of environmental, feminists or consumers' social organizations (Sotiropoulos 1995). Interests and social groups such as the latter can be seen to reflect a more pluralist pattern with differential and often inchoate relations with state administration and political parties. For most part, political parties do not show a persistent interest in the activities of these civil society groups but only approach them occasionally or periodically when relevant issues or needs arise. Therefore, partisan divisions do not bear upon or fragment them (Sotiropoulos 1995).

The depiction of state corporatism has also been questioned even in reference to the economic interest groups of employers and employees. With the evolution of such interests themselves over time, as well as under the influence of EU integration from the 1990s onwards, organizations such as the General Confederation of Greek Employees (GSEE) and the Association of Greek Industrialists (SEV) have developed in a direction of reduced state intervention in their collective negotiations. Therefore, the purported depiction of dominant state corporatism arrangements in Greece is misleading and arguably must be replaced by one of "disjointed corporatism" with some interests managing to develop or retain a lesser or greater degree of autonomy from the state (Lavdas 2006: 132; 136).

The diversity characterizing relations between state and civil society in Greece, surfaces clearly in the eight interviews that we conducted for the purposes of this study. These are interviews with representatives from eight different civil society organizations, which were selected because they capture a wide cross-section of civil society, and include some

of the most influential social-economic interests. The organizations are: 1) the Supreme Administration of Associations of Public Sector Employees (*Anotati Dioikisi Enoseon Dimosion Ypalilon*, ADEDY), a powerful umbrella trade union organization representing public sector employees, 2) General Confederation of Workers in Greece (*Geniki Sinomospondia Ergaton Ellados*, GSEE), an umbrella trade union organization representing private sector employees, 3) Association of Greek Industrialists (*Syndesmos Ellinon Viomichanon*, SEV), representing industrialists and employers, 4) Technical and Professional Chamber (*Techniko kai Epangelmatiko Epimelitirio*, TEE), 5) Association of Journalists of Daily Newspapers in Athens (*Enosi Syntakton Hmerision Efimeridon Athinon*, ESYEA), 6) *Medecins du Monde* (*Yatroi tou Kosmou*, MM), the Greek chapter of the homonymous international humanitarian organization that has as its mission the provision of assistance to those who are in need, 7) World Wild-life Fund (WWF), the Greek chapter of an international organization aiming at environmental protection, and 8) European Network of Women (*Dyktio Gynaikon Evropis*, ENWO) dedicated to achieving equal rights between women and men, and to supporting socially excluded women.

The eight interviews that we conducted with civil society actors show that while there are certain common themes and issues in their relations with parliament, the interaction and experience of each organization differs depending on the issue area, in which each is active. One distinction that can be drawn is between economic-professional interests, such as trade unions, employers' and professionals' associations on the one hand, and non-economic interests such as environmental and gender organizations, or groups engaging in social and humanitarian work domestically and abroad, such as the organization *Medecins du Monde*. The former have on the whole

more extensive interactions with parliament and they are in a position to exert substantial impact on legislative activities, while the latter have more limited interactions and influence potential. In the rest of this section, we shall present and discuss a) the stakeholders' general interest in the activity of national parliament and their interaction with it, as these surface from the interviews, b) the availability of and access to information from and about parliament, as well as the impediments in obtaining it, and c) broader issues affecting the openness and transparency of the Greek Parliament.

#### A. *Interactions of civil society actors with parliament and their interest in its activities*

All interviewees affirmed that their organization is interested in parliament and its activities, and their interest ranges from average to strong. However, the interactions of the different social actors with parliament and their specific interest in its activities significantly vary. Influential trade union organizations with sizeable membership like ADEDY and GSEE are in constant and frequent interaction with parliament. They submit their views and positions regarding most bills that concern them, such as those pertaining to social security, pensions, labor relations, healthcare, or public administration. They do so primarily through the respective parliamentary committees with competence in these areas, such as the Standing Committee (SC) of Social Affairs, or the SC of Economic Affairs. They also do so in the context of the Economic and Social Committee (OKE), a consultative body established on the model of the European Economic and Social Committee of the EU, with the aim to promote social dialogue and consensus. Government bills are also sent to the OKE for an opinion. Even though both the GSEE and the ADEDY participate in it, only the ADEDY interviewee mentioned it as a forum of indirect



participation in the legislative functions of parliament. As an association of journalists, who have a central role in giving publicity and coverage to parliamentary activities, ESYEA also has extensive relations with parliament, which are often channeled through individual (and often informal) rather than official contacts.

On the other hand, relations between the three issue-based organizations with parliament are less frequent, and they are primarily with individual MPs who have an interest in the specific issues of their expertise. Interactions with these organizations seem to date from about the second half of the 1990s or later. They mainly involve the supply of information regarding their activities or an expert opinion, provided by these organizations either voluntarily or at the request by one or more MPs or a by a parliamentary committee. Some organizations like the WWF systematically supply such information and documentation to MPs. Others like the ENWO also approach MPs, who care about the issues that they advocate, in order to submit questions (*eperotiseis*) to the government through them.<sup>110</sup> They also seek to monitor questions addressed to the government independently by MPs, which are relevant to their issue of interest. At the same time, their institutional contacts with parliament are entirely absent, while their relations with political parties are also weak or absent, in contrast to the close relations that trade union organizations have developed with parties. This stems from the fact that civil society

organizations like the ENWO, MM and the WWF are keenly wary of developing any kind of attachment to or dependence on a political party, and fully resist such a possibility.

At the same time, these three organizations differ in the degree of interest that they have shown in parliament and the extent to which they have engaged in work and sought to acquire skills that are necessary to influence it. The WWF has shown greater interest in the national parliament (but also in the European parliament) and has engaged in activities specifically geared towards monitoring its activities and seeking to influence these. For instance, it has set up a separate website page specifically aimed at monitoring the environment-related questions that are submitted to the government by individual MPs, who then forward them to the WWF. The WWF has even been invited a few times to present its views and positions on particular environmental issues in the Special Permanent Committee on the Protection of the Environment, even if these were not taken into account, as our interviewee noted. In contrast while the MM has also occasionally been approached by MPs to provide information about its activities, it has never been invited for consultation by a committee. It itself has not seriously attempted even to lobby individual MPs, as it was acknowledged by our interviewee. It was entirely at the initiative of the ex-Speaker of Parliament, that the MM was once invited in parliament, which provided funds for some activities of the MM.

All civil society organizations are naturally interested in the acts and documents issued by parliament, in so far as they concern their area of activity, such as government bills under deliberation, questions to the government, or laws that are passed. Those organizations that seek to lobby individual MPs (such as the WWF) are also eager to gain knowledge about the votes cast by MPs in order to identify their positions and views on matters of common in-

<sup>110</sup> *Questions and current questions* are means through which the Greek parliament exercises government control. Parliamentarians have the right to submit written questions to the Ministers regarding any public issue. These questions aim towards the update of the Parliament with regards to that specific issue. The Ministers are required to reply in writing within twenty five days. In any case, at the onset of every weekly session, the petitions and the questions are listed in the daily agenda and discussed (Articles 126 to 128 Internal Standing Orders). For questions concerning current issues, parliamentarians have the right to submit a question addressed to the Prime Minister or the Ministers, who answer orally. At least once a week, the Prime Minister himself answers at least two questions that he selects. Current questions are debated by the Plenary Session in three sittings every week, as well as during the Recess Section (Articles 129 to 132 Internal Standing Orders).



terest for the organization. Between the Plenary Session meetings and committee meetings, the latter seems to attract relatively greater interest for those organizations that have attended or participated to lesser or greater degree in such committees (i.e. the ADEDY, or the WWF). This may also be suggestive of the fact that substantive or constructive discussion on an issue is more likely to take place inside committees that are smaller in size and may be less polarized, in contrast to debates in Plenary Session that are sharply partisan, excluding the possibility to express different ideas or independent viewpoints.

Nearly all interviewed organizations have addressed requests in parliament ranging from invitations to attend their activities to submitting letters, petitions or position papers with their views on issues of interest that are legislated. At least the three issue-based organizations have assessed the response of parliamentarians to be inadequate or entirely lacking (ENOW, WWF, MM), and so did the powerful trade union of GSEE, representing private sector employees. In the case of the GSEE and the WWF, the interviewees' noted dissatisfaction with the response from parliament mainly refers to the perceived unwillingness of MPs and government members to take into account the positions and demands that they advance. The ESYEA interviewee characterized the parliament's response to their demands as adequate but not satisfactory, noting that it greatly varies by issue and depends on the cabinet minister who is handling it. At the same time, he also attributed the deficient responsiveness of parliament to the ESYEA itself, most importantly its internal divisiveness and inability to assume coherent and united positions on issues such as social security or licensing of electronic media. It is only the ADEDY interviewee who assessed the responsiveness of parliament to be satisfactory.

#### *B. Availability of and access to information from and about parliament*

Nearly all interviewees assessed the availability of and access to information from and about parliament as satisfactory. For all interviewees, the parliament's website, in operation since 2000, emerges as the major means of obtaining minutes from committee meetings, Plenary Session proceedings, or explanatory reports that accompany bills introduced by the government. Some noted that searching through the website for such documents is not as easy for those who are not acquainted with how the parliament functions (MM and WWF interviewees). For instance, one has to search for proceedings by parliamentary period and session, which is often not known to most citizens or to organizations. Those groups that have frequent contacts with MPs, access information also through the supply of official documents by individual MPs (ESYEA, ADEDY, GSEE), and even by cabinet ministers who may send draft bills to certain organizations such as the ADEDY. In sum, in so far as obtaining information and official documents from parliament is concerned, the legal frame (described earlier in this study) and the existing electronic and non-electronic channels do not pose any significant obstacles to do so.

On the whole, nearly all interviewees assessed transparency in the Greek parliament to be fairly high (around 4 in the scale from 1 to 5). This assessment was mainly made in reference to access to information as well as to what is discussed and debated inside parliament. At the same time, most interviewees also saw a transparency and accountability deficit in the preparatory stage of law drafting that largely takes place before bills are introduced in parliament, and with regard to which there is little public knowledge as to who the actors who participate are, what the conflicts are and how compromises are reached (if they are reached at all). They also saw a deficit in

the informal and personalized relations that are cultivated between decision-makers, government officials and MPs on the one hand, and influential individuals and organizations from civil society on the other. Such relations are seen to be often more decisive and politically consequential for the laws that are passed than the formal, institutionalized structures of parliamentary consultation and debate. We now turn to these issues as they surface in the interviews with civil society actors.

*C. Is the Greek parliament characterized by openness and transparency?*

In spite of the fact that publicity and access to information in the Greek parliament is assessed as largely unproblematic and overall satisfactory, nearly all interviewees claimed that the *Vouli* and its workings are still characterized by substantial gaps in transparency and openness. They identify the source of the problems in this regard in three inter-related factors, which have already been mentioned in the previous section. In the first place, the presumed democratic nature and legitimacy of parliament as an institution of popular representation, public debate and governmental control is in practice thoroughly circumvented by the intensely partisan quality of its activities. The parliamentary majority made up of MPs of the governing party unquestionably support, always uphold and facilitate, rather than control and hold accountable the government and its policies and laws. Far from any genuine debate taking place regarding the government bills that are brought for discussion, the MPs positions and views strictly follow the party line and they are often aimed as declarations of support of or opposition and challenge to the government. While such pervasive partisanship may have been in tune with the social climate in the earlier years of the post-1974 democracy, it no longer seems to satisfy contemporary

democratic standards and expectations or to resonate with popular sentiment.

The implications of rigid party divisions and polarization for the quality of deliberating and legislating functions of parliament are substantial and rather onerous. All interviewees, including those representing the most powerful and influential organizations (ADEDY, SEV) agreed that the deliberations that take place in Plenary Session and for most part in committees are superficial and mostly inconsequential for the final laws that are passed. As the ADEDY interviewee explained, because of the culture of our political and parliamentary system, very few are the instances in which a government bill is substantively modified and transformed in the course of parliamentary debates, and when such modifications do take place they are minor and peripheral. As a matter of fact, discussions and debates in the *Vouli* are far from being lively and dynamic processes of contestation and argumentation, and they lack openness to diverse ideas, views and actors who are not allied with a party.

The superficial and largely declaratory nature of parliamentary discussions and debates is also linked to the fact that the substantive process of legislative initiative and drafting of government bills takes place before these reach parliament, namely within the competent ministries. It is within the latter that interested actors can exert substantive and decisive influence in the content and form of government bills. This process, however, is for most part unregulated and completely shielded from public exposure, therefore it is thoroughly opaque. While influential organizations or individuals may be invited to participate in this process, this is entirely informal and depends on the will and contacts of the ministries' legal departments or of high ranking public officials, including the ministers themselves. Even the most influen-

tial actors among our interviewed organizations, which have had privileged access to and participation in such extra-parliamentary consultations, were ambivalent about it and saw it as a central problem of transparency and accountability. All social actors, even the most influential ones, would like to know who was in a position to supply input to a draft law, at least when they are not the ones who were invited or approached to do so. As the GSEE interviewee stated, “we reckon that the transparent participation of all actors involved strengthens democracy and has more satisfactory results for society and citizens, to which the laws passed by parliament are addressed and whom they affect”.

The influence that powerful trade unions are able to exert in government policy and law-making processes is also channeled through strong connections between their different factions and political parties. The two large political parties of ND and PASOK have created their own labour organizations of civil servants, which struggle for power in the ADEDY, the nationwide general confederation of unions of civil servants, and in each ministry or public enterprise. Within ADEDY, the front labour organizations of ND, PASOK and KKE among civil service employees are DAKDY, PASKDY and DE, respectively. Similarly, the GSEE has also been an arena of factional divisions mirroring those of the different political parties, on the strategies of which it depends (Sotiropoulos, 1995). Labour movements without ties to any political party have also appeared at the plant or company level but they have for most part been unable to exert any influence or to survive for more than a few years at a time.

Similarly, the ESYEA interviewee stressed that while access to parliamentary information is unhindered, important impediments to transparency exist related to the opaque and ostensible fashion in which the various con-

sultations take place (when they take place at all). They are often shaped by the actions of invisible organizational or individual actors, who lobby ministerial legal experts and officials, or parliamentary committees in order to introduce an exception or to push for the inclusion of self-seeking provisions. In a self-critical assessment, the ESYEA interviewee admitted that any kind of input that journalists are able to exert in parliamentary legislation goes through individual or party contacts rather than via open procedures and structures. In this manner, certain individuals seek to gain influence for themselves, and to pursue their own self-interested demands. This leads to fragmentation and ineffectiveness as far as collective interest representation is concerned, evidenced in the fact that the ESYEA often fails to act in a united fashion around certain common interests. Above all, it is symptomatic of the thorough lack of transparency in the process whereby particular, societal and economic, but also individual interests access and influence informally but decisively government decisions and law-making.

The thorough lack of transparency at the pre-parliamentary stage of law drafting becomes even more pronounced when the competent minister introduces a government bill for discussion in parliament at the last minute, i.e. the day before, or even the same day and outside the agenda of parliament. Both the GSEE and the ADEDY interviewees confirmed this practice to be frequent, at least more than it should, and it does not leave any time for interested actors to read carefully through and formulate well-documented positions. This practice is made possible by recourse to relevant provisions in the parliament’s Rules of Standing Order and in the constitution, which allow for voting on a government bill without discussion and debate by appealing to the urgent nature of the issue involved. Both confirmed that re-

course to this provision is excessive and undue, and in practice it excludes social consultation and public dialogue of any sort.<sup>111</sup>

In the end, the lack of transparency in the law-drafting stages is a corollary to the fact that no real consultation with societal interests and organizations takes place in the legislative processes in Greece. This seriously undermines the democratic legitimacy and openness of parliament as the preeminent representative institution on behalf of society. Even though there are multiple contacts between the eight organizations represented by our interviewees with parliamentary committees, MPs and cabinet ministers, these are for most part assessed as not exerting any influence. Those civil society actors who acknowledge that they have been able to influence, occasionally or frequently, the final laws that are passed (ADEDY, SEV, and less so GSEE) admit that they have done so largely through informal channels, when cabinet ministers or MPs informally ask for their views and suggestions. While the influence of these organizations in the legislative process is substantially greater in comparison to the issue-based organizations interviewed, both the ADEDY and the GSEE interviewees would like to see a more consistent, open and systematic kind of cooperation with parliament, especially in the context of committees.

In fact, nearly all of the interviewees expressed the view that there is a need to establish open and clear structures and processes that institutionalize the participation of social and economic actors in the legislative process, therefore making it more transparent and open. As an example, the ENOW interviewee stated that the institutionaliza-

tion of NGOs' participation in the context of committees, in which they would be regularly and under explicit rules invited to hearings, would also be a means to counter partisan polarization. It is indicative that 6 out of 8 interviewees would like to take part in a future campaign to increase transparency in parliament, predominantly in the direction of strengthening the role of parliamentary committees, and establishing more permanent, institutionalized, and transparent participation of social actors in the legislative process. At the same time, there are disagreements among NGO activists regarding the establishment of institutionalized consultations of parliament with NGOs, as the WWF interviewee brought to our attention. Skepticism around this stems from wariness about losing their independent and non-governmental quality. But even the more skeptical activists would like to see a systematic process, rather than occasional and ad hoc invitations, whereby parliamentarians engage and seek the views and advice of civil society actors.

### **5. Concluding Remarks and Recommendations: a More Open Greek Parliament?**

The consolidation of the post-1974 democracy in Greece and the permanent removal of extra-parliamentary centers of power, such as the military and the monarchy, from politics have not been accompanied by an equivalent rise in the power, prestige and legitimacy of parliament. If anything, both its power in shaping but also in controlling government decision-making, as well as its perceived legitimacy by the Greek public have been in a process of decline. In part, broader and longer-term processes of modern state expansion in social and economic affairs, along with more recent processes of supranational integration in the EU (which have not been

<sup>111</sup> Prior to the 2001 constitutional revision, MPs could introduce additions or amendments to a law at any time, even during the course of the parliamentary debate. The 2001 revision no longer allows this and requires MPs to introduce amendments or additions at least three days prior to the debate (Foundethakis 2003: 92).

explored in this study) have no doubt contributed to the decline of parliament vis-à-vis the executive. They have also created a context in which parliaments, including the Greek one, have been under pressure to adapt in order to reclaim their legitimacy as representative and accountable institutions.

The study of the Greek case shows that such adaptation of the national parliament has not so far been successfully accomplished. The obstacles must be sought in the configuration of domestic political structures and the social-political practices that have developed within them. The weak status of parliament (and of parliamentary opposition in particular) has been linked to the overwhelming dominance of the governing party in it, as well as to the powerful relationship of the latter with the state and public administration. In his study of nearly twenty years ago, Alivizatos characterized the Greek *Vouli* as “talking” parliament as opposed to a “working” parliament with a central aim to support action by the executive, to which it is subordinate, at the expense of ensuring publicity and control (Alivizatos 1990: 144).

This has not significantly changed today. The intensely partisan character of the law-making processes has rendered the *Vouli* pre-eminently an arena of party confrontation as opposed to genuine societal representation. These processes are overwhelmingly shaped by party loyalties at the expense of rational debate and the independent views of individual deputies. The parliamentary group of the governing party has not had the slightest autonomy from the government cabinet, whose legislative initiatives it obediently ratifies. The opposition parties engage in polarized and unproductive debate that is equally defined by their party loyalties making debate in parliament largely ideological and symbolic rather than rational and constructive.

The nature and extent of transparency, openness and accountability in the Greek Parliament cannot be understood and assessed outside of this context of a party polarized and government-dominated institution. While they depend on constitutionally and legally guaranteed rights such as the right to information and procedures to ensure publicity of parliamentary activities and access of citizens to the latter, these rules are not in and of themselves sufficient to guarantee transparency and openness. As a result, they are not in and of themselves capable to uphold the democratic legitimacy and accountability of parliament. As the ES-YEA interviewee emphatically stressed, transparency above all presupposes the existence of a serious parliament, with serious political parties and serious representation. Based on the analyses of this study, guaranteeing transparency and openness presupposes fundamental and multifaceted reforms of parliament and the institutions connected with it, at least in three different directions. In the first place, they require improving transparency and effectiveness in the financial affairs and broader management of the parliament itself (i.e. by reforming the process of hiring its staff, rationalizing the expenses of MPs, etc.)

Secondly, promoting transparency and openness is linked to the ability of parliament to perform more effectively and authoritatively its legislative functions. Achieving this requires bolstering both its structures and resources in order to improve its capacity to engage effectively and substantively in law-making, instead of being entirely superseded or side-stepped by the government and the administrative departments of the ministries. Among other things, this would require greater competences of and input from the scientific services of the Greek parliament, the role of which is currently marginal, as well as bolstering the role of specialized committees. Finally, improving transparency and open-

ness also requires reforms that open up parliament to societal input simultaneously with standardizing, institutionalizing and rendering transparent the processes of consultation with social and economic interests (which now take place informally inside ministries). All these sets of reforms are necessary if the Greek parliament is to reclaim its legitimacy and authority as a representative and accountable democratic institution. However, they are unlikely to be effective or sufficient if they are not simultaneously based on and in turn lead to the weakening of the party-state and the party-dominated parliament.

The recently installed socialist government of PASOK has vowed to pursue reforms in all

these directions as well as to upgrade the national parliament in order to establish "a political system that guarantees transparency and improves the quality of representative democracy." In particular, it has vowed to institute a mandatory stage of public consultation for all government bills, which will be recorded and posted on the website; to have government bills accompanied by a quality control report that assesses the implementation of the law and its impact on society, the economy and the environment, among others; and finally, to regularly update the parliament and the public about European affairs, the issues that the government discusses at EU level and the positions that it takes.<sup>112</sup>

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<sup>112</sup> See the website page of PASOK and the respective link at <http://www.pasok.gr/portal/resource/section/PoliticalSystemForTransparencyandAccountability>



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## Open Parliaments: The Case of Macedonia

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### **Introduction**

Our study follows three ways of answering the questions of “How open is the Macedonian Parliament?” and “What can be done to raise its transparency and accountability?” We examined the legal framework of transparency applied to the parliamentary level, then the practices and the perceived obstacles in using transparency instruments expressed by various categories of civil society actors (NGOs, trade unions, media etc.) and last but not least, we assessed the present situation of the openness of the Parliament based on a common methodology, using the jointly agreed, measurable criteria.

Modern Macedonia came into existence in 1945 as one of the six constituent republics of the Socialist Federal Republic of Yugoslavia. When Yugoslavia disintegrated in 1991, Macedonia declared independence on November 21 1991, and today is a democratic multiparty state. Power is divided among the three branches of government: the Parliament (Sobranie), the executive (the government with the president and premier), and the judiciary (Supreme Court, Constitutional Court, and the public prosecutor)<sup>113</sup>. By law the Sobranie is composed of between 120 and 140 members elected by direct, universal suffrage. All Parliaments since 1990 have had 120 members. Members of the Macedonian Parliament (MPs) are elected for a four-year term in six electoral districts. Each district has about 290,000 voters and elects 20 members by proportional representation. Citizens vote for an electoral list, and seats are distributed on a proportional basis, according to the D’Hondt formula. Articles 60-78 of the Constitution outline the

main competences of the Parliament. The actual organization and work procedures of the Sobranie and the parliamentary bodies are detailed in the Parliament’s Rules of Procedure.<sup>114</sup> In July 2009 the Parliament adopted new Rules of Procedure which had been the subject of controversy for several years, one of the more controversial issues being limiting the duration of speeches by MPs at plenary discussions.

Pursuant to Article 88 of the Constitution, executive power is vested in the government, which is responsible for the organization and coordination of all state administrative bodies. It initiates draft legislation, oversees the operation of state institutions, and executes laws and regulations adopted by the Parliament. In the last fifteen years, the governments have been formed by a coalition of parties, typically a major Macedonian and Macedonian Albanian party and a smaller Macedonian party as a junior coalition partner. Although the president has the legal duty to nominate candidates, the Parliament appoints the premier, who is the head of government and is selected by the party or coalition that gains a majority of seats in the Parliament.<sup>115</sup> The current government is led by Premier Nikola Gruevski and includes the Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity (VMRO-DPMNE), the Democratic Union for Integration (DUI), the Democratic Renewal of Macedonia (DOM), the Party for European Future (PEF), and the Socialist Party (SP), as well as a number of smaller ethnic parties.

The Macedonian political system is semi-presidential, akin to the French model. By law, the president represents Macedonia at home and abroad and is the commander-in-chief of the armed forces. The president may veto legislation adopted by the Parliament with simple majority. However, this veto power is quite limited, and

<sup>114</sup> The Rules of Procedure of the Macedonian Parliament can be downloaded at this link: [http://www.sobranie.mk/WBStorage/Files/Delovnik\\_Sobranie.pdf](http://www.sobranie.mk/WBStorage/Files/Delovnik_Sobranie.pdf)

<sup>115</sup> According to the Macedonian legislation the premier is referred to as the President of the Government.

<sup>113</sup> See Article 8 of the Macedonian Constitution.

the Parliament can vote on the same law again within 30 days. If the law in question is approved again by a two-third majority, the president must sign the decree into law. Since the president is elected by universal and direct suffrage, serving a period of five years with a two-term limit, the personality of the president has a great impact on the position's actual power. Mr. Kiro Gligorov, acting as "father of the nation" from 1991 to 1999, set the trend for influential presidents, with the late Boris Trajkovski and the current president, Branko Crvenkovski, following his example. For example, in 2008, Mr. Crvenkovski had great influence in the main issue in the foreign affairs, the state name dispute with Greece.

Even if Macedonia is a parliamentary democracy, in practice the government strongly dominates the assembly by introducing laws to be adopted or amended.<sup>116</sup> Still, there are strong mitigating factors preventing the concentration of power in cases where a political party or a coalition gains control (after elections) of both the legislature and the executive. First of all, the strong figure of the president works to balance the dominant tendency of the Prime Minister even if they are from the same party. This functions well when the president and the Prime Minister do not belong to the same party, such as during the period from 2007 to early 2009. The periods of cohabitation are frequently character-

ized by a critical stand, even antagonism, of the president on the workings of the government, and vice versa. Second, the Macedonian political system features an informal rule of having the government composed of a multiethnic coalition. Governing such a coalition requires advanced interpersonal skills and accommodation, which in turn necessitates much political maneuvering and compromise, making the concentration of power unfeasible.

### ***Low Confidence and Interest in the Work of the Parliament***

By law Macedonian citizens and the media have access to legislators and the legislative process, and parliamentary sessions are open to the public. Yet in practice, few citizens visit sessions of the Sobranie either on local or national level. In general, Macedonian citizens' involvement in the political life is rather low. The number of citizens participating in elections is decreasing. Although the turnout at the first parliamentary elections after independence in 1990 was extremely high, at 85%, it dropped to 57% at the last early elections called at extraordinary times for Macedonia following the failure to get NATO invitation at the Summit in Bucharest due to Greek objections to the name of the country. In fact, turnout has been decreasing since the 1990 elections.

**Table 1:** Turnout at Parliamentary Elections in Macedonia

<b>Elections in</b>	<b>1990</b>	<b>1994</b>	<b>1998</b>	<b>2002</b>	<b>2006</b>	<b>2008</b>
<b>Turnout</b>	<b>85%</b>	<b>78%</b>	<b>73%</b>	<b>73.5%</b>	<b>56%</b>	<b>57%</b>

Source: State Electoral Committee, [www.dik.mk](http://www.dik.mk)

Furthermore, NGOs and concerned citizens have not been engaged in budget oversight, and local governance is a largely unchecked endeavor in Macedonian political life. An additional problem is that many civil society organizations

in Macedonia are politicized and represent the agenda of the main political parties.<sup>117</sup> The media raises many issues of general interest, rarely taken by civic organizations and citizens groups; but a

<sup>116</sup> See for example the report on the MPs protesting the marginal role of the Parliament, "1 spikerot poklopen od premierot [The President of the Assembly also covered by the Prime Minister]", *Utrinski Vesnik*, 24<sup>th</sup> July, 2009, available at <http://www.utrinski.com.mk/?ItemID=DD5612F828F51344BD1BEE6BDF53E13D>

<sup>117</sup> See for example the "Civil Society" section of the reports on Macedonia in the Freedom House's annual *Nations in Transit Report*, or Zoran Stojkovski, "Civil society in Macedonia at the crossroads: towards fighting for public needs and interests or securing its own sustainability", Center for Institutional Development – CIRa: Skopje, 2008.

general passivity of the citizens in the democratic processes on local or national level is visible.

The decrease in turnout at the elections reflects the general opinion of the citizens about the work of the parliament. Citizens understand that since Macedonian parties are very centralized structures, the voice of individual MPs is not relevant. Party discipline is high and in the Assembly they vote en block, dissident voting being a complete rarity. Some parliamentarians even vote with the voting card of another member.<sup>118</sup> Due to the overwhelming role of the political parties in the running of the country, Macedonian citizens have very low level of confidence in the national institutions such as the parliament, the government, the president, or the judicial system (the courts). In particular, the level of confidence in the national Parliament has been very low for at least the last seven years, a period for which data is available. Thus in the January – February 2002 survey of IDEA, the

International Institute for Democracy and Electoral Assistance, only 12.5% of the respondents answered that they trust very much or trust a fair amount the Parliament. Subsequently, in a series of surveys of UNDP, the respondents were asked whether they have confidence in the Parliament. Throughout the years 2003 – 2008 the percentage of those answering “very much” did not go above 6%. On the other hand, those answering having “no confidence at all” in the parliament varied between 30% in January 2003 and November 2006, reaching the staggering 54% in November 2005. In most of the UNDP surveys the percentage of those with no confidence in the parliament was above 40%. If you combine the percentages of those who have “no confidence at all” and those who answered “somewhat not” then it is clear that a vast majority of the citizens do not have confidence in the parliament (from 47 % in January 2003 to 77% in March 2008).

**Table 2:** Percentage of respondents answering the survey question  
“Do you have confidence in Parliament?”

UNDP Report	Very much	Somewhat confidence	Somewhat not	No confidence at all
January 2003	6	43	17	30
November 2004	4	26	20	46
January 2005	4	27	21	46
March 2005	4	27	21	46
June 2005	4	32	20	40
November 2005	4	22	18	54
March 2006	3	19	22	52
June 2006	3	25	21	47
November 2006	5	37	24	30
March 2007	4	32	24	34
March 2008	2	20	32	45
March 2009				

Source: UNDP

<sup>118</sup> See for example, Utrinski Vesnik, 22<sup>nd</sup> May, 2009. “Vo Sobraniето se falsifikuvashе glasanje [Fabricated Voting in the Parliament]” available at <http://www.utrinski.com.mk/?ItemID=416BC4815B486242A75A6F1D96CD8C0F>, Utrinski Vesnik 16<sup>th</sup> October, 2006, “Koj glasa vo ime na otsutnite pratenici [Who votes on the behalf of the absent deputies]”, available at <http://217.16.70.245/?pBroj=783&stID=4351&pR=2>, A1 news, 30<sup>th</sup> June, 2003, “Vo sobraniето eden pratenik glasa za drug [In the Parliament, MP votes in the name of another MP]”, available at <http://www.a1.com.mk/Vesti/default.aspx?VestID=21696>.



More recently, in a national poll by the Institute for Democracy, Civil Society and Solidarity the citizens have given the work of the parliament a score of 2.64, on a scale between 1 and 5.<sup>119</sup> About 44% of the citizens gave a score of “3”, 24% gave a score of “2” while 16%, gave a score of “1.” Although the score of 2.64 given by the citizens is low, in fact it is the highest score given in such surveys in the period since February 2007. While in 2007 the scores were 2.35 and 2.32, in 2008 they were 2.26 and 2.43, raising to the mentioned 2.64 in 2009. Slightly more citizens believe that the parliament does a good job (39%) rather than a bad job (35%). A great majority of the citizens – 73%, stated that they have never met the member of the parliament representing their electoral district.

Half of the respondents claimed not to be informed about the work of the parliament, while 48% mentioned that they are informed. A vast majority of the citizens stated that they are not informed about the work of the Working Groups in the Parliament (50.9% claiming to be “fully not informed” and 28.8% “partially not informed”). Moreover, almost the same number of citizens (44% and 43%, respectively) claimed that the Parliament is open/closed to the general public. The citizens are not convinced that the parliament has any control over the work of the government, 58% of them stating that the parliament has a small control (43% saying small and 15% partially small control).

### ***Constitutional and Legal Framework for an “Open Parliament”***

There is no specific constitutional regulation of the right to information. In principle, Article 16 of the Constitution guarantees freedom of speech

and access to information. The Law on Free Access to Public Information (hereinafter: Free Access Law) was enacted in 2006 and a special Commission for protection of the right of free access to public information was established. Unfortunately, there is no developed jurisprudence of the courts regarding this law. Moreover, the citizens very rarely use the provisions of this law. The access to information of journalists, researchers and concerned citizens alike has been problematic in 2008 despite the existence of the Law.

The Free Access Law determines the procedure for requesting and receiving information by interested citizens. The Law was prepared in participatory way with numerous NGOs contributing to the legal drafting. It was put into force on September 1<sup>st</sup>, 2006. This Law “operationalized” the right of all citizens to demand information, which has been a constitutionally guaranteed right since 1991. At the same time, the Free Access Law implied an obligation on part of the information holders (public bodies) to provide access to the information they have. There are several instruments used for enforcement of the Free Access Law:

- *The Commission* is an independent body for the enforcement of the Free Access Law deciding on appeals made against decisions by the public institutions to deny requests. The Commission, as a second-level body, decides on appeals against denied requests for free access. It is responsible for the education of citizens and public institutions, gives opinions on the law that regulates this right, and submits an annual report on how the Law on Free Access is enforced;
- *The Information Official*. All public institutions are obligated to appoint an “information mediating official” whose responsibility is to assist citizens in submitting requests for access to information. This official should act upon the request internally and ensure the timely reply to the requests;

<sup>119</sup> See Utrinski Vesnik, 18<sup>th</sup> July, 2009, “Gragjanite dadoa trojka za rabotata na parlamentot[The citizens gave a score of 3 for the work of the Parliament]” available at <http://www.utrin-ski.com.mk/default.asp?ItemID=83000E70A39FB94E8B4C8257DC8EA44C>. The findings are available on the Internet site of the Parliament, <http://www.sobranie.mk/WBStorage/Files/Anketa%20juli20090.pdf>

- *List of Public Information.* The List, as a catalogue or an index, should be prepared by all public institutions and published in a manner that would make it easily accessible to the public, so that the citizens can be informed as to what kind of information each public body holds;
- *Request Form.* It is the written form of the request for free access to information. As a rule, the citizens should submit written requests (by submitting a request form) which, in principle, are used to make access easier. If the request is not submitted using a standardized form, it should nevertheless be clear from the content of the request that it is a request for access to information and the public institutions are obligated to consider and process it in accordance to the Free Access Law;
- *Pricelist.* The Government adopted an act<sup>120</sup> which outlines the eligible costs when supplying information to citizens for which financial compensation may be requested from the interested citizen.

Citizens have the right to free access to public information and can obtain it from holders of such information: orally, in writing or in electronic form. If the information holder approves access to the requested information, they should release this information within 10 days after the request was received orally. If the request was submitted in writing (Articles 12 and 14), the deadline for receiving the answer to such request is 30 days from the day of submitting the request. This period can be prolonged for further 10 days for two reasons (Articles 21 and 22): (i) to enable partial access; or (ii) because of the big size of the requested document. Exceptions to the Law are mentioned in Article 6 and refer to secret data on business, monetary and fiscal policies of the government, and all personal data, intellectual property rights, and data

of criminal proceedings. Still, the Law declares that despite these limitations, the “holder of information must give the data to the interested parties if the benefits for the public good in revealing the data exceed the costs of keeping the data secret.”

If the information holder, addressee of the request, does not possess the requested information, the request is redirected to the institution that possesses the requested document and the information seeker is informed about the referral. If the information is not provided or the request for information is partially satisfied, citizens can submit complaints to the information holder within 15 days after the decision. (Article 28, Line 1). The complaint can also be submitted to the Commission for Protection of the Right to Free Access to Public Information (Article 28, Lines 1 – 4). The Commission decides about the complaint within a timeframe of 15 days of receiving the complaint (Article 28, Line 3). The decisions of the Commission are final, but the applicant has the right to an appeal (to start an administrative procedure) against the decision of the Commission. The appeal should be sent to the Supreme Court of Macedonia, which is authorized according to the provisions of the Law on Administrative Procedures.

Despite the good intentions, the implementation of the law is marked by numerous deficiencies. The monitoring of the implementation of the law identified low level of awareness and knowledge on how and what information should be released. Additionally, there is no consistency of applying the rules across the public administration units.<sup>121</sup> This is mainly due to the fact that the Commission for Free Access to Information was late with training civil servants and raising their awareness on how to apply the Free Access Law.

<sup>120</sup> Decision of the Government of Macedonia (See “Official Gazette of Macedonia”, No. 13/06).

<sup>121</sup> See the Report “Dzid na Tishina [Wall of Silence]”, FIOOM: Skopje, November 2007. According to the monitoring data, the same type of document is considered to be classified information for some ministries, while others are posting it on their websites.

In practice citizens have their requests not responded on time; their requests are either transferred to another public institution (usually long after the deadline) without informing them about the referral, or the public institutions refuse to supply information that they hold. In many cases and especially when budget data was requested, the public officials decided not to respond and release the data, but to remain silent (thus, for example, within the monitoring period two out of three budget data requests were faced with administrative silence and the data was supplied in appeal procedure). Administrative silence is an area that decreases the transparency of the Macedonian civil service. The tools against such practice in the Macedonian public administration system are already embedded in the Macedonian Free Access Law, which regulates an appeal procedure to be initiated at any time. This procedure influences the official's responsibility and work and makes the citizen free of obligation to count the days since the request was filed to make sure that they do not miss the appeal deadline and therefore be punished for the administrative body's inability to do its work. However, the public institutions do not compulsorily apply the Public Interest Test in each particular case when they limit access to information (applying the exceptions listed in Article 6, Paragraph 1 of the Free Access Law). Therefore, the particular conditions in which the assessment is carried out in order to determine whether the benefits for the public from the publication of the information outweigh the damages caused to the protected interest, are largely unknown. This closes the administration further and decreases the level of transparency of the system.

Macedonia has legal definitions of public information and confidentiality criteria. According to the Law on Classified Information,<sup>122</sup> "public information" is every "information or

material prepared by the state institutions, the institutions of the local government, a public enterprise, public service, an organization or individual, as well as by foreign state institutions, an organization or individual, which is related to the security and defense of the state, its territorial integrity and sovereignty, the constitutional order, public interest and human rights and freedoms." Classified information is information which is protected from unauthorized access or use, determined by level of classification. Macedonian courts usually accept broad "national security" justifications limiting access to information, which is often misused, impeding the citizens' rights to free access to information.

In Macedonia there is a number of laws and bylaws regulating the work of the Parliament such as the Law on Members of the Parliament, the Rules of Procedure of the Parliament and others. They do not regulate the issues of openness in details, but only generally. Part XIV (Articles 225-234) of the Rules of Procedure of the Parliament explains the public work of the Parliament, and defines the number and the members of the parliamentary committees, as well as the permanent representations of the Parliament in the international organizations. There are no specific details in the constitution about the parliamentary meetings. In fact, there is only one article in the constitution (Art. 70) where the issue of publicity of parliament meetings and sessions is regulated. It says that the meetings of the Parliament are (open to the) public.

Citizens can be present at the plenary meetings of the Parliament, while the journalists can be present also at the meetings of the committees, commissions and other bodies of the Parliament, with intention to inform the public about the work of the Parliament. In principle, the representatives of the media can access the documents, agendas, and materials of the plenary meetings and meetings of the committees, commissions and other bodies of

<sup>122</sup> *Official Gazette of the Republic of Macedonia*, No. 9/2004.

the Parliament. These documents are publicly available at the Parliament's web site ([www.sobranie.mk](http://www.sobranie.mk)), as are the transcripts of the discussions in open plenary and committee sessions. Moreover, another way of openness of the Parliament to the public are the regular press conferences where journalists and citizens can obtain information about the work of the Parliament. If an initiative for evaluating the legality or constitutionality of some act regarding the openness and transparency of the Parliament is directed to the Constitutional court, or the Court decides autonomously to evaluate the acts, and if it finds legal anomalies, it can make review of the disputable acts or part of the acts. Yet, in practice these activities of the Constitutional court have not occurred/are very rare.

A further fundamental human and civil right, defining the relations between an individual citizen and the government or the State, is guaranteed by Article 15 of the Macedonian Constitution. "The right to appeal against individual legal acts issued in first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed." This right is crucially important for guaranteeing open and accountable representative institutions and is further clarified in the Law on Administrative Procedure.

### ***The Legislative Process in Macedonia***

The legislative process in Macedonia consists of several phases and is defined in the Book of Rules of the Parliament (Articles 132-192). According to the Book of Rules, a draft law is to be submitted to the President of the Parliament, who submits it electronically or in written form immediately or within three working days the latest to the members of the Parliament. The President of the Assembly submits to the Government a draft law not proposed by the Government, in order for the Govern-

ment to give its opinion. If the Government does not submit its opinion, the Assembly and the working bodies shall consider the law proposal without its opinion.

Thereby, the legislative process is continued in three steps. There is a "first reading" of the proposed legislature if at least 15 Members of the Assembly, within seven (7) days from the day of receiving a law proposal, request that the Assembly hold a general debate. Before discussing a law proposal at a session of the Assembly, it is examined by the relevant working body and the Legislative Committee, within three (3) days prior to the day designated for holding the Assembly's session. If the law proposal contains provisions for which additional finances are allocated, the proposal may also be examined by the working body under whose competence fall the issues of the budget and finances, with respect to the effect of these provisions on the available finances and the possible sources for financing the proposed solutions. The reports of the relevant working body and the Legislative Committee shall contain their position on whether the law proposal is acceptable and whether it should be put to further reading.

After a general debate, the Assembly decides whether the law may be put to second reading. If the Assembly decides that the law proposal is acceptable and may be put to further reading, the legislative procedure continues and it may include holding public debates if the law proposal is of broader public interest. In that case a working body is made which is to:

- ensure that the law proposal is published and thus made available to the citizens, public organisations, institutions, civil associations, political parties, trade unions and other interested subjects;
- ensure collection and arranging of the opinions and suggestions presented during the public debate;
- prepare report on the results of the public debate.

On the basis of the opinions and proposals presented in the public debate, the relevant working body shall prepare a report and submit it to the Assembly together with the law proposal for second reading.

The second reading is done in a relevant working body and in the Legislative Committee. They are to examine the provisions of the law proposal and the amendments submitted, and shall take a vote on them. The working bodies may also submit their own amendments. Every Member of the Assembly, parliamentary group or working body may propose an amendment. The relevant working body and the Legislative Committee, following the completion of the debate, and within five (5) days at the latest, draft a text of the law proposal incorporating in it the adopted amendments (amended proposals) and explanatory notes. If differences arise during the drafting of the amended law proposal between the relevant working body and the Legislative Committee, they shall hold a joint session to “harmonize” their positions. Failing to do so, the ultimate decision is left to be taken by the Assembly. In the second reading at a plenary session of the Assembly, only those articles of a law proposal are debated that have been altered with amendments at the working bodies and amendments may be submitted only to those articles.

The third reading on a law proposal is held on the first subsequent session following the session of the Assembly for the second reading. The working bodies do not debate in this phase. In the third reading, the Assembly shall debate and decide only on the articles of the amendment law proposal to which amendments have been submitted and shall decide on the proposal as a whole.

During the third reading on a law proposal, amendments may be submitted only to those articles to which amendments have been adopted in the second reading at the session of the Assembly. Laws are adopted

by a majority vote of the Members of the Assembly determined in the Constitution of the Republic of Macedonia and a law.

A law may be adopted in an *urgent procedure* when this is necessary in order to prevent and avoid major disturbances in the economy or when this is required for the interest of the security and defense of the Republic, or in cases of major natural disasters, epidemics or other extraordinary or urgent needs. An initiator of a law proposal may suggest to the Assembly to examine the law proposal in *shortened procedure* in cases of:

- not complex or extensive laws;
- termination of validity of a certain law or particular provisions of a law; or
- not a complex or extensive harmonization of a law with the European Union legislation.

In such case, the President of the Assembly immediately assigns a relevant working body and the Legislative Committee to examine the law proposal. When a law proposal is examined in a shortened procedure, there is no general debate. The second and the third readings are held at a single session. In such case, the second reading starts with a debate on the law proposal in accordance with the provisions of these Rules of Procedure for the second reading. Amendments may be submitted at the session, until the beginning of the third reading on the law proposal.

*Direct democracy* in Macedonia is not very well developed although it is legally possible to pass legislation after a popular initiative. According to Article 71 of the Macedonian Constitution, and Article 71 of the Law on Referendum and other Civic Initiatives, only the members of the Parliament, the Government and a minimum of 10,000 citizens/ voters can make draft-laws to the Parliament, but every citizen, group of citizens or institutions can propose an initiative for passing a law. Yet, although formally there is a possibility for passing legislation following a popular initiative, in prac-



tice this model is rarely used, because the main drafter of laws is the Government, and the responsiveness of the Parliament for other legal initiatives is on a very low level. Only “Polio Plus”, the “Dostoinstvo[Dignity]-Association of 2001 War Veterans,” the so-called ‘Braniteli’,<sup>123</sup> and the World Macedonian Congress have attempted to use this legal opportunity to initiate laws. Despite gathering 32,000 signatures, “Dostoinstvo” could not muster parliamentary majority to pass a Law on the 2001 War Veterans. Although “Polio Plus” successfully gathered 19,000 signatures in support of an initiative to pass a Law Defending the Rights and Dignity of the Persons with Disabilities, this law was not subsequently passed by the Parliament.<sup>124</sup> Unsuccessful was also the initiative of the World Macedonian Congress to pass a law on the coat of arms.<sup>125</sup>

The Law on Referendum specifies that 150,000 voters can initiate a referendum (Article 20 of the Law on Referendum) on an adopted or proposed law. Twenty days is the period in which the signatures of the voters are to be collected. A referendum cannot be held on budgetary laws, matters of defense in extraordinary circumstances, and all laws that require majority of the votes of the members of the parliament as well as the majority of the votes of the members of the non-majority communities in Macedonia (Article 28). A majority of the voters is needed to accept a decision moved through a referendum, while 50% plus one

turnout is obligatory. In reality, the referendum to vote for or against keeping the 123 municipalities as determined by the Law on Territorial Division of the Republic of Macedonia and Determination of the Areas of Local Self-Government Units, and the Law on the City of Skopje, has been the only instance when this democratic tool has been used by the citizens since independence. At that time, the question was whether to overturn the municipal redistricting plans which gave greater autonomy to Macedonian Albanians following the Ohrid Framework Agreement that ended the 2001 conflict between ethnic Albanian militants and the government forces. Although opinion polls prior to the vote suggested support of the majority of the voters, turnout was only 26,2%, which meant that the referendum was defeated. Of those 26,2%, 95,4% were for the referendum while 4,6% were against.<sup>126</sup>

### **Competences of the President of the Assembly**

The President of the Assembly represents the Assembly, convenes and chairs its sessions, ensures the implementation of the Rules of Procedure, signs the decrees for promulgation of the adopted laws and carries out other responsibilities determined by the Constitution and the Rules of Procedure of the Assembly.

Among other competencies, the President of the Assembly:

- provides clarifications on the implementation of the Rules of Procedure, for which purpose he/she may request an opinion by the Committee on the Rules of Procedure, Mandate and Immunity;
- determines the working body competent for debating particular issues submitted to the Assembly (competent working body);

<sup>123</sup> See A1 news, “Dostoinstvo so protesten marsh niz Skopje[Dignity on a protest rally in Skopje]” 30<sup>th</sup> November, 2008, available at <http://www.a1.com.mk/vesti/default.aspx?VestiID=100923>, A1 news “Zakonot za braniteli ne pomina vo parlamentot[the Law on the 2001 War Veterans did not pass in the Parliament]” available at <http://www.a1.com.mk/vesti/default.aspx?VestiID=100467>, A1 news, 28<sup>th</sup> July, 2008, “Dostoinstvo so peticija bara zakon za braniteli [Dignity uses a Petition to ask for Law on the ‘Braniteli’], available at <http://www.a1.com.mk/vesti/default.aspx?VestiID=95757>.

<sup>124</sup> Elena Kochovska, Polio Plus. Interview made on 28<sup>th</sup> July, 2009. See also Polio Plus, *Sistemska Zakonodavstvo za licata so Hendikep*, Polio Plus: Skopje, 2006, pp.83-101.

<sup>125</sup> See the interview with the president of the World Macedonian Congress, Todor Petrov, available at <http://popovashapka.com/Intervju%20so%20Todor%20Petrov.doc>.

<sup>126</sup> See “Referendum on territorial organization 2004”, IFES Macedonia, available at <http://www.ifes.org.mk/en/referendum.asp>



- examines the procedural accuracy of a proposal for launching a citizens' initiative for a law, for calling a referendum at national level and for submitting proposal to start a procedure for amendments to the Constitution;
- ensures coordination of activities between the Assembly and the President of the Republic and the Government;
- cooperates with the Coordinators of Parliamentary Groups;
- on behalf of the Assembly pursues international cooperation with parliamentary, diplomatic, consular and other representatives of foreign countries and international organizations, as well as with other foreign officials;
- follows the work of the Assembly's Service, ensures promotion of its work and creation of conditions for its modern and efficient operation;
- entrusts certain obligations to the Secretary General;
- establishes working groups to examine issues falling within the competence of the Assembly;
- passes acts stipulated with the Rules of Procedure, and
- conducts other duties stipulated with the Constitution, law and the Rules of Procedure.

### ***"Open Parliament" in Practice***

In Macedonia, in general, there are no differences between the legal regulation and the practices which have taken root in parliamentary work regarding openness because the openness of the Parliament is constitutionally guaranteed, and there is not a serious obstacle for practicing openness and transparency. In principle, Macedonian citizens can have access to plenary meetings and committee sessions. Citizens can attend the plenary meetings and follow them from the Visitors' gallery. In addition, the public

access is possible through viewing the Parliamentary Channel and via the Internet. The Parliamentary Channel of the Macedonian Public Broadcaster directly broadcasts the plenary sessions while also broadcasting live and recorded sessions of the various committee meetings. Interested citizens can also visit the Internet site of the Parliament and find there the transcripts of the plenary meetings. The Parliamentary committee work can only be followed directly through the Parliament channel, or by following the reproductions on the same TV. According to Article 121-2 of the Rules of Procedure of the Parliament at the committee meetings, an authorized representative of an initiator of a law, supported by at least 10,000 voters, can be present. In addition the committees might invite experts, scientists, academics and other public figures, as well as representatives of municipalities or of the city of Skopje, public enterprises, trade unions and other organizations that can provide opinions on the matters discussed at the meeting. There is also an Office for contact between the NGOs and the Parliament.

Records of Macedonian Parliamentary meetings and sessions: plenary meetings and meetings of committees are kept and archived. According to Articles 104, 106 and 107 of the Rules of Procedure of the Parliament, records consist of the main information about the meetings, initiatives and amendments that are submitted and the voted/adopted conclusions. The General Secretary of the Parliament is responsible for preparing the records and keeping the originals of the records. The transcripts of the meetings are archived in the Parliamentary Archive where all Parliamentary documentation, in hard copy and in electronic-digital form, is kept. The draft laws are also published on the web.

The Macedonian parliamentary records are open to the public. The records of the plenary meetings of the Parliament, the so-

called transcripts, are available at the web site of the Parliament, and also at the intranet of the Parliament. The comments and speeches of the members of the Parliament are also incorporated in the transcripts. Changes of the transcripts are possible, but there is a special act enacted by the President of the Parliament which regulates these changes. Furthermore, the agenda for the plenary meetings is available on the web site of the Parliament, so every citizen can see it. Moreover, the agenda and working programs for the meetings of the working groups and committees are also available to the public. The Parliament publishes daily agendas for all committees' sessions. Unfortunately, the transcripts of the working committees are not available on the Internet.

There is openness regarding the recording and keeping track of individual votes of MPs. Although at the moment there is no possibility for the public to know how individual members of the parliament and their party factions vote(d), the Internet site had such information and will have it in the future when the redesign of the web-page is finished.<sup>127</sup> The Macedonian Parliament has an institution called "usage of individual voting" regulated by Article 97 in the Rules of Procedure of the Parliament. In a situation when for unforeseen circumstances the result of the vote is ambiguous, or, when the difference in the party votes for enacting a legal proposal is five or less votes, all individual members of the parliament are called by their name for a public vote. This mechanism is also implemented when the President of the Parliament, or one member of the Parliament supported by ten other MPs, makes a motion for having individual voting. On the other hand, the voting records of the members of the parliament working in the committees are not

available to the citizens at all, so in this case there is no openness of the Parliament at all.

Furthermore, Macedonia has specific criteria for secret vote of the Parliament. According to Article 70 of the Constitution, the meetings of the Parliament are open and public, but the Parliament can bring decision to make the meeting secret, with qualified (2/3) majority. Moreover, according to Article 4 of the Rules of Procedure of the Parliament, a secret vote can only be used for election, nomination and denomination of the bearers of public and other functions. According to Article 98 of the Rules, the secret vote is realized using voting sheets/papers, which are equal in size and color. This voting procedure is guided by the President of the Parliament, helped by the General Secretary and three other members of the Parliament, all from different political parties appointed by the Parliament. There is a stamp on every voting paper, and before the voting procedure starts the President explains the modalities of voting.

The Macedonian Parliament is keeping with the latest technological trends. There is a parliamentary website ([www.sobranie.mk](http://www.sobranie.mk)) that is quite detailed, because there is information about plenary meetings, the organizational structure of the Parliament, members of the Parliament, information about the services in the Parliament, Commissions, working groups, the international cooperation of the Parliament, adopted laws and legislation, links to websites of the government and other public institutions and so on. Increasing the openness of the Parliament, its website is available besides in Macedonian also in Albanian, English and French.

There is satisfactory media coverage of the work of the Parliament, because the media give regular reports in the news about it. Furthermore, there is a special Parliamentary channel, which broadcasts plenary as well as committee meetings of the Parliament. The print media also

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<sup>127</sup> Slavica Biljarska-Mircheski, from the civil society organization, *Most* confirmed that such data was available on the Internet; interview made on 27<sup>th</sup> July, 2009. Marjan Madzhovski, the Chief of Cabinet of the President of the Parliament also confirmed this. Interview made on 28<sup>th</sup> July, 2009.

covers the work of the Parliament very well, and there are many analyses and journalists' and editors' comments after the meetings of the Parliament. Yet many of these reports are only superficial and not in-depth. Comparisons with other countries or policy relevant analyses of the proposed legislation and the general work of the Parliament are often missing. In general we can say that there is a middle-level of the depth of analyses in the print and electronic media in Macedonia. Most of the Parliament's work that is reported in the media is related to topics that are current and highly politicized, or linked with the Euro-Atlantic aspirations of the country. The media rarely report about topics that affect the every day life of citizens. Issues such as regional development or changes in the tax system are not very extensively covered.

Typically the local journalists are the ones most interested in gaining access to parliamentary information. They are also the most successful and the most persistent ones. Lobbyists, trade unions, citizens, researchers and others gain the information less frequently and through more intermediate channels (typically obtaining it from contacts with friendly members of the Parliament, at press conferences or through media contacts, or the web-site).

Generally, the public assesses the openness and transparency of the Parliament as better than those of the other state institutions (such as the Government, the President and the Courts). Still, despite this, a lot has to be done regarding the transparency and openness of the Parliament. This is due to the fact that the Parliament increased its relations with its constituencies by: making public the official mobile phones of all MPs; opening constituent relations offices and making Friday a constituent relations day.<sup>128</sup>

<sup>128</sup> All MPs are expected to travel back to their electoral districts in which they hold constituent relation's offices and where they should meet with citizens. These offices are however opened during the week and citizens through the MPs assistants working in the offices can establish contact, inquire and initiate discussions with their MP.

However, the effect of these mechanisms is very limited as the electoral system (characterized by closed party lists) does not stimulate greater responsiveness, openness and transparency in the work of the MPs, but in turn strengthens the party leadership, their ideology and dominance in Macedonian politics.

The National Democratic Institute (NDI) with funds from the Swiss Agency for Development and Cooperation (SDC) and in partnership with the Assembly of Macedonia and the Association of Municipalities helped open 47 constituent relations offices throughout Macedonia. The offices are housed in municipal buildings, ensuring equal access for all citizens, and were publicized in a nationwide campaign using television, radio, newspapers and billboards. Starting in 2008, the parliament has secured funds to cover office expenses independent of NDI. The plan is to open 75 offices taking into account various criteria in order to balance party, ethnic, gender, and regional interests. Moreover, NDI is supporting a new domestic organization, the Institute for Parliamentary Democracy (IPD), to promote constituency relations and other good legislative practices over the long-term. As of November 2008, and with funding from SDC, IPD is taking over the management and the upgrading of Parliament's Constituency Relations Offices Network. IPD is responsible for selection, training, mentoring and on-going management of the Constituency Office Assistants that work in the offices, for liaising with the municipal authorities that are providing the office space and for working with MPs to ensure their continuing involvement in the initiative and to provide capacity-building for improving their constituency outreach skills. Within its Parliamentary strengthening program, NDI also supports public legislative hearings in committees, a multi-partisan group of women-members in their advocacy for changes in healthcare and electoral laws, among others, to advance women's interests, public tours to acquaint citizens with the

legislative branch, and student participation in a legislative internship program developed by NDI and now divested to parliament.

In June 2009, IPD received a sub-grant from NDI under the "Strengthening Citizen Involvement in the Legislative Process" project, funded by the National Endowment for Democracy. Under the project IPD will:

- Assist constituency offices and MPs in reaching out to local civil society organizations (CSOs) and organizing local public discussion forums;
- Organize training seminars for civil society organizations to enhance their legislative research, drafting and lobbying skills;
- Organize an event where lawmakers offer practical examples of effective cooperation with the civil society organizations, MPs, and committees on pieces of legislation for which the CSOs would provide expertise and input;
- Develop with NDI and the National Assembly a cross-referenced Directory to the Assembly of the Republic of Macedonia and Resource Guide including descriptions of the legislative process to help CSOs to identify entry points as well as factual and contact information for committees, working bodies, parliamentary sectors, and members of parliament.

Citizens can obtain data on the MPs' salaries and other financial benefits such as per diems when traveling abroad, funds for usage of official cell phones and the like, submitting a request using the Free Access Law. The rates for these categories are defined by Law and the internal regulations of the Parliament.<sup>129</sup> The

<sup>129</sup> Marjan Madzhovski, Chief of Cabinet of the President of the Parliament. Interview made on 28<sup>th</sup> July, 2009. See the following legal acts: "Zakon za plata i drugi nadomestoci na pratenicite vo Sobranieto na Republika Makedonija i drugi izbrani i imenovani lica vo Republikata [Law on the monthly wage and other financial benefits of the MPs of the Parliament and other elected or appointed state officials in the Country]", Official Gazette 161/2008, and the "Odluka za opredeluvanje na dnevnice za sluzbeno putovanje vo stranstvo na pratenicite vo Sobranieto na Republika Makedonija [A Decision on calculating the per diems for official trips abroad of the MPs of the Parliament]", Official Gazette 51/2009.

same regulations can be obtained from the office of the Official Gazette of Macedonia. Unfortunately, the subscription is for a fee.

There are a few important novelties to be implemented in the future according to the new Law on the Parliament, currently read in parliamentary procedure and expected to be voted on in the second half of August.<sup>130</sup> Thus, the MPs will have an obligation to have regular consultations with citizens and non-governmental organizations, trade unions, international organizations (Article 8). The municipalities will be obliged to support the work of the MPs, while the parties in the Parliament will be able to hire experts (external aids/staffers) the number of which will be regulated by a Working Group of the Parliament (Articles 9, 11 of the Draft Law). Moreover, the Parliament will have a Parliamentary Institute that will assist with legal and policy expertise the party caucuses.

### ***Relevant Stakeholders' Assessment on the Transparency of the Macedonian Parliament***

The actual practice in accessing public information and the challenges in this respect are equally important in our analysis. We sent the questionnaire to 44 national and local NGOs, 4 trade unions, 7 business associations, 30 national mass-media representatives/ journalists, and we collected 12 replies from NGOs, 1 from trade unions, 1 from business associations and 6 from mass media. Therefore, figures and analysis presented below represent an indication of the civil society's understanding of the transparency of the Parliament rather than a statistically representative evaluation. We have to also bear in mind that some

<sup>130</sup> On the expectation the Law to be passed at a session in August see Dnevnik news, 28<sup>th</sup> July, 2009, "I DUI bara dvo-jazichno sobranie [DUI also wants bilingual Parliament]", available at <http://www.dnevnik.com.mk/?itemID=E8EF92C2D36E5848B3134A6C51C15410&arc=1>, Marjan Madzhovski, Chief of Cabinet of the President of the Parliament. Interview made on 28<sup>th</sup> July, 2009.

questionnaires were not completely filled, some questions left unanswered.

We have collected the filled in questionnaires in electronic form, not by phone, in order to be able to document our results. To ensure a higher response rate, the questionnaires were re-sent to those who did not respond, but the response rate was still not up. The journalists have easier access to the Parliament than other stakeholders and do not seem to see serious problems with Parliament's transparency, though they are occasionally irritated by the limitations on where within the building of the Parliament they can work and ask for statements and comments from the MPs. An important issue regarding this question and the general openness of the Parliament for the interests of the journalists is the personality of the President of the Parliament, some being more easygoing while others – more rigid and less cooperative with the media.

Since journalists have the fewest problems dealing with the Parliament, we have made separate analysis of their responses. From the journalists that have responded to our questions aimed at evaluating their general interest for the Parliament's activities, 33% indicated the highest interest (score 5), 33% indicated the medium score – 3 (on a scale from 1 – no interest, to 5 – greatest interest) the average score being 3.67%. A third of the journalists have addressed official requests for data to the Parliament trying to access information, using the official procedure according to the Law on Access to Public Information. They did not receive any answers. The journalists complained about the level of responsiveness of the Parliamentary administration and the MPs. Half of the journalists are most interested in improving the transparency of the "acts and documents" issued by the Parliament. The journalists are least interested in how individual MPs vote. They give an average score

(3.17) to the transparency of the Parliament. Commenting on the ways of accessing public information from the Parliament, journalists have mentioned the MPs themselves as crucial information providers. They have also used the Internet site, the Spokesperson of the Parliament, the General Secretary of the Parliament as sources of information.

Overall, among all the stakeholders that answered the questionnaire, there is above the average interest for the Parliament's activities, the average score given to this question being 3.75. As far as the interest in specific Parliamentary activities is concerned, the respondents are interested in "acts and documents" issued by the Parliament (35%), steering committee's debates (29%) and plenary sessions (27%). The interest in individual MPs' votes is minimal (2%). Very few stakeholders have formulated official requests for data to be obtained from the Parliament trying to access information using the official procedure according to the Law on Access to Public Information (35%). From those who submitted request an equal number (43%) got a judicious and satisfactory answer as those who did not get any answer, 14% receiving incomplete answer. None of those who did not obtain or got an incomplete answer have initiated a lawsuit against the Parliament. The stakeholders give an average score (3.15) to the transparency of the Parliament. All of the respondents are interested in advocacy campaigns in order to raise the transparency of the Parliament. About 45% of the stakeholders are interested in raising the transparency of the "acts and documents" issued by the Parliament, 29% are interested in increasing the transparency of Plenary and committees' debates, while 13% say are interested in how the MPs vote can be made more transparent.

The following ways of accessing public information from the Parliament were mostly mentioned by the respondents: direct



contact with MPs and using the Internet site. Also mentioned were the following: obtaining news from the media (not mentioned by the journalists replying to the questionnaire), lodging formal requests, watching the Parliamentary Channel, reading the Official Gazette, from the administration of the Parliament and attending the plenary and working group sessions. Among the main impediments in accessing public information from the Parliament the following were mentioned: no clear information who the information holder is, no adequate and very slow replies to the request for information, no will for cooperation and transparency in the work of the part of the MPs and the responsible staff of the Parliament, no contact information given on the Internet site of some MPs and members of the working groups, old or lack of information posted on the Internet site/ no updates on the site.

### ***Conclusions and Recommendations***

Opening up the Macedonian Parliament, making the work of the MPs more transparent, is the first necessary step to bringing people back to politics by winning their trust in the main representative institution of the country. Even though at a general level it is quite obvious that Macedonian officials have formally assumed to guarantee unrestricted access to information, by explicitly regulating it in several legislative acts, including the Constitution, the true challenges appear when it comes to enforcing all these regulations. Similar to other countries in the region, the existence of the legislation does not always mean that there is proper enforcement in Macedonia. As discussed in the case of the Law on Free Access to Information, often officials, responsible for applying the legal provisions, act abusively and deny citizens'/ civil society's

access to public information. Therefore, we believe that the elaboration of specific legislation should always be accompanied by sufficient training of responsible staff/ officials, in order to have a consistent enforcement. It is equally important to constantly monitor the latter, as they tend to ease the exigencies in enforcing the law once the general public's perception becomes a positive one on the overall environment.

The work of the MPs needs to be put under stronger public scrutiny. Their legislative initiatives and other activities in the standing committees and in the plenary sittings, and their work back in their constituencies needs to be accessible to the citizens. Often the mere presence at the Parliament's meetings is not reliably recorded – deputies register and leave almost immediately, mandating a colleague to vote with their electronic voting cards. Therefore, publicly available records of the electronic parliamentary voting should be used as a rule for all structures of the Parliament, including the Steering Committees, in order for citizens to be able to track the entire process of legislation, from the bill to the law adopted by the plenum. Furthermore, in order to increase the transparency and civic participation in the work of the Macedonian Parliament, the access of citizens to the Parliamentary Committee Meetings should be made more open. Moreover, the legislative activity of each deputy is insufficiently known. Information concerning the Parliament's budget spending, the travel expenses of the deputies, the earnings of the deputies should be posted on the website of the Parliament, as well, including: the Parliament's budget, the annual reports and budget execution, the travel expenses for each deputy, announcements on public procurement made by the Parliament, etc.



**ANNEX 1**
**A. List of organizations (NGOs/CSOs) to which the questionnaire was sent**

1. Aureola (focusing on gender issues)
2. Antiko (focusing on gender issues)
3. Esmā (focusing on Roma women)
4. Prodolzen zivot (focusing on elderly and persons with psychological issues)
5. FORUM Centre for Strategic Research and Documentation (think tank)
6. Studiorum Center for Regional Policy Research and Cooperation(think tank)
7. Institute for Democracy "Societas Civilis" (think tank)
8. Center for Economic Analyses (think tank)
9. Ohrid Institute for Economic Strategies and International Affairs (think tank)
10. Analytica (think tank)
11. SZO Sv.Nikole (focusing on gender issues)
12. Megjashi (focusing on children)
13. Sumnal (focusing on Roma issues)
14. MKC- Youth Cultural Center Bitola (focusing on youth)
15. SOZM-Association of organizations of women of Macedonia (focusing on gender issues)
16. OXO (focusing on education, local development, trainings)
17. Makedonski Helsinshki Komitet (Macedonian Helsinki Committee)
18. Fokus (Foundation for Local Development and Democracy)
19. ESEM- Association for Emancipation, Solidarity and Equality of Women in the Republic of Macedonia (focusing on gender issues)
20. Млади за Млади-Youth for Youth (focusing on youth)
21. ЕЛСА (Law Students' Association)
22. Kreativ (focusing on youth)
23. AIESEC (global, non-political, independent, not-for-profit organization run by students and recent graduates of institutions of higher education)
24. AEGEE (Macedonian branch of the Pan-European student association)
25. JEF (Macedonian branch of the Young European Federalists is a supranational, European political movement)
26. SS FON (Student association of FON University)
27. SS Evropski Univerzitet (Student Association of the Evropski Univerzitet)
28. Klub na Oratori (A well known student club at the Law Faculty of the University of Cyril and Methodius)
29. ESTIEM (Student association )
30. IAESTE (The International Association for the Exchange of Students for Technical Experience)
31. SPUKM (Student Parliament of the University of Cyril and Methodius)
32. BEST (Macedonian branch of the European Students of Technology Association)
33. Association for Democratic Initiatives (think tank/development)
34. Center for Civic Initiative (think tank/development)
35. CIRa-Center for Institutional Development (capacity building and development)
36. Koalicija SEGA (Coalition of youth organizations)

37. Center for environmental research and information "Eco-sense" (focusing on environmental issues)
38. MCET-Macedonian Center for European Training (EU affairs, capacity building)
39. FOSIM-The Foundation Open Society Institute – Macedonia (foundation/development)
40. Macedonian Center for International Cooperation (MCIC)-(foundation/development)
41. MOST (democracy promotion/electoral monitoring)
42. IPD-Institute for Parliamentary Democracy (democracy promotion)
43. Polio Plus (focusing on persons with disabilities)
44. MZL-Macedonian Women Lobby (Lobby group of Macedonian women)

#### **B. List of 30 media persons to which the questionnaire was sent**

1. Aleksandar Pesev Utrinski Vesnik
2. Aleksandar Metodijev Kanal 5
3. Ana Veljanovska Vreme
4. Antonija Popovska Nova Makedonija
5. Bojan Kanal 5
6. Branko Gjorgjievski Dnevnik
7. Bukurie Avdi TV Era
8. Eli Vasilevska Forum
9. Elizabeta Galevska A1
10. Elizabeta Veljanovska MIA
11. Gorazd Comovski A2
12. Kate Popovska Alfa TV
13. Kate Neskova FORUM
14. Lidija Minanova ALFA TV
15. Maja Jovanovska A1
16. Maja Blazevska RFE/RL
17. Meral Ismaili Alsat TV
18. Milka Novakovska Alfa TV
19. Naum Stoilkovski BBC
20. Katerina Neskova Forum
21. Predrag Dimitrovski Dnevnik
22. Redzep Kaishi Kanal 77
23. Sasko Dimevski DW
24. Sead Rizvanovik A1
25. Srgan Stojanchov RFE/RL
26. Toni Angelovski Vreme
27. Vane Markoski Sitel
28. Verica Jordanova KAPITAL
29. Vesna Jovanovska Telma
30. Zoki Fidoski ALFA TV

### C. List of Business Associations to which the Questionnaire was sent

1. Advokatska Komora (Lawyers Association)
2. Evropska Biznis Asocijacija (European Business Association)
3. Zanaetchiska Komora (Craftsmen Association)
4. Lekarska Komora (Doctors Association)
5. Sojuz na Stopanski Komori (one of the two main Associations of Businesses)
6. Stopanska Komora (one of the two main Associations of Businesses)
7. Trgovsko Tekstilno Zdruzenie na Republika Makedonija (Business Association of Clothing Producers)

### D. List of Trade Unions to which the Questionnaire was sent

1. Sojuz na sinidikati (Association of trade unions – the biggest in Macedonia)
2. SONK (Trade Union of workers in education, culture and science)
3. Sindikat na finansiski rabotnici (Trade union of workers in financial institutions)
4. Tekstilen sindikat (Trade union of workers in clothing producers)

#### ANNEX 2 List of interviews made

1. Dr. Ivan Bimbilovski, *Law Faculty, European University*, Vice Dean and expert and trainer on the UK Embassy Project, implemented by the Commission for Protection of the Right to Free Access to Public Information (CPRFAPI) in cooperation with the Macedonian Institute for Media (MIM), "Technical Support and Raising Awareness for the Implementation of the Law on Free Access to Public Information." Interview made on 15<sup>th</sup> July, 2009.
2. Mariela Trajkovska, *Dnevnik*. Interview made on 27<sup>th</sup> July, 2009.
3. Naum Stoilkovski, *BBC, Macedonian language section*. Interview made on 6<sup>th</sup> July, 2009.
4. Slavica Biljarska – Mircheski, *Most*. Interview made on 27<sup>th</sup> July, 2009.
5. Aleksandar Petkovski, *Institute for Parliamentary Democracy*. Interview made on 27<sup>th</sup> July, 2009.
6. Elena Kochovska, *Polio Plus*. Interview made on 28<sup>th</sup> July, 2009.
7. Marjan Madzhovski, *Chief of Cabinet of the President of the Parliament*. Interview made on 28<sup>th</sup> July, 2009.
8. Slagjana Marjanovikj, *National Democratic Institute*. Interview made on 28<sup>th</sup> July, 2009.

## Open Parliaments: The Case of Romania

Elena Iorga

### 1. Argument

*“Governing people without information for the people, or without the means to reach information, is nothing but the prologue of a farce or of a tragedy or, maybe, of both. Knowledge would always rule on ignorance, so people who intends to self-govern needs to arm with the power of the information”*

James Madison, letter to W.T. Barry, 4 August 1822<sup>131</sup>

The Parliament is the fundamental institution of a consolidated democracy. Economic prosperity, as well as the respect for human rights is associated with healthy parliamentary transparency, accountability and civic participation at all levels of the government, from the legal process to the empowerment of legislation. Monitoring the Parliament’s activity and openness is part of the *watchdog* role of the civil society during the process of democratic consolidation if we have in mind the parliamentary functions: representation, the legislative function and the control of the government.

The present research paper is continuing the Institute for Public Policy’s efforts of monitoring the Romanian parliamentary activity, by issuing periodic reports on the activity of Romanian MPs during sessions, drafting statistic and qualitative analysis of their activities in constituency offices and analyzing expenditures engaged by Parliament’s Chambers on each deputy/ senator’s related activities. Such work would not be possible in the absence of formal instruments guarantee-

ing free access to information from and about the parliamentary works, even if in some cases such information is not always easy to access. Therefore, through the present research, we have tried to identify several aspects related to legal, actual and perceived transparency of the Romanian Parliament, while also providing a general overview for anyone interested in this topic, be that fellow colleagues from NGOs in the country or abroad, representatives of domestic or international organizations, journalists etc.

In this context the paper follows two ways for answering the questions of how open the Romanian Parliament is and what is possible to be done in order to raise its transparency and accountability. We examined the legal framework of transparency applied to the parliamentary level, then the practices and perceived obstacles in using transparency instruments, expressed by various categories of civil society actors (NGOs, trade unions, media, etc).

For the Romanian general public and beneficiaries of this research, the main conclusions of the present study are of a particular importance in the actual political context: since Romania has had parliamentary elections based on a completely new electoral system<sup>132</sup> which was advertised by politicians as being the panacea for raising individual accountability of MPs, it is even more important to learn what the drawbacks in terms of transparency and accountability of the previous Parliament are, in order to clearly state what should be done further for eradicating/diminishing such deficiencies. Furthermore, the research is equally important for raising the topic of “parliamentarism” in the new Romanian political context, as our political system has moved in the past four years between moderate parliamentarist regime to a semi-presidential one. Last but not least, in its position as a new member state

<sup>131</sup> Quoted by Jeremy Pope in *Access to information: whose right and whose information?*, Global Corruption Report 2003, Transparency International, 2003.

<sup>132</sup> In November 2008 Romanians elected a new Parliament based on a mixed majority electoral system (as compared to the former proportional representation), in single electoral colleges (constituencies).

starting in 2007, Romania should prove that the fundamental criteria of a functioning democracy lie in the heart of the democratic system – which is the legislature – and that efforts will be further made to correct the public image of the Parliament in the eyes of the Romanian citizens.

## **2. The Romanian Parliament: Role and Functioning**

The Romanian Parliament is bicameral; the total number of deputies and senators is determined by the electoral law, in relation with the number of population. The Chamber of Deputies is composed of 332 Deputies, and the Senate – of 137 senators. Currently, there is a strong debate in Romania whether we should opt for a uni-cameral Parliament, with less representatives and most likely Romanians will be called to express their will in that respect through a referendum<sup>133</sup>.

The two Houses of the Romanian Parliament are similar in structure, and their mode of operation is determined by the Standing Orders. Hereby below are briefly introduced the main components of the two Houses.

### **Standing Bureaus and Presidents of the Chamber of Deputies/Senate**

The President of the Chamber of Deputies and the President of the Senate are elected by the legal establishment of the Parliament plenary vote. After the election of Presidents of the 2 Houses and negotiations between the leaders of parliamentary groups, two decisional forums are formed: the Permanent Standing Bureau of the Chamber of Deputies, respectively of the Senate. They reflect the political configuration of the Chamber of Deputies/Senate, as evidenced by the initial formation of parliamentary groups. The Standing Bu-

reau is made up of: President of the Chamber of Deputies/ Senate who is also Chairman, 4 vice-chairmen, 4 secretaries and 4 quaestors.

Standing Bureaus determine the weekly agenda with draft laws, priority on legislative initiatives submitted for debate, etc.

### **Parliamentary groups**

All structures of the Parliament are in a direct dependence relation. The Rules of Procedure (Standing Orders) of the Chamber define *parliamentary groups* as groups consisting of at least 10 deputies who have run in elections for the same party or political alliance. Those deputies who do not meet the required number can form mixed parliamentary groups. The current composition of parliamentary groups in the Romanian Chamber of Deputies is the following:

- The parliamentary group of the Democrat – Liberal Party;
- The parliamentary group of the Social Democrat Party and Conservative Party;
- The parliamentary group of the National Liberal Party;
- The parliamentary group of the Democratic Union of Hungarians in Romania;
- The parliamentary group of the national minorities.

Senatorial parliamentary groups are functional if they include at least 7 senators elected on the lists of the same party, political or electoral alliances. There are 5 parliamentary groups in the Romanian Senate:

- The parliamentary group of the Democrat – Liberal Party;
- The parliamentary group of the Social Democrat Party and Conservative Party;
- The parliamentary group of the National Liberal Party;
- The parliamentary group of the Democratic Union of Hungarians in Romania.

<sup>133</sup> The referendum shall be organized simultaneously with the Presidential elections on November 22 2009.

## Permanent Steering Committees

For guaranteeing the legislative and control functions of the parliament, the Standing Orders have established *permanent steering committees*, as working committees of both parliamentary chambers. There are 17 permanent steering committees in the Chamber of Deputies and 16 in the Senate, but the two may establish joint committees or specialized committees.

The activity of permanent steering committees is extremely important in the economy of the legislative process, as it usually leads the decision towards adopting/rejecting a specific piece of legislation.

## MPs' Mandates

Romanian Deputies and Senators are elected based on universal suffrage, equal, direct, secret and freely consented, for a term of 4 years.

According to the Constitution of Romania: "The Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country" and "MPs are serving the people in the exercise of their mandates". According to Article 84 (1) of the Regulation of the Chamber of Deputies and Article 80 of the Regulation of the Romanian Senate, MPs work in two sessions per year: from February to June and from September to December. During a session, lawmakers work in the plenary sessions, the steering committees' sessions, in parliamentary groups, in the constituencies and other parliamentary activities established by the Chamber. Corroborating the foregoing, in the course of a parliamentary mandate, 2 major functions is the source of representation and lawmaking. The principle of separation and balance of powers enshrined in the supreme law causes a third function arising from the quality of parliamentarian, that is

checking and balancing the activities of other public authorities.

Main means that MPs use for their constitutional functions (legislative and representative) are:

- *Audiences and petitions*: these are key drivers of communication between citizens and the Parliament. The latter is informed of disfunctions in applying legislation and/or legislative gaps and is requested to correct them;
- *Political meetings*: these are the most coherent interactions of MPs with constituency representatives or specialists in the field of activity of the committee/committees of which one may be concerned. Political meetings play a role as important as the hearings and petitions, if we consider the possible vast collection of useful information, necessary for the parliamentary law-making function.

The *check and/or balance function* that the MP may exert is based on the principle of separation of powers, therefore, it is to examine the activities of other powers, to oppose some decisions and to prevent them from arbitrary exercise of power. This function of Parliament is (or should be) most visible in its relation with the Executive. Main ways of expression are:

- *Queries and questions*: Interpellation is a request to the Government made by a parliamentary group or a single MP, which requires an explanation of government policy on important issues of its internal or external activity. Interpellation of Prime Minister Government policy should focus on important internal or external problems. The two Regulations clearly state that any institution questioned/asked is obliged to respond. Thus, the ability of MPs to request clarifications, answers to problems from any public institution is an essential tool for verification;



- *Political statements and motions*: These two instruments are a political manifestation of the democratic counterweight function. The motion could also act as a censorship tool of a political action group and has as main purpose to bring public attention to a problem that requires verification and/or counterweight and ultimately to expel the Government when it is no longer supported by the parliamentary majority;
- *Investigations and inquiries*. The possibility of establishing parliamentary inquiry committees is equally important for the *checks and balances* function. Such committees have a limited mandate to analyze the activity of other public authorities, detailing certain aspects that are prone to mismanagement, corruption etc. Commissions of inquiry may be set for a particular purpose, for a fixed period, on a defined topic or issue to be investigated may be delegated to one of the specialized committees of the Chambers of Parliament. Investigations conducted may lead to the initiation of a new query or a motion in the spirit of the verification function, or to initiate a legislative proposal or amendments to existing legislation.

The activity of all parliamentary structures and individual MPs is – or should be – subject to unrestricted transparency. In the following chapter we have presented the main instruments that guarantee free access to information regarding parliamentary works.

### **3. Legal and Institutional Framework for an Open Parliament in Romania**

The Romanian legal framework on public institutions' transparency and free access to information, maybe surprisingly, is one of the best in Europe. Unfortunately, as we will see, the legal framework only is not enough to ensure the effective transparency of institutions. Guarantee-

ing the access to public information and giving citizens the legal instruments to obtain it, does not automatically mean efficient law enforcement. The minimum legal standards are not enough to ensure the openness, the fast and easy access to information whenever needed, through actions in law or for the mass-media. It is very often a matter of interpretation given to some provisions of the law by those civil servants responsible for providing answer to FOIA requests<sup>134</sup>, therefore making the whole effort of ensuring fair and unrestricted access to public interest information more difficult and liable to personal approach.

The most important legislative acts regulating free access to information/transparency, as well as legal limitations to these, in Romania are:

1. The Romanian Constitution, amended in 2003;
2. Law No. 544/2001 on free access to public interest information, published in the Official Gazette No. 663/October 23, 2001;
3. Law No. 677/2001 regarding persons' protection against processing personal data and free movement of this data, published in the Official Gazette No. 790/December 12, 2001;
4. Law No. 182/2002 regarding classified information, published in the Official Gazette No. 248/April 12, 2002;
5. Law No. 96/2006 regarding Deputies' and Senators' Statute, republished in the Official Gazette No. 763/November 12, 2008;
6. The Internal Standing Orders of the Chamber of Deputies;
7. The Internal Standing Orders of the Romanian Senate;
8. The Internal Standing Orders of the Joint Sitzings of the Chamber of Deputies and of the Senate.

<sup>134</sup> Freedom of Information Act requests issued based on Law on free access to public interest information (Law No. 544/2001 in Romania).

The presentation of the Romanian legislation on the Parliament transparency will emphasize two aspects. First, the law establishes a minimum standard, while in practice, doing more to open the public institutions towards the citizens is always possible. Second, the existence of the legislation is not always synonymous to a proper enforcement in Romania, and there is always a possibility for those responsible for applying the legal provisions to act abusively and deny citizens/civil society's access to public interest information. Therefore, the elaboration of specific legislation should always be accompanied by training of responsible staff/officials, in order to have a consistent enforcement. It is equally important to constantly monitor the latter, as they tend to ease the exigencies in enforcing the law once the general public's perception becomes a positive one on the overall environment.

Article 31 of the Romanian Constitution is dedicated to the right to access information. It stipulates that "a person's right to access any information of public interest shall not be restricted".<sup>135</sup> In this context, the "public authorities, according to their competences, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest."<sup>136</sup>

The existence of provisions regarding the right of accessing information in the Constitutional text represents both a symbolic and legal fact. It leads to the need of drafting a special separate law regulating the freedom of information and citizens' access to public interest information. It indicates that the Romanian legislative body is "concerned" with institutionalizing transparency concepts in the Romanian legal framework.

The limit of the right to information is also stipulated in the Romanian Constitution: it "shall not be prejudicial to the measures of protection of young people or national security."<sup>137</sup> The same article of the Constitution addresses the

problem of mass media and its duty "to provide correct information to the public."

As the citizens' access to public interest information is frequently ensured as a reply to a petition, the Constitution of Romania also stipulates as fundamental the right to petition at Article 51. "Citizens have the right to address public authorities by petitions formulated only in the name of the signatories."<sup>138</sup> In this context, the representatives of the State cannot limit this right and are bound to answer to citizens' inquires. The exact text stipulates: "the exercise of the right of petition shall be exempt from tax"<sup>139</sup> and "the public authorities are bound to answer to petitions within the limits and under the conditions established by law."<sup>140</sup>

Very important in a symbolic but also legal sense of the words is the next fundamental right mentioned in the Constitution of Romania: the right of a person aggrieved by public authority. "Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation of the damage."<sup>141</sup>

Based on the above mentioned Constitutional articles and also encouraged by a successful national NGO advocacy campaign to bring *Freedom of Information Act* into the Romanian legislation, the Romanian Parliament adopted Law No. 544 regarding free access to public interest information in 2001.<sup>142</sup> Romanian FOIA has been inspired mostly by the American experience and was drafted by a joint working group made up of MPs and experienced civil society representatives. It is considered to be exceeding the minimum standards established by the

<sup>135</sup> *Constitution of Romania*, Art. 31 (1).

<sup>136</sup> *Idem*, Art. 31 (2).

<sup>137</sup> *Ibidem*, Art. 31 (3).

<sup>138</sup> *Ibidem*, Art. 51 (1).

<sup>139</sup> *Ibidem*, Art. 51 (3).

<sup>140</sup> *Ibidem*, Art. 51 (4).

<sup>141</sup> *Ibidem*, Art. 52 (1).

<sup>142</sup> Published in the Official Gazette on October 23 2001.

European Union in the European Commission Directive No. 98/2003.

The *Law on Free Access to Information of Public Interest* allows all persons<sup>143</sup> to have access to information that is „in the possession, regarding or generated by public institutions“ (entities using public money and being active on Romanian soil).<sup>144</sup> Exceptions from the free access are listed within Article 12; the law makes clear that the protection of classified information is the sole responsibility of those holding the information (a change for the better compared to the previous legislation regarding the State secrets); it also states that no information regarding a wrongdoing of a public authority or an institution can be classified as “secret”.<sup>145</sup> The same law states the obligation of the public authorities and institutions concerning the release - ex officio or by request - of the public information, as well as the procedures and the deadlines for releasing such information: 10 days or 30 days for complex information.<sup>146</sup> Releasing the information may also mean that the requester is directed towards another entity holding it. The public authorities and institutions are required to create special departments to deal with public information inquiries. An information request can be submitted in writing, orally or in electronic format. The petitioner has to pay, if the case, the costs for copying the requested documents, but no additional tax can be charged for public information.<sup>147</sup>

A special chapter is dedicated to the media and journalists’ access to information. The authorities and the public institutions are required to create specialized structures for their

media relations. The media outlets are subject to positive discrimination, as the deadline for the release of information to them is 24 hours, compared to 10 days for ordinary requests.<sup>148</sup>

Those who consider that their rights to freely access the information have been breached – either by denial of access or by failure of meeting the deadlines – can appeal the decision, by administrative complaint (to the superior of the employee who has denied the information), or to the Court. The Court can rule in favor of the disclosure of the information and can also sentence the public authority or institution to moral or patrimonial damages. Still the Court may also agree with the public authority’s position, in which case the person/legal entity may further appeal the decision to the Court of Appeal, the resolution of the latter being definitive and past recall.

Positive aspects of the law analyzed by the *Centre for Independent Journalism, a reputed NGO in Bucharest promoting professional and responsible media*, are:

- “The broad definition of “public authority and institution”. The definition is centered on “public money”. Thus, any entity using public money (including State-owned companies, foundations receiving State grants, companies running activities involving public money) is subject to the FOIA;
- Stating that “person” (not the “citizen”) is the beneficiary of the right to free access to information;
- Giving the law “teeth”, introducing sanctions for those infringing the right to free access to information.”<sup>149</sup>

At the same time, several weaknesses in the same legal text were identified:

- “There is no clear definition of what “public interest” means. Thus, exceptions from the free access to information do not

<sup>143</sup> An interesting reference is worth to be mentioned here regarding the concept of *person* used by the law, which includes citizens (as natural persons), public or private entities (as legal persons), but may also include foreign persons (natural and legal) and stateless persons.

<sup>144</sup> *Ibidem*, Art. 26 (2).

<sup>145</sup> *Ibidem*, Art. 12.

<sup>146</sup> *Ibidem*, Art. 7.

<sup>147</sup> *Ibidem*, Art. 9.

<sup>148</sup> *Ibidem*, Art. 8 (5).

<sup>149</sup> Avădani Ioana, *Freedom of Information in Romania. The Role of NGOs*, available at [www.justiceinitiative.org](http://www.justiceinitiative.org), p.2.

provide for the internationally accepted prevalence of the public interest over any other reason for concealing information;

- The law does not provide for the “*harm test*”, for example it does not require for the threats to the national security to be actual and measurable, when evoked as reasons to conceal information;
- The law does provide only feeble protection for the *whistle blowers*<sup>150</sup>. The only provision in this respect is the one stipulating that no information concealing a wrongdoing or a law breach can be classified as secret.”<sup>151</sup>

Furthermore, besides FOIA, that applies to all public entities in Romania (including public utilities companies), the Parliament has special provisions regarding citizens’ access to specific information, stipulated in various legislative texts requiring the publicity of the sessions, votes etc. In this context, the transparency of parliamentary works is ensured, generally *ex officio*, by special regulations. The main representative body of the Romanian democracy, the bicameral Parliament<sup>152</sup> is firstly regulated in the Constitution of Romania. Following the Constitutional text, the two Chambers are organized based on their own Internal Standing Orders. Regarding the transparency issue, the Constitution mentions the publicity of parliamentary sessions. Article 68 stipulates “the sessions of both Chambers shall be public”,<sup>153</sup> but “the Chambers may decide that certain sessions will be secret.”<sup>154</sup>

<sup>150</sup> The *whistle blower* has been introduced in the Romanian legislation later than the free access to public information (through Law No. 571/2004) and so far provisions of the two legislative pieces have not been harmonized.

<sup>151</sup> *Ibidem*.

<sup>152</sup> Prior to the modifications of the Constitution in 2003, the two houses had identical responsibilities. After the 2003 referendum, a law still has to be approved by both houses, but in some matters one is “superior” to the other, being called “decision chamber” (“*cameră decizională*”). This eliminates the process of “negotiation” between the two houses, and keeps the Senate, 133 members as the upper house and the Chamber of Deputies, with 325 deputies, as the lower house. The Senate is decision chamber for foreign policy issues, the organization of the Justice as a State power and education. The Chamber of Deputies is decision chamber for all the other laws.

<sup>153</sup> *Constitution of Romania*, Art. 68 (1).

<sup>154</sup> *Ibidem*, Art 68 (2).

Based on these provisions, the two Chambers have established their own Internal Standing Orders, as distinctive rules for the functioning of the respective Chamber and its specific structures. The plenary sessions are public, but in practice an important difference is made between the two Chambers at the Standing Committees’ level, as well as in what concerns individual vote registration of MPs. Although not a formal rule, Internal Standing Orders of the two Chambers are amended each 4 years, after the investiture of the new Parliament.

Regarding the parliamentary sessions, the *Internal Standing Orders of the Chamber of Deputies* stipulate that: “the sessions of the Chamber of Deputies shall be public and broadcast online on the website, unless, at the request of the President or a parliamentary group and based on the vote cast by a majority of the present deputies, it is decided for certain meetings to be secret.”<sup>155</sup> Moreover, efforts are made to establish a special TV broadcasting channel for relying parliamentary plenum debates.

“The public sessions of the Chamber of Deputies may be attended by diplomats, representatives of the press, radio and television channels, as well as other guests, based on accreditations or invitations endorsed by the Secretary General of the Chamber, under the terms established by the Standing Bureaus. Citizens may attend the proceedings of the Chamber of Deputies based on individual passes distributed on request, following the order of receiving such requests, within the number of seats available in the lodges designated for the public.”<sup>156</sup> Although some administrative problems occurred in providing access to the plenary session meetings, it has never happened for a solicitant’s access in the Parliament to be denied. Several incidents occurred as some visitors have occupied MPs’ seats in

<sup>155</sup> *Regulations of the Chamber of Deputies*, <http://www.cdep.ro/pls/dic/site.page?id=240>, Art. 139.

<sup>156</sup> *Ibidem*, Art. 140 (1).

standing committees' rooms instead of those assigned in the plenary hall, yet this has never lead to ignoring/banning citizens' access to the Parliament. Practice has shown that access is easier for an institutional actor's representative (NGO, media) than for a regular citizen, who should normally wait for someone to accompany him/her to the designated seat(s). This regulation is exactly the same for the Senate<sup>157</sup>. The weekly sessions' agenda is public as well and is posted on the websites of the two Chambers<sup>158</sup>. Still, in practice, order of the bills on debate changes frequently.

Furthermore, the sessions of the Chamber shall be recorded and archived by the secretariat. "The verbatim reports shall be posted on the website of the Chamber of Deputies and published in the Official Gazette of Romania, Part II, within ten days."<sup>159</sup>

During plenary sessions, as a rule, the vote shall be open. The open vote shall be cast by electronic means.<sup>160</sup> "If the vote by electronic means is open, it should be posted on the website of the Chamber of Deputies/Senate for each member of the Parliament"<sup>161</sup>. In this way the vote is displayed nominally, and any person can track the vote of each deputy/ senator. As a rule, the vote is secret each time it is cast on a person: election, nomination and demission, etc. The confidence and non-confidence vote for the Government and the recall are as well secret, as a rule. More recently, some of the Steering Committees in the Deputies Chamber have started to use electronic displays of their work: the Committee for Budget, Finance, and Banks, the Juridical Committee and the Committee for Public Administration currently track and publish the individual votes of MPs on the Standing Com-

mittees' reports on debated bills. The sessions of these three Committees are video recorded and posted on the web page of the Chamber of Deputy at [www.cdep.ro/calendar](http://www.cdep.ro/calendar). The aim is to further expand these practices to all committees upon logistical arrangements without which such attempts are impossible.

Debates of the two Chambers' Standing Bureaus are recorded in minutes and posted on the websites,<sup>162</sup> but as an unwritten rule the public cannot attend these sittings. On the other hand "the sittings of the Chamber of Deputies Standing Committees shall be open" and their minutes are published in the Official Gazette of Romania, Part II<sup>163</sup>. "A summary of the Standing Bureau's meetings and of the Committees' meetings shall be posted on the website of the Chamber of Deputies within ten days"<sup>164</sup>. From practice, this is not always the case for the Committees' meetings records. Still, if an interested person asks for copies of these documents using a FOI request, she/he usually receives them.

Similar to the *Regulations of the Chamber of Deputies*, the ones of the Senate stipulate the rule of casting the open vote by electronic means. Although the regulations' text is rather restrictive – stipulating that the results of the open electronic vote can be released on request of any parliamentary group, the actual practice is that of registering and displaying each senator's vote on bills on the website of the Senate. Political will in this case proved to be as important as the text of the law itself. In fact, in Romania, political parties exercise a very important role in advancing reforms in this field.

*The Regulations of the Joint Sessions of the Chamber of Deputies and Senate* is not mentioning that all electronic open votes are posted on the Internet, but this is usually the case on the website of the Chamber of Depu-

<sup>157</sup> *Regulations of the Senate*, <http://www.senat.ro/PaginaPrincipala.aspx?tdID=14&divID=2&b=0&adr=%2fpagini%2fsenatul%2fregulamentul+senatului+2006.htm>, Art. 116, 117 (2).

<sup>158</sup> [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

<sup>159</sup> *Regulations of the Chamber of Deputies*, Art. 153 (1), (2).

<sup>160</sup> *Ibidem*, Art. 123.

<sup>161</sup> *Ibidem*, Art. 124.

<sup>162</sup> *Ibidem*, Art. 31 (3).

<sup>163</sup> *Ibidem*, Art. 53, 58.

<sup>164</sup> *Ibidem*, Art. 53 (3).



ties. Still, the debates of the Joint Committees are not public, according to the Regulations<sup>165</sup>. Yet such sittings are rather an exception than the rule.

According to the Senate's Regulations, the Standing Bureau is posting on the website only its most important decisions<sup>166</sup>. Both Chambers' Standing Bureaus post their sittings' minutes on the websites and the votes of the Bureaus' members are also nominally registered<sup>167</sup>.

As far as Steering Committee's debates are concerned, interested citizens/NGOs can attend the committees' sittings if they priorly ask for permission from the President of the respective Committee and receive a formal approval. During the sittings, guests may not take the floor unless invited to by the President; therefore it is advisable for those interested to write down any comment/ amendment to the bills discussed within the respective session and to distribute handouts to Committee's members before the meeting.

In what concerns the access to the plenary sittings, the Chamber of Deputies has recently institutionalized an accreditation system for NGOs, based on nominal passes for members of organizations who usually attend parliamentary working meetings.

Each parliamentary Chamber has special structures in charge of providing free access to information for the civil society: the *Public Information Office* for the Senate and the *Department for Public Information and Liaison with the Civil Society* for the Chamber of Deputies.

The websites of the two Chambers are handy tools to use for people searching for general information about the Parliament, as they display *ex officio* several categories of information, such as: contact details for each

MP, disclosure of assets and interests, status of bills, individual votes of MPs, etc. The two Chambers publish their legislative reports at the end of each legislative session, including statistic data on the legislative activity of each chamber as a whole, mentioning the number of laws, the number of initiatives and their initiator, the Committees' activity report: number of sessions, number of amended laws etc. The instrument is very useful to statistically examine the activity of the Parliament as an institution, more than that of the MPs. Still, if an organization is interested in actually getting involved in the legislative process, it should seriously consider thorough documentation including attendance at plenum and steering committees' sittings, individual or group advocacy campaigns, etc.

The Law on Deputies' and Senators' Statute (Law No. 96/2006) also introduces - with a general character - the principle of *transparency*, as it stipulates in Article 11 that "deputies and senators should prove transparency in their parliamentary activity", while the same legislative text states that they "have the obligation of maintaining a permanent dialogue with citizens regarding problems that the latter are interested in and which lie in assuming and exercising the parliamentary mandate". Yet, although transparency and participation are recognized as fundamental principles of parliamentary activity, there is no coercive means to sanction those MPs who do not follow the principles, thus leaving the law empty of substance when speaking about transparency of parliamentary activity.

Furthermore, anticipating some of the aspects that are to be further discussed when referring to the Romanian parliamentary transparency and corresponding shortcomings, the Law on Deputies' and Senators' Statute is the main legislative text including a separate chapter on MPs' mandate performance in constituency offices. While most of the readers would

<sup>165</sup> *The Regulations of the Joint Sittings of the Chamber of Deputies and Senate*, <http://www.cdep.ro/pls/dic/site.page?id=748>, Art. 11.

<sup>166</sup> *Regulations of the Senate*, Art. 36.

<sup>167</sup> *Ibidem*, Art 38 (2).



expect to find here relevant information on the duties/ responsibilities of Romanian MPs for organizing specific activities within local offices, meetings with citizens etc., the chapter only points to pecuniary rights MPs are entitled to (lump sums allocated for constituency offices, per diem, travel expenditures) and there is no evidence on what MPs should “perform” in exchange for this public money spent on constituency offices. The issue of parliamentary expenditures is in fact a great test of transparency that IPP has undertaken on a periodic basis, and it points out to the actual level of transparency of the Romanian Chamber of Deputies/ Senate<sup>168</sup>.

Subsidiary to the first categories of legislative provisions regulating the free access to information – the Constitution, FOIA and the Internal Standing Orders of the Parliamentary Chambers, it is equally important to address several other pieces of legislation that indirectly fall under the incidence of the transparency issue.

A still problematic issue when enforcing free access to information is connect to often abusive interpretation of the law on personal data protection. Although they were historically regulated almost simultaneously (in 2001), Law No. 544/2001 and Law No. 677/2001 for protecting persons against processing personal data and free movement of this data, are still far from being harmonized, theoretically but mostly in practice. This makes it a challenge for both the person asking for certain types of information, as well as for the civil servant responsible for providing this information – as both parties may have op-

posite interpretations of the same legal text. For example, if one would ask for the presence sheets from the Romanian Parliament, he or she would most likely be denied access to these documents based on the motivation that these lists include signatures of the deputies/senators, and these are considered personal data. The list of such examples may go on endlessly. The Law on personal data protection tends to be placed on a higher position compared to the Law on free access to public interest information, and this is happening only because of general mentality of institutions searching for hiding as much as possible from peoples’ scrutiny.

Further on, Law No. 182/2002 protecting classified information may also be subject to arbitrary/ abusive interpretation when interacting with a request of free access to information. Although the law clearly states that “no provision of the present law [n.a. Law No. 182/2002] may be interpreted as limiting access to public interest information or ignoring the Constitution, the Declaration of Human Rights, of covenants or other treaties to which Romania is a part, regarding the right to get and disseminate information.” The vague definition of *classified information* leaves place for personal interpretation: “information, data or documents of interest for the national security which, because of importance and consequences they may generate as a result of unauthorized revealing or dissemination, need to be protected”. Unfortunately, in practice one may quite often face situations in which intemperate zealous civil servant exacerbate the “consequences” of revealing pure public interest information.

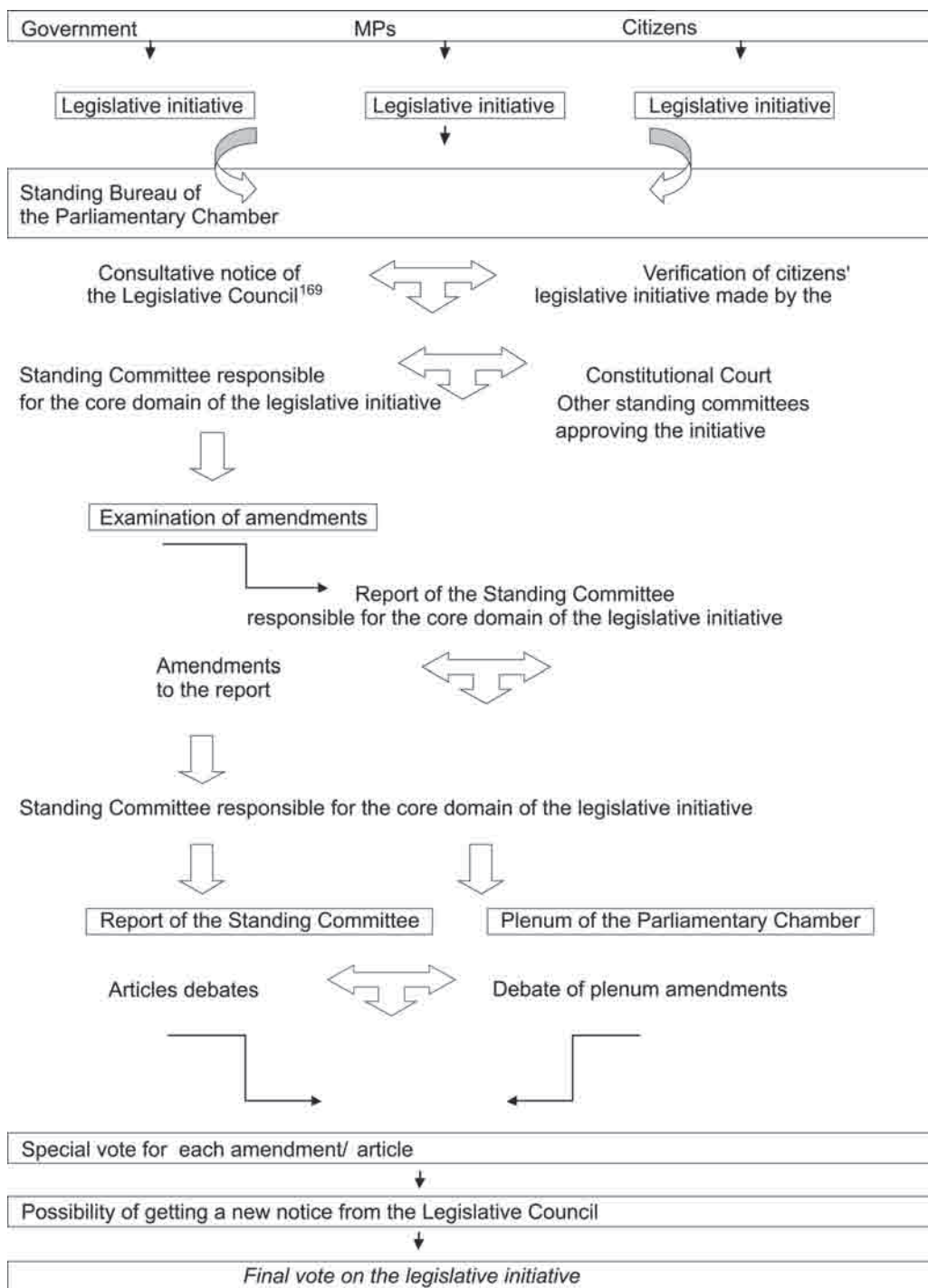
The brief overview of the main legislative acts regulating free access to public information and its limits in Romania show – as stated from the very beginning – that theory is far beyond practice, as main problems usually occur with law enforcement. Undemocratic in-

<sup>168</sup> Each year, IPP addresses FOIA inquiries to the Chamber of Deputies and the Senate, asking the two to provide detailed information on public expenditures engaged with the activity of each deputy/ senator on a whole range of expenses. Most of the times, the Institute ends up in court with these inquiries, as answers provided are either incomplete and/or illegible or the two Public Information Offices deliberately refuse access to some categories of information (e.g. MPs’ indemnities are not disclosed, as they are assimilated with salaries which were declared *personal data* by the Constitutional Court in 2007).

terpretation of the laws at the level of public institutions has roots in the mentality of these institutions' leaders that have not learnt yet that their positions owe significantly to citizens' vote and/ or trust.

*The legislative process in Romania*

Before an idea/ a solution to a problem become a law, it passes several stages which are fundamental to be understood by anyone searching for transparency of the legislative process. The diagram below shows the most important phases of how a bill becomes a law in Romania.



<sup>169</sup> The Legislative Council is the Parliament's specialized consultative body, which is responsible with approving normative acts in order to systematize, unify and coordinate entire legislation (Art. 79 of the Romanian Constitution).

The Constitution theoretically provides general conditions for Romanian citizens to advance a bill to the Parliament: the right to issue a legislative initiative belongs to at least 100.000 citizens entitled to vote, who should originate in at least one quarter of Romania's counties (that is from at least 10 counties) while a minimum number of 5,000 signatures supporting the initiative shall be registered in each of these counties, plus the capital city. Citizens cannot issue legislative initiatives on fiscal matters, international policies, amnesty or pardon.

A specific law (Law No. 189/1999 regarding exercise of citizens' legislative initiative) details further on the specific procedures to be followed by the 100,000 citizens in order to pass a law. Paradoxically, unlike the precedent laws which provide only feeble sanctions for public authorities infringing the right to information/to provide participatory decision making, the present law clearly stipulates penalties for what it is called "blackmail", that is coercing a person or deluding him/her against his/her will to sign the supporting list for the legislative initiative represents a crime and the author may be sentenced to prison from 5 months to 6 years. Under such conditions, it is not astonishing that in the post-communist recent history, we have never had a law originating at citizens' legislative initiative in Romania.

Based on the above mentioned aspects, we may conclude that the Romanian legal framework regulating transparency and free access to information is theoretically a proper one, yet when it comes to enforcement things may change. Concretely, main deficiencies pointing out to the need to further pressure on decision-makers for improving *real* access to public interest information are:

- Lack of regulation with respect to the parliamentary constituency offices and consequently lack of provisions regarding access to information at this level;
- Cross-interpretation of laws regarding free access to public interest information, personal data protection and classified information puts on an undue inferior position the Law No. 544/2001 (on free access to information). At this point, we have major problems especially when dealing with issues that MPs are hyper-sensitive to, such as presence, money spent etc. In this context, the law is practically endangered by politicians' attitude of protecting their image by all means;
- The same problems of law interpretation are observed at the level of public servants responsible for providing free access to information. Political arguments described above sometimes lead to intemperate zeal of executive staff in charge of providing information, who sometimes deny access at their own free will, considering that they are protecting the leader of the institution in this way.

In conclusion, although a solid legislative framework is in place in Romania, we still have problems with arbitrary/non-uniform interpretation of this legislation especially when parliamentary activities are at stake, secondary variable factors being in fact most persuasive, such as political conjecture or the requester's capacity of bringing the topic on media's agenda. Thus stability and objectivity in what concerns transparency and free access to information are not yet assumed as an internal value of the Romanian legislature, but rather perceived as an extra-weight by both MPs and civil servants in the responsible departments.

#### 4. Facts and Figures on Romanians` Perception Towards Parliament and the General Issue of Transparency

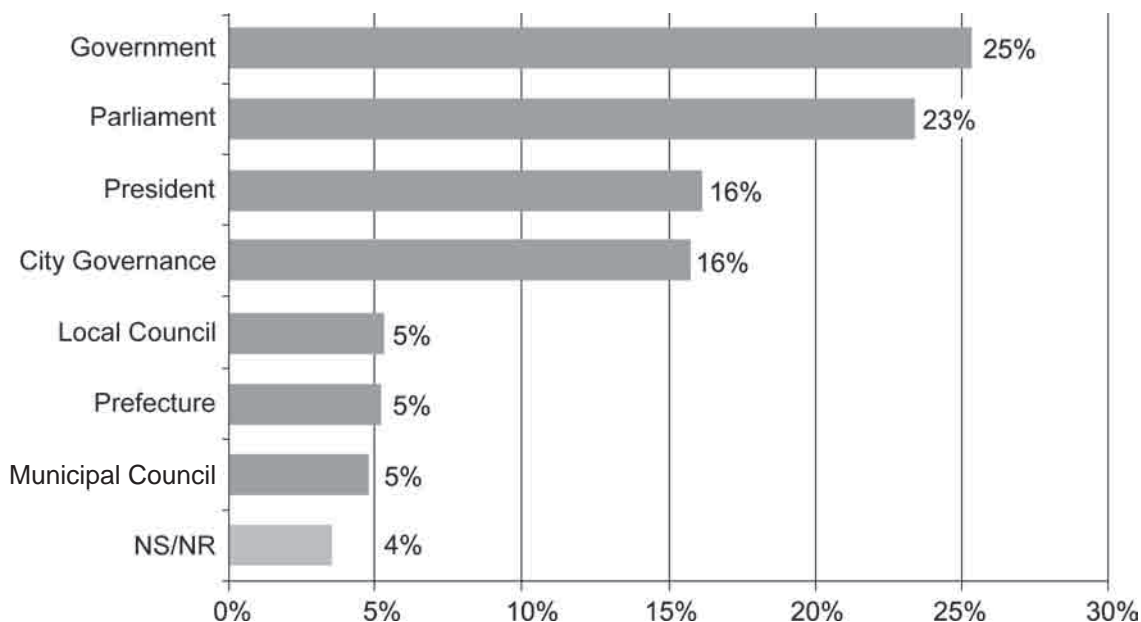
A recent survey ordered by the Institute for Public Policy<sup>170</sup>, Romania, has revealed the *real* usefulness of the above mentioned legal instruments for guaranteeing access to information and, more specifically, perception towards the openness of the Romanian Parliament.

Thus, the fundamental right to information is less important for Romanians than, for example, the right to private property, the right to a fair trial or the right to elect and to be elected. Nevertheless, 37% of Romanians consider that their right to information is *never* or *rarely* respected by public authorities.

Romanians consider themselves as being rather uninformed on the activity of the

Parliament (12% – *totally uninformed*, 42% – *rather uninformed*). Parliament scores low when it also comes to the interest of the citizens: 43% declare themselves as being *totally uninterested* or *rather uninterested* in the activity of the Parliament (only 7% of the respondents declare they are interested in the activity of the Parliament). Most relevant topics of concern for Romanians when looking at MPs are: the degree of compliance with their electoral promises (41%), followed at a significant distance by their actual parliamentary activity (21%).

When asked to rank institutions according to the degree of transparency in communication with the public, the Parliament is mentioned second as *least transparent* by 23% of respondents, right after the Government (25%).



As far as free access to information is concerned, 41% of the respondents tend to consider it *rather difficult*. 39% have heard about the existence of a law that obliges public authorities to disclose information, while 18% of Romanians have used FOIA at least once in their lifetime.

Such figures need to be interpreted in the more general context of technicalities that were described with regards to access to Parliament related information. Perception towards the openness of the legislative tends to be inertial and rather following the same pattern of *trust* in the fundamental legislative body: although the means for accessing information are formally existent, most people

<sup>170</sup> Available at <http://www.ipp.ro/pagini/39-dintre-cet259355e-nii-romaniei-php>.

assume that they are ineffective, a prejudice that is difficult to eradicate as long as there are other factors that affect the image and credibility of the institution.

### **5. Conclusions and Recommendations for a More Open Romanian Parliament**

Reviewing the main aspects analyzed above with regard to the legislative and institutional framework regulating transparency of the legislature in Romania, as well as perceived “openness” at the level of Romanian civil society, we may generally appreciate that continuous efforts are further needed for improving especially *the practice* of transparent disclosure of information from and about the Parliament.

While at a general level it is quite obvious that Romanian officials have formally assumed to guarantee unrestricted access to information, by explicitly regulating it in several legislative acts – including here the fundamental law (the Constitution), the true challenges appear when it comes to enforcing all these regulations. Several deficiencies were signaled both by civil society representatives and could have been inferred from the author’s own experiences, such as: abusive/ arbitrary interpretations of some information as being *personal data* (such as signatures of MPs on presence sheets in the Parliament) or *classified information*, excessive bureaucracy and deliberate tergiversation in providing information on request, lack of real consultation between MPs and the civil society in the decision making process, etc. To all these problems, we envisage a general solution which could be synthetically encompassed in the need to build continuous civic pressure onto the legislative process as a *checks and balances* democratic mechanism which is fundamental for concretizing concepts such as “transparency” and “accountability”. We do hope that, with the change of

the electoral system, things will start evolving in that direction.

Secondly, a whole list of problems/ proposed solutions may be further taken into discussion for the particular case of Romania, but also for other countries in the region where serious efforts focus on making the Parliament more transparent and accessible to citizens. Out of this list, we would only mention here some of the most important concerns that IPP and Romanian civil society in general shall further pursue for the above stated objective:

- The need for a more coherent, clear regulation of aspects regarding MPs’ duties and specific activities in constituencies (moreover in the context of the new electoral system which practically bounds the MP to his/her constituency);
- The fundamental importance of institutionalizing accountability mechanisms that shall prevent negative phenomenon such as chronic absenteeism: proper sanctions should be imposed, as a rule, to all those members of the Parliament who miss parliamentary sittings or do not care to express their vote on a frequent basis and access to such information is vital for an efficient combat against these malpractices;
- The need for *ex officio* publication on the web pages of the Parliament and in general, of all public institutions/ authorities, of as much public interest information as possible, in order to ease citizens’ access to such information and to avoid requesting unreasonable fees for copying documents. The more inquiries are submitted with regards to one issue or another, the faster the institution should be in displaying that information *ex officio* for a further similar request;
- Electronic means for voting should be used as a rule for all structures of the Parliament, including the Steering Committees, in order for citizens to be able to track the en-

tire process of legislation, from the bill to the law adopted by the plenum;

- Institutionalizing functional consultation mechanisms at the level of the Romanian Parliament (based on the principles of the *sunshine law*) which shall allow for interested groups/ citizens to express their opinions, concerns etc. *before* the law is adopted. There are numerous examples of laws being passed today in Romania without any *ex ante* impact assessment, which are not only unpopular, but raise serious problems when enforced (e.g. the recent example on an “electoral charity” law increasing teachers’ salaries with amounts exceeding the economy’s potential).

The list of concrete measures may continue, yet the core point of this initiative is that there is a constant need of involvement of all civil society actors in order to “move” institutions and practices which tend to postpone reform for an indefinite term. While a transparent legislative body is a facet of the democracy coin, the other one should be represented by a participatory civil society. We can “open” the Parliament through several instruments, what is important is to have the conscience that such endeavor should make us an integrating, and not an auxiliary part of the decision making process.





## Open Parliaments: The Case of Serbia

*Dejan Pavlovic*

### **Introduction**

This study aims to assess the normative pre-conditions and the existing practices, related to the transparent and accountable operation of the supreme representative body in the legal order of the Republic of Serbia.

The study is based on the assessment of the relevant legal framework, analysis of the parliamentary practices in communication with the public, the input from the eight structured interviews, conducted with the relevant stakeholders particularly interested in the transparency of the Parliament, and the relatively modest feedback, received by mailing to the various persons and organizations from the civil sector. The additional factor for consideration was the very low level of public trust in Parliament, although, as one deputy recently stated: "That is rather an indication that the parliamentarians are transparent than that they are not".<sup>171</sup>

Good governance is always a desirable model, while societies in transition value it even more. Such an argument is based on the presumption that in the process of transition numerous policy decisions are made at a high pace, with rare and modest public debates, shaping society and its future for decades. In case of incomplete democracies, one indeed understands the cynical notion that citizens are sovereign once in four years: when they cast their votes, effectively waiving that right in favor of the political parties. To what extent are the public officials accountable to the

citizens depends on the availability of information on what they do doing, and the existence of the institutionalized mechanisms for remedying the so-called mal-administration. In non consolidated democracies there is always a risk that the governmental bodies will breach Rule of Law principles.

The adoption of the new Constitution of Serbia in 2006 was a clear example of violation of the good democratic principles by not conducting almost any public debate on the content of the Constitution. The Kosovo crisis cast a long shadow over the constitutional debates and shaped the consensus for the future constitutional design of the Republic of Serbia.

The attitude of the legislative and the executive power towards direct democracy instruments, such as popular initiative, was illustrated in the case of the civil society initiative to amend the current Law on Access to Information of Public Importance and to propose a Law on Classification of Information to the Serbian Parliament. The coalition of the civil society organizations gathered more than 70,000 signatures, and delivered it to the Parliament on December 7<sup>th</sup> 2007, creating obligation for the President of the Parliament to forward the proposed initiatives to all the deputies, appropriate committees and the Government, in accordance with Articles 137 and 138 of the Rules of Procedure of the National Assembly. Unfortunately, there was no response, although it was mandatory that a valid popular initiative finds its place on the agenda of the next sitting (the deadline is 60 days with the possibility of adding 30 more). There were no developments in this process before the interventions of the Civil Defender (the Ombudsman) and the Commissioner for Free Access to Information of Public Importance. Recently the President of the Parliament promised that the proposed initiatives will be included in the agenda for the Spring Parliamentary Sitting in 2010. It will be interesting what official expla-

<sup>171</sup> Deputy Meho Omerovic expressed this view during the Public hearing topics relevant for the drafting of the proposal of the Law on National Assembly of the Republic of Serbia and Proposal of the Rules of Procedure of the National Assembly (June 19<sup>th</sup> 2009)

nation will be provided by the President of the Parliament since such explanation is required by the Rules of Procedure in case of delays.

Recently there was an interesting yet unfortunate event related to the Serbian foreign relations with the USA. Milan Kovacevic, a student in the USA of Serbian nationality, severely injured his American colleague in a bar fight. After being bailed out from detention and deprived of his passport for the sake of securing his presence for the judicial proceeding, he managed to obtain new traveling documents from the Serbian Consulate and return to Serbia in spite of the formal notification that there was ongoing proceeding against him. With Serbian Constitution preventing extradition of Serbian citizens to other countries, he was effectively out of the reach of USA prosecution, although still being subject to the Serbian justice system. For the Serbian Government the case was not over, because of the high pressure by the State Department to resolve this issue. In the meantime one of the daily newspapers (“Borba”) launched the story about the Serbian Government negotiating with the State Department the compensation for the injured American student, speculating with the amount of 1 million USD. In the intense public debate on the issue it was striking that the Government’s main concern was how the information they wanted to remain secret found its way to the media from the closed sessions of Government, in spite of the legitimate and justified interest of the public to know how the “taxpayers’ money are being spent”. The chief editor of “Borba” was summoned to disclose her source, which she denied exercising her constitutional right to privileged information. The Parliament also had some role in this ill-timed event. The crime suspect Kovacevic was, as an emerging public figure, a special guest of one of the major parliamentary groups in the National Assembly, using his “right” to spend the day

with the deputies and observe their work. But is there really such right? One of the aims of this study was to test if any citizen could enjoy similar treatment like that of Mr. Kovacevic.

The most important issue concerning the Serbian Parliament in the last several years is how relevant the Parliament actually is. This is a rather awkward issue, since parliaments are considered to be pillars of the consolidated democracies. Serbian Parliament adopts close to one hundred laws per annum, struggling to get laws in conformity with the new Constitution (2006), but also to harmonize Serbian legal framework with the *acquis communautaire*. The deputies work till late in the never-ending debates and struggles to recuperate quorum for the voting days. And still, the public trust in Parliament is between 10% and 20%, the lowest of all institutions, while being further undermined by the Government for alleged blocking of the EU integration process.

The main premise of the claim that Serbian Parliament is not so relevant is the fact that deputies are not being effectively elected by voters, but by the political parties instead. The proportional electoral system in Serbia uses closed party lists, yet the parties do not have an obligation to respect the order on the lists and autonomously decide who will be a deputy on behalf of the political party or coalition and until when. Although formally the mandate belongs to the deputy and not to the political party, there is a constitutional provision and a practice that the deputies sign blank resignations, conferring their mandate on the political party. Article 102 of the Serbian Constitution, regulating the status of deputies, prescribes:

*Under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at disposal to the political party upon which proposal he or she has been elected a deputy.*

The electoral process in Serbia currently functions in a way that all the political parties populate their election lists with 250 names, putting on the top the most popular party members, as well as popular sportsman, actors, writers, and influential people from the regions. After the elections, the mandates are assigned by the party leadership, but there is no obligation to respect the order in the electoral lists. At this point, the placements in the Parliament are done by different criteria, loyalty being the dominant one.

According to the analysis of the Serbian NGO Center for Modern Skills, as a consequence of this practice there are 75 municipalities without representation in the Parliament. There are sub-regions of Serbia totally unrepresented in the Parliament. Thus none of the voters is in a position to claim that any deputy represents him. It could be claimed that the public owns ideal share of 1/250 of all the deputies. It would be more frank to admit, however, that all 250 deputies are owned by the political parties.

In recent years the importance of the laws, aimed at improving the accountability of public officials, and preventing or reducing corruption, has been recognized. The benefits of the Law on Public Procurement, the Law on Prevention of the Conflicts of Interests, the Law on Free Access to Information of Public Interest, the Law on Personal Data Protection, and the Law on the Financing of the Political Parties are recognized. Yet all of them have some deficiencies, the last law in the list above being commented on as a “blank letter and mere cosmetics”. There is much to be improved and one of the major challenges for the issue, discussed in this paper will be the adoption and the implementation of an adequate and well-balanced Law on Confidentiality of Information. This law is currently pending in the Parliament – it provokes severe criticism

from the civil society because it significantly erodes citizens’ right to free access to information. The positions of the Commissioner for Free Access to Information of Public Importance and of the Civic Defender are drastically weakened there, depriving them of the opportunity to assess whether public officials perform their actions in accordance with the law or violate human rights.

### ***The Legislative Process in Serbia***

The legislative process in Serbia starts with the initiative of one of the authorized bodies enumerated in Article 137 of the Constitution. The proposal must contain a proposed law in a form in which the law is to be adopted, accompanied with an explanatory note. The note must include:

- The constitutional framework of the law;
- Reasons for adopting the law;
- An explanation of the main legal institutions and individual solutions contained therein;
- Estimates of the funds required for the implementation of the law;
- Justification why the law is proposed to apply retroactively, if the law contains retroactive provisions;
- Overview of provisions to be amended and/or modified, if a bill amending and/or modifying an existing piece of legislation is proposed;
- Grounds for the law in the legislation of the European Union and generally accepted guidelines in international law.

The President of the Parliament upon receiving it immediately forwards the proposal to all the deputies, the relevant committees and the Government, unless the Government is the initiator of the proposal.

The proposal of the legislative act can be included in the agenda of the plenary sitting not earlier than 15 days after its submission,

and no later than 60 days. However, in exceptional cases the deadline can be exceeded, by no more than 30 days, in which case the President of the Parliament must inform the deputies about the reasons for such delay.

Before its reading in the parliamentary plenary session, the proposal is assessed by the competent committees and the Government. The committees and/ or the Government submit opinions, in which they propose to the Parliament to accept or refuse the proposed piece of legislation in principle. The draft law would be considered even without the submission of these opinions. The Parliament discusses the draft in principle and then in detail, with a mandatory 24 hours period between the two sessions. A debate on particulars is focused on the articles to which the submitted amendments refer, as well as on amendments proposing inclusion of new provisions. The total discussion time for each parliamentary group does not exceed fifteen minutes per amendment.

The proponent of a proposed law may withdraw it before the debate on it in the Parliament sitting is concluded. The Parliament votes on proposed laws and other general acts in their entirety and in particular, on the Voting Day sittings. If a proposed document has been adopted in principle, the Parliament votes on each of the amendments *seriatim*.

As to the method of decision-making, the Parliament adopts decisions by majority vote of deputies at the session when a majority of deputies are present. If the subject matter of the laws voted is one of those enumerated in Article 105 (2): referendum and national initiative, enjoying of individual and collective rights of members of national minorities, development and spatial plan, public debt, territories of autonomous provinces and local self-government units, and ratification of international contracts, the Parliament decides by the majority vote of all deputies.

In the exceptional cases, a law can be adopted in the urgent procedure. Urgent procedure may be resorted to only for the adoption of a law regulating issues and relations resulting from unforeseeable circumstances, where failure to adopt such law under urgent procedure may cause adverse effects to human life and health, to national security and the work of agencies and organizations.

Documents defined in Article 134 of the present Rules of Procedure adopted by the National Assembly, are published in the *Official Gazette of the Republic of Serbia*.

The publication of laws, the budget, development plans, zoning plans, the end-of-year balance, Rules of Procedure, declarations, resolutions, recommendations, decisions, conclusions and authentic interpretations of any of these acts is the responsibility of the Secretary of the Parliament.

The President of the Republic promulgates the adopted laws by a decree, prior to their publication. As a general rule, published laws enter into force on the eighth day after publication in the Gazette.

In 2007 the Parliament spent 112 days in sittings, adopted 81 laws, 42 decisions and 4 other general acts. There were 1318 proposed amendments.

In 2008 there was 90 days in sittings, producing 48 laws, 47 decisions and 1 general act. The number of submitted amendments was 1424.

### ***Legal and Institutional Framework for an Open Parliament in the Republic of Serbia***

The legal framework for transparent work of the Serbian Parliament is relatively new and, as is the case in the other post-transitional democracies, is to a large extent in accord with the good European standards, formulated by the international organizations, such as the Council of Europe and OSCE.

The framework consists of the following legal acts:

- The Constitution of the Republic of Serbia (*Official Gazette* No. 98/06);
- The Law on Free Access to Public Information of Public Importance (*Official Gazette* No. 120/04, 54/07);
- The Law on Referendum and Popular Initiative (*Official Gazette* No. 48/94 and 11/98)
- The Rules of Procedure of the National Assembly of the Republic of Serbia (*Official Gazette*, No. 53/05);
- An Instruction for Publication of the Information Bulletin on Work of the Public Authorities (*Official Gazette* No. 57/05);
- Rulebook on Basic Principles of Work, Conduct and Dress-code of the Persons Employed in the National Assembly (2006);
- Administrative Committee's Decision on the Internal Order in the Parliamentary Building (1994).

### **Constitution of the Republic of Serbia**

The new Constitution introduced a new approach in terms of the transparency of work of the public institutions. It stipulates that *the Rule of Law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of the Constitution and Law by the authorities* (Article 3).

It is recognized that only informed citizens can exercise their rights effectively and hold the elected and appointed public officials accountable.

According to Article 51 of the Serbian Constitution, *everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right.*

*Everyone shall have the right to access information kept by state bodies and organiza-*

*tions with delegated public powers, in accordance with the law.*

In order to provide adequate conditions for the proper exercise of the right to information, a "rule of law state", to be recognized as such, must guarantee the freedom of the media. In Serbian legal order this freedom is guaranteed by Article 50 of the Constitution, providing freedom of the media and the prohibition of censorship, limited to accord with the good European standards, as expressed in the qualification "necessary in a democratic society". Freedom of the media in Serbia is currently at stake, since there are pending amendments to the Law on Information (*Official Gazette* No. 43/03) that could seriously limit this right, particularly those provisions that would effectively impose certain degree of censorship.

### **The Law on Free Access to Information of Public Importance**

In line with Article 51 of the Constitution, the National Assembly adopted Law on Free Access to Public Information after a long and persistent advocacy campaign by civil society organizations, NGOs and the media.

The Law regulates the right of access to information of public importance, held by the public authorities. It serves the public interest of having information on public affairs – the precondition of free, democratic and open society. A Commissioner for Free Access to Information of Public Importance is established as an autonomous body. His/her responsibility is to:

- 1) Monitor the compliance of the public authorities with their obligations with regard to this Law and inform the public and the Parliament about the results;
- 2) Initiate new legislation or amendments to guarantee the exercise of the right to free access to information of public importance;
- 3) Propose measures to improve the work of public authorities with regard to the Law;



- 4) Introduce and monitor measures for training civil servants to fulfill their obligations under the Law;
- 5) Decide on appeals against public authority's decisions, allegedly violating the Law;
- 6) Inform the public about the content of the Law and the rights it guarantees.

For the effective exercise of the rights guaranteed by the Law the definition of 'information of public importance' in the Law is crucial. Every kind of information that the public has a *justified interest* to know and is held by a public authority represents information of public importance. It is irrelevant what the source and the form of this information is. The Law stipulates that a justified interest always exists, which removes the obligation on the part of the applicant to explain the reasons for their request and/ or to prove their justified interest in obtaining the relevant information.

If the public official denies access to information, he/she is obliged to prove (*onus probandi* is on the public authority) that in the concrete case there is an outweighing public interest grounded in law (such as national security, international relations, economic stability of the state, functioning of the justice system, confidential information, right to life, privacy or dignity) that would have been violated if the requested information had been granted. If the information relates to the protection of public health or the environment, it is considered that the public always has a justified interest to know it – this is the so-called privileged information.

The right to free access to information of public importance belongs to any person or legal entity, irrespectively of nationality, residency, race, gender, confession, etc. The public authority official is not allowed to discriminate among journalists or media by giving some exclusivity or priority in accessing the information of public importance.

The Right of free access to information consists of four distinct rights:

- the applicant's right to be informed whether the public authority has the specific information or can access it;
- the right to get access to the document containing the requested information;
- the applicant's right to get a copy of the document containing the information paying a compensation for that in accordance with the Government's regulation;<sup>172</sup>
- the applicant's right to receive a copy of the document with the requested information by post, e-mail or fax.

The Law prescribes the procedure for requesting the information from the public authority. The applicant submits a written request to the public authority, containing the name of the public authority, their own name and address, and description of the requested information. Justification of enquiry is not stipulated.

The public authority is obliged to respond without delay and within 15 days from the submission of the request. If there are justified reasons preventing the public official to respond within 15 days, they should inform the requestor and specify a new deadline not exceeding 40 days.

The Law stipulates an urgent procedure and 48 hours deadline for the requests for information, important for the protection of life, freedom, public health or the environment.

The requestor may appeal to the Commissioner for Access to Information of Public Importance both in cases of negative decision and in absence of decision (silence of the relevant administration). In our opinion, the Law has a major weakness, contained in Article 22 (2). According to it, *there is no right to appeal to the Commissioner against the decisions of*

<sup>172</sup> According to the Article 17 (3) there is no obligation to pay the compensation for copying and delivery of the request information of public importance in case of the journalists when they do their work, the human rights organizations when they request information pursuant their statutory objectives, and all the person requesting information related to the protection of public health and the environment. These exceptions are not applied in case when the information is already public and available (e.g. on the Internet).

*the National Assembly, the President of the Republic, the Supreme Court, the Constitutional Court, and the Public Prosecutor.*

In case of negative or no decision by these institutions, an applicant has one legal remedy – to initiate an administrative litigation.

The Law also prescribes a set of measures to provide better conditions for exercising the right to free access to information of public importance. First of all, the public authorities are obliged to proactively publish a wide range of information without anyone requesting it. This is the main purpose of publishing information bulletins, containing the following items:

- 1) Description of the competences, responsibilities and the organizational structure;
- 2) Budgetary data and list of the available assets;
- 3) Type of the services the public authority provides to the interested parties;
- 4) Description of the procedure for requesting access to information;
- 5) Overview of the requests, appeals and other measures taken by the interested parties, as well as the decisions on these motions;
- 6) Information on the type of available information and the form and place of its keeping;
- 7) Names of the senior staff in the public authority, description of their responsibilities and the decision-making procedures;
- 8) Internal rules and decisions related to the transparency of the work of the public authority (e.g. working time, contacts, accessibility, permissibility of audio and video recording of their sessions etc.);
- 9) Rules and decisions related to the exclusion or limitation of the public in the working process of the respective public authority, including the rationale for such rules.

Another important measure is that each public authority must assign specific official(s) to act on the submitted requests. The public authority is required to maintain the informa-

tion carriers in a manner that enables effective access to information. Civil servants are to be trained to effectively meet the requests. Finally, all public authorities are obliged to file an annual report on their activities, the measures undertaken and the requests processed in compliance with the Law.

### ***The Law on Referendum and Popular Initiative***

Article 2 of the Constitution provides that *sovereignty is vested in citizens who exercise it through referenda, people's initiatives and freely elected representatives. No state body, political organization, group or individual may usurp the sovereignty from the citizens, nor establish government against the freely expressed will of the citizens.*

The Constitution specifically guarantees the right to petition (Article 56), empowering everyone with *the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers, bodies of the autonomous provinces and local self-government units and to receive a reply from them if they so request. No person may suffer detrimental consequences for putting forward a petition or proposal. No person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offense.*

In Article 107 the Constitutions empowers, among others, 30, 000 voters to initiate laws and other regulations and general acts.

The last time the Serbian people had an opportunity to exercise direct democracy through referendum process was in 2006, within the constitutional procedure for adoption of the new constitution. On the other hand, right to popular initiative is used more frequently, although it is hard to claim that it has much effect. We have already illustrated Government's attitude in the case of the pro-

posed amendments to the Law on Access to Information and the proposed Law on Confidentiality of Information. One popular initiative worth mentioning because of its subject is the proposed Law on Restitution of the Nationalized Property from 2003.

According to the Law, the initiator is obliged to deliver a proposal to the competent public authority and inform it about the start of collection of signatures.

Furthermore, the initiator has to inform the Ministry of Interior about the collection of signatures, at least three days before its start. There is a seven-day deadline for the collection of minimum 30, 000 valid signatures. Upon the successful collection and submission of the signatures to the Parliament, the President of Parliament is obliged to act in accordance with Article 137 of the Rules of Procedure and forward the proposal to the deputies, appropriate committees and the Government.

### **Law on the National Assembly**

Article 110 of the Constitution foresees enactment of the Law on the National Assembly. Although there is a pending proposal initiated by 21 deputies from the Democratic Party of Serbia on March 6<sup>th</sup> 2009, there is an ongoing process of *travail préparatoire* for enactment of the Law on National Assembly and the corresponding new Rules of Procedure of the National Assembly. On June 18<sup>th</sup> and 19<sup>th</sup> 2009 in the small Plenary Hall of the parliament building there was a *Public hearing on the topics relevant for the drafting of the proposal of the Law on National Assembly of the Republic of Serbia and Proposal of the Rules of Procedure of the National Assembly*. The working group on these two important pieces of legislation confronted their opinions with those of the attending deputies and the invited scholars and practitioners. The discussed issues were:

- Constitutional position of the National Assembly of the Republic of Serbia;
- Competencies and functions of the National Assembly;
- The role of media in the development of parliamentary practice;
- Financial aspects of the autonomy of the National Assembly;
- Status, right and obligations of deputies;
- Organizational issues.

The public discussion was up-to-the point and touched upon key problems related to the functioning of the Parliament, such as ownership of deputy mandate, broadcasting of the plenary sessions, immunities and income of the deputies, design of the annual work plan of the Parliament, etc. The value of the event was further enhanced by the presence of guests from the region, who added significant comparative perspective on both the normative solutions and the existing practice.

### **National Assembly Rules of Procedure**

*The Rules of Procedure* dedicates its Part IX to the openness of the Parliament, providing that the sittings of the Parliament and its committees are public (Article 173 (1)). They may be held *in camera* in cases stipulated by law after a proposal by the Government, a Committee or at least 20 Deputies and the approval by the majority in Parliament (Article 173 (2)).

The communication with the media is regulated by Articles 174-177, providing that the representatives of the press and other media have free access to sittings of the National Assembly and its Committees in order to be able to inform the public about these bodies' activities.

The representatives of media may also use official shorthand minutes from the sittings, the texts of the laws, drafts and bylaws, as well as the documentation materials on the activities of the Parliament. The Parliament has the

duty to provide adequate working conditions for the representatives of the media.

Article 177 provides that one means of communication with the public is official press releases, which have to be approved by the President of Parliament.

In accordance with the Law on Access to Public Information, the Secretary of the Parliament issued the *Instructions for acting on requests for access to public information and implementing measures for enhancement of the transparency of work*, regulating procedures for effective compliance with the Law and determining the premises where interested persons may submit request for access to public information or actually access the documents.

The Secretary also designated an official who is responsible for the requests for access to information.

In order to exercise his/her right of access to information of public importance held by the Parliament a citizen should lodge the request in writing to the address of the Parliament by e-mail (infopristup@parlament.rs), by telephone/fax, or personally at the Registry of the Parliament.

The formal request should contain identification of the public authority he/she addresses for information, data necessary for identification of the requested information, and name and address of the applicant. There is no obligation to state the reasons why the information is requested. In the request the applicant may propose the way of getting access to the information.

In accordance with the *Law on Access to Information* and pursuant the *Instructions for acting on requests for access to public information and implementing measures for enhancing the transparency of work*, the right to access information of public importance could be limited if necessary for the protection of an outweighing interest, established in the Constitution or in a law.

The Parliament will not provide requested information if that would endanger the life, health, safety or other important good of a person, endanger, disturb or obstruct the identification of criminal act, prosecution or judicial proceedings or enforcement of judgment, or violate fair trial.

Parliament will also refuse to provide access to information that is legally classified as state, official or business secret, if disclosing it would cause serious legal or other consequences, violating legal interest outweighs the interest of access to information. The access will also be denied if that would lead to violation of the right to privacy and reputation (except in cases of public persons, whenever they with their behavior provoked the request).

If the authorized person on behalf of the Parliament denies the access to information (in total or partially), they are obliged to issue an official decision, accompanied with its justification and instructions about the legal remedy.

All the plenary sessions of the Parliament are transmitted via National Television, irrespective of the duration of the sessions. There is also an internal television in the building, available to media representatives, deputies and the employees of the Parliament.

Press releases are issued by the Chairperson, the chief of a Deputy group or a deputy. There is a Public Relations Department that prepares the proclamations and announcements about the events in the Parliament. Furthermore, the announcement of all the events can be found at the parliamentary website. Every deputy is entitled to hold press conference in the premises of the Parliament.

Another relevant bylaw is the *Decision on the internal order in the parliamentary building*, adopted by the Administrative Committee of the Parliament in 1994. The visits to the Parliament can be organized on invitation by the President or the Secretary of the Parliament,

or by registration of the interested organized groups. Article 12 of the Decision provides that all permissions for individual or collective presence to the parliamentary sessions are issued by the Secretary of the Parliament, in agreement with the President of the Parliament. The persons allowed to be present to the parliamentary session would be placed at the gallery.

In the *Instructions for enforcement of the decision on the internal order in the parliamentary building* there are specific provisions related to the visits to the Parliament.

The Secretary of the Parliament also issued a *Rulebook on Basic Principles of Work, Behavior and Dress-code of Parliamentary Employees* (February 2006). Its Article 5 is related to the right of access to information of public importance, obliging all the employees in the Parliament to take all the necessary measures for adequate exercise of this right, while also taking into account legal provisions, related to the classified information. Article 9 of the Rulebook prescribes that all the visits to the Parliament during the sitting days need special approval by the Secretary of Parliament.

### ***The Openness of the Parliament in Practice***

Based on the assessment of the legal framework for an Open Parliament in Serbia above, we may conclude that there are solid foundations for the modern model of transparent and accountable Parliament. On the other hand, undoubtedly there is much space and need for improvement. The quality of the normative solutions is first to be assessed, and only then are they to pass the test of interpretation and enforcement. From that perspective it is of utmost importance to assess the practices related to the Parliament's openness. We thus tried to review the practice by testing some of the central features and by taking the opinion of the relevant stakeholders in the following areas:

## **1. Broadcasting of the Plenary Parliamentary Sessions**

The practice of the direct broadcasting of all the plenary sessions without exception is well established and there is no indication that such approach would be changed. Previously it was usually the case that it is the opposition, which insists on the public broadcasting. The rule now is that if there is no broadcasting there would be no session. National Television – Radio Television of Serbia is responsible for direct coverage from the Plenary Hall. This is the practice on the basis of the provisions of the Rules of Procedure of the National Assembly and the Recommendation (2007) of the Serbian Broadcasting Agency that it should broadcast all the plenary sessions from the Parliament. In this respect there is one anomaly which is rarely met in comparative parliamentarism. The problem is that the National Television, along with charging a monthly fee to all users of electricity, also functions as a commercial television. It has expensive licenses for broadcasting events such as tennis tournaments, athletic championships, and football matches. Since the TV ratings of such events are much higher than the parliamentary sessions, the editorial board tends to decide to broadcast semi-finals of the Roland Garros instead of the parliamentary debate, effectively deciding that the national legislation be put on hold. This type of development provoked some debate and pressure on the Director of the National television, but it appears that we are closer to the establishment of a new television with national coverage.

## **2. Information Bulletin on the Work of the Parliament**

In accordance with Article 39 of the Law on Free Access to Information the Parliament publishes extensive Information Bulletin on its



website and meets, at least formally, the requirements set by the Law.

One finds there a clear description of the competences and the responsibilities of the Parliament and its administration, with precise organizational structure, including a very clear schematic display. The budgetary data is also well presented, including the facts that are usually most interesting both for the media and the public – the income and the privileges granted to the deputies:

- The monthly salary of a deputy is 825 EUR net<sup>173</sup>;
- Every deputy is entitled to receive additional 330 EUR for the services they perform in their constituency;
- A deputy is entitled to receive per diem 25 EUR when they attend plenary or committee sessions;
- A deputy has the right to use free public transportation in road, railway and river transport on the whole territory of the Republic of Serbia;
- A deputy has the right to compensation for using their own vehicle – amounting to 15% of the price of 1l of fuel per kilometer;
- A deputy who is not resident of the City of Belgrade has a right to hotel accommodation for the days of the parliamentary sessions but this does not include Hotels of the 1<sup>st</sup> category (4 stars); alternatively, a deputy may request that they receive 380 EUR for renting a flat;
- A right to a vehicle and a driver belongs only to the President of the Parliament, Vice presidents and the Secretary of the Parliament. A deputy may get this right upon decision of the Administrative Committee for their specific functions.

The total expenses of all the deputies in 2008 for gross salaries, per diems, travel

expenses and all other expenditures was 669,271,954. 62 RSD. We can approximate that during 2008 EUR/RSD exchange rate ratio (1:85). This means that all 250 deputies received 7,873,787 EUR. On average that would be 31, 495 EUR for each of the deputies in 2008.

The Information Bulletin specifies the authorized officials responding to requests for access to information. It also clearly describes the procedure for requesting information and the available remedies. There is an overview of the submitted requests and their outcome. It also lists the most often asked questions and information requested. In the Bulletin one has information on who the applicants requesting information are (the media, legal entities or physical persons). According to the Bulletin there were 110 requests in 2007 and 94 in 2008.

The requests are most often related to the election lists, submitted by the political parties, the dates of the sittings, the sitting placements of the parliamentary groups, the income of the deputies, the total time spent by the deputies in the Assembly, the financial reports on deputies' properties and their use of diplomatic passports.

The Bulletin contains a description of the legislative process, the work of the committees and statistics of the activity of the deputies' groups. There is also an overview of the activities of the Parliament, its international cooperation, and as an appendix a collection of the internal regulations governing various aspects of the functioning of the Parliament, including the openness of its affairs, is provided.

The Commissioner for the Access to Information of Public Importance, Mr. Rodoljub Sabic, one of our interviewees in the preparatory work for this report, evaluated this Information Bulletin as one of the best examples of compliance with the Law.

<sup>173</sup> Salaries and other payments are calculated in Serbian dinars (RSD), but for the purpose of this study and comparability, we transferred them in euros. 1EUR=92 RSD



### 3. Quality of the Parliamentary Website

The parliamentary website [www.parlament.rs](http://www.parlament.rs) is a modern website, providing most of the services such a tool can offer. Yet it is less interactive than some parliamentary websites in the region (e.g. the web-site of the Romanian Parliament)

It provides detailed information about the composition of the Parliament, yet no contact information (phone, e-mail) for the MPs is found there.

There is information about all the legislative acts adopted since the end of 2001, including their full texts. There is also a list of the pending legislature and the texts of the draft laws. For both groups of documents there is a search engine facilitating finding the needed document. A significant problem is that there is no clear information about the status of a draft law or other act in the legislative process before their adoption and promulgation. As was already pointed out, that was one of the main issues in the scandal from 2007, when no trace of the popular initiative related to the Law on the Free Access to Information of Public Importance and the Law on Confidentiality of Information could be found.

The website contains an overview of the various activities related to the parliamentary life. Yet, neither the minutes from the parliamentary sessions and the committee sessions, nor the voting record of the deputies are published there. This is a significant drawback in terms of the openness and transparency of the work of Parliament.

A very interesting set of information is available there and we would like to recommend as a useful practice – the item “*Istrazivanja*” (“*Research*”). Well-prepared comparative research analyses (e.g. on lobbying, national minorities, restitution of property, e-government etc.) are found there.

The website contains a very good presentation on the history and the architectural value of the parliamentary building.

### 4. Access to Information of Public Importance by the Media Representatives

As already noted, the Rules of Procedure grant the right to the representatives of the press and other media, in accordance with the decision on the internal order within the parliamentary building, to have access to the sessions of the Parliament and its committees. It also guarantees the necessary conditions for their work. According to the several journalists we have interviewed, a very good practice in terms of the communication and cooperation with the media representatives exists. The accreditation procedure is clear and simple, and the licenses are renewed annually. The Parliament provides very good conditions for the media and there is never a problem for a journalist to get access to the needed materials, such as minutes, listings and shorthand notes from the parliamentary and committee sessions. One of the interviewees testified about her experience in attending the sessions of the Committee for Security and Defense. There has never been a problem, but in some cases when there was a request for a closed session, she had to wait outside while that item from the agenda was discussed. Of course, some of the privileges and the access to the deputies depend on the rating of the media and the personal rating of the journalist, but this is a common practice in most if not all the countries.

### 5. Access to the Parliament Building, Parliamentary and Committee Sessions and to the Deputies by a Citizen

Although the President of the Parliament claims it is possible for the interested citizens to audit the parliamentary sessions from the balcony, the normative acts do not provide clear rules in that respect. It is pos-

sible that the President of the Parliament or the Secretary of the Parliament could grant such privilege. Some researchers report to being allowed to monitor the parliamentary sessions, and there are also reports of special guests on the course of the international cooperation who have attended parliamentary sessions. There is no practice of citizens present at the committee sessions, and that would be also contrary to the Rules of Procedure. Such privilege is reserved to accredited media representatives. A citizen may apply for the permission of the Secretary of the Parliament to visit the library and to access documents containing non-confidential information.

It is not clear whether it was due to the summer schedule, but in more than 10 attempts to access the assigned parliamentary officials responsible for responding to requests for information (Mrs. Aleksandra Raso and Mr. Nebojsa Pavlovic) via telephone, we did not receive an answer. We also sent two e-mail inquiries and there was still no reply. These attempts were made periodically during June, July and August.

There is a practice of access of citizens to the Parliament in an organized manner, through the program called "The Day of Open Doors". The program is announced both on the website and in the Information Bulletin, describing a simple 3-step procedure, consisting of the citizen's expressing their wish to visit the Parliament, a telephone call and the arrival in the scheduled time. The Parliament has professional custodian who provides educative tours through the monumental parliamentary building. In the initial phase of the project there was much more enthusiasm, to some extent thanks to the enthusiasm of the previous President of the Parliament.

Our experience is that the parliamentary officials are very open to the visitors. On

two occasions we were able to organize visits to the Parliament for students of the Faculty of Political Science and simulate debates in the Great Parliamentary Hall. Furthermore, from my personal experience and from the feedback we received in the interviews with the civil society activists, interested in the work of the Parliament, there is a very good practice of summoning scholars, practitioners and other experts to the Parliament for the purpose of providing expertise on certain issues or presenting law proposals originating in an NGO or an international organization.

The lobbying activities are not regulated in the Republic of Serbia. A citizen cannot access the committee sessions where he could impact the legislative process. On the other hand, as should be clear from the first part of the study, there is no real power vested in the deputies, but the lobbying is oriented towards the political parties, the ministries, and the public enterprises.

As to the citizens' access to the deputies, it seems that a part of the problem is in the proportional system, alienating parliamentarians from their electorate. As we have noted, none of the deputies left any contact information at the website or in the Information Bulletin. On the other hand, they are very accessible when the political party is a mediator in the process.

The Parliament has the Committee for Petitions and Proposals which is responsible for assessing and responding to the petitions and proposals addressed to the Parliament by the citizens. The Committee reports to the parliament at least once a year, but based on our interviews and the assessment of these reports, we find the work of this Committee rather ineffective.

### ***The Public Perception of the Parliament in Serbia***

*“Laws are like sausages. It is better not to see them being made.”*

*Otto von Bismarck*

- Only 2% of the citizens in Serbia believe that the Parliament is not corrupted, and 30% of citizens believe that it is extremely corrupt (Transparency International, June 2009);
- According to Vladimir Goati, president of Transparency International – Serbia, „At the moment we do not have 250 deputies in the Parliament but a vast majority of the political party delegates, which, as mailmen, transfer the opinions of their respective political parties. If the situation remains the same, the parliamentary sessions will not be needed. Instead of them, the party leaders should gather and decide as if they are a board of directors<sup>174</sup> “;
- According to the Strategic Marketing Research’s public opinion survey from November 2008 Serbian Parliament is on the bottom of the list in terms of positive public opinion. According to the survey, only 8% of citizens have positive opinion on the legislative body:

<b>Institution</b>	<b>Positive opinion</b>	<b>Negative opinion</b>
<b>Church</b>	<b>52%</b>	<b>18%</b>
<b>President of Republic</b>	<b>43%</b>	<b>31%</b>
<b>Military</b>	<b>26%</b>	<b>35%</b>
<b>Government</b>	<b>13%</b>	<b>49%</b>
<b>Judiciary</b>	<b>10%</b>	<b>55%</b>
<b>Parliament</b>	<b>8%</b>	<b>54%</b>

<sup>174</sup> Published in the daily newspaper “Politika” on December 14<sup>th</sup> 2008.

- The center for Free Elections and Democracy (CeSID) also measured (in the winter of 2007/08) citizens' trust in institutions and the civil society organizations, and presented the following results:

Institution	Trust	Distrust
Church	63%	14%
Republic of Serbia	42%	24%
Military	41%	27%
President of Republic	34%	36%
Police	30%	39%
Prime Minister	24%	42%
Government	22%	43%
NGOs	20%	42%
Parliament	18%	47%
Trade Unions	18%	42%
Judiciary	17%	53%

### ***Relevant Stakeholders' Assessment on the Openness of the Serbian Parliament***

In order to better assess the perceptions of the civil society on the transparency of the Parliament, we sent the questionnaire translated into Serbian language to 8 TV stations, 6 daily newspapers, 2 weekly political magazines, and 24 NGOs, 1 trade union organization and 2 business associations. Either because of the ignorance or because of the summer vacation time, we received feedback from only 4 NGOs, 1 daily newspaper and 1 TV station.

On the other hand, we were much more successful in accessing stakeholders such as the Commissioner for Free Access to Public Information, Vice Civic Defender, 2 journalists directly

covering the activities of the Parliament, 2 NGO experts, 1 political analyst and the custodian of the Parliamentary building.

They are all interested in having a more open Parliament and most of them agree that the situation in the Parliament in terms of transparency is much better than before (e.g. there is a very good Information Bulletin, the web-site is working and well-designed, containing rich information, and there is a growing practice of the parliamentarians summoning interested NGO and other experts for public hearings on the pending draft laws).

Interviewees claimed to be very interested to get access to the draft laws as soon as possible, yet the website is not always regularly updated. Some of the interviewees had to take active steps in order to get access to some in-

formation. In general their perception is that the Parliament functions in a much more transparent way than the other public institutions. Almost all the interviewees emphasized that there is a serious threat that the access to information of public importance will be severely limited if the Draft Law on the Confidentiality of Information is adopted. Several of the interviewees are members of the Coalition for Free Access to Information<sup>175</sup>, comprising civic organizations with a mission of human rights protection and securing transparent and accountable work of the public authorities.

It is important to note that we could not get clear confirmation that there is a possibility for a citizen or a researcher to get a copy of the voting records of the parliamentarians, though we had 2 scheduled meetings in the Parliament in order to clarify that matter.

As the main problem related to the Parliament almost all the interviewees singled out the *ownership over mandate*, a problem significantly reducing public trust in the deputies and having impact on the dignity of both the Parliament as an institution and the deputies as persons. Some of them shared the recent initiative of the President Boris Tadic for constitutional changes and reduction of the number of deputies to 150. Some believe that a change in the electoral system is needed – introducing mixed system (part of the deputies elected from a list and part – on majoritarian principle) instead of the currently existing purely proportional one. The control of the Government is one of the fundamental responsibilities of the Parliament, but it is hard to achieve it considering the fact that the Government is composed of the party leaders, exercising strong party discipline and the chiefs of the parliamentary groups (“the whip”) control the deputies’ voting and other activities.

<sup>175</sup> See the website of the Coalition for Free Access to Information ([www.spikoalicija.org](http://www.spikoalicija.org)) for the full list of members of the coalition and the overview of their activities.

There are also serious concerns over the financing of political parties, an issue with a large impact on Parliament. Serbian parliamentarism witnessed in recent history the phenomenon that deputies migrate from one political party to another, resulting on several occasions in a situation when some parties are represented in Parliament even without participating in the elections or without passing the census threshold.

The interviewees emphasized the role of the media, noting that media coverage improved in terms of professionalism and became less biased. Media coverage is an important tool for the political education of the citizens and also one of the available tools for making the political class more accountable.

### Conclusions

To paraphrase and merge two famous quotes, freedom is oxygen for the soul, and information – oxygen for democracy. If citizens do not have correct, complete and timely information, they cannot exercise their judgment when it comes the time for political choices. Without sufficient information a citizen cannot hold public officials accountable and corruption would thrive.

99% of the Serbian population never visited the Parliament building, and virtually no one knows which deputy represents them. When coupled with the fact that during the broadcast of the parliamentary sessions deputies are seen spending most of the time obstructing or insulting each other, or reading newspapers with one finger in their noses and the other hand texting on the mobile phone, one could hardly disagree with the cynical Bismarck’s statement. On the other hand, the Parliament is where we vest our sovereignty; the laws determining many of the important features of our lives are made there.

The openness of the Serbian Parliament is a textbook example of the developments in a consolidating democracy. There is an avalanche of adoption of legislation conveying good European standards, most often initiated, supported or motivated by the activism and funds of the international organizations and the NGOs dedicated to spreading the best practices.

New institutions and mechanisms are introduced but still most of them tend to fail or underachieve. This is so, in our opinion, partly because public officials are not sincere in their reform efforts, and partly because institutions just cannot be reformed and transformed overnight.

The Serbian Parliament is a relatively open representative body. Yet the deputies are relatively closed towards the public, unless they are guests in some TV show, campaigning for the forthcoming elections (taking place in Serbia much more often than if the regular political cycle is followed). That is the reason why deputies always have to run campaigns, while remaining distant from the voters who could ask them for past promises and concrete measures taken.

The Serbian Parliament respects the letter of the Law on the Access to Information of Public Importance, but does not respect its spirit. There is not much pro-activity and initiatives to facilitate citizens' access to information and overall to provide more open and more responsible governance.

Of course, we do not believe that the Serbian Parliament is an exception or that it is worse than the other political institutions in Serbia, or that the other parliaments in the transitional countries do not experience similar weaknesses. The quality of the Serbian Parliament is a direct consequence of the quality of the electoral system and the overall level of the political culture

in Serbian society. A deputy interviewed by us recently on the issue of the accessibility of the deputies by the citizen shared with us that in most cases when the citizens approach him in private they ask if he can do some favor such as to find employment for a family member, provide some financial privilege or solve a problem with the judicial system; none of the citizens approaching him asked anything that he can do in his competence as a deputy.

It is encouraging that there is high level of respect for the media representatives, because of their special role in the democratic development of the society. We believe that the idea for the special parliamentary channel is very good, particularly if it would include something more than broadcasting of the plenary sessions. Citizens need to know more about their representatives and about the process of drafting the laws.

Finally, we should also comment on the availability of remedies for possible non transparent attitude of the Parliament. It is a very unfortunate legal solution to exclude all the key public institutions from the competence of the Commissioner for Human Rights while the Parliament Civic Defender as well does not have prerogatives to monitor them.

The only remedy for a person with a denied right of access to information of public importance, held by the Parliament, is to initiate administrative litigation, but there is yet no jurisprudence in that respect. The controversies related to the amendments to the Law on Information and the proposed Law on the Confidentiality of Information suggest that the transparency and accountability of the work of the public authorities and their officials will be at stake again in the days to come.





## Open Parliaments: The Case of Turkey

*Mustafa Durna*

### **Introduction**

To have a healthy democratic system in a country, the parliament there should be open, transparent and accountable, and the citizens should be able to participate in the decision-making process. For the development of the country's democratic system, both the government holding the executive power and the MPs holding the legislative power should be democratically accountable. Similarly, if the citizens do not feel responsible to hold their representatives accountable, non-democratic inclinations and abuses would be likely to occur. By making the political, administrative and parliamentary system transparent and accountable, democracy will be strengthened.

Monitoring the Parliament by civil initiatives is an important criterion for evaluating parliament's openness and transparency. For such monitoring activities, the information and documents produced by the parliament and the debates in parliament must be accessible. In this sense, the Parliament's transparency is essential for public control over parliaments and MPs. Aware of these matters, the Association of Committees for Monitoring Parliament and Elected Officials (TUMIKOM) has been preparing reports on the activities of MPs and the Turkish Parliament since 2003; it is continuing to work for more transparent and accountable legislative and administrative processes.

In this study, a general evaluation of the transparency of the Turkish Great National Assembly (TGNA) is offered. First of all, the legal framework for its accountability and transparency will be studied and then, it will be shown how this legal framework is put in practice. Afterwards, the results from the

current empirical study will be presented and finally, some suggestions for a more transparent, accountable and participative parliamentary system will be presented.

Turkey is trying to take steps towards democratization. On the one hand, it is trying to become a member of the European Union, yet on the other, it is affected by turbulences in the Middle East and the Caucasus region. Therefore, its democratisation efforts do not always live up to the expectations. Moreover, Turkey's democracy is still open to anti-democratic interventions. The country is still governed under the 1982 Constitution, adopted by the military administration after September 12<sup>th</sup> 1980 coup d'état. There are, therefore, some anti-democratic provisions in the Constitution. Furthermore, most of the legal regulations, due to political culture and the state structure remain inadequate. Privacy, state secrets and national security issues are very important in the administrative system in Turkey, where problems regarding transparency, citizens' access to information and participation are experienced. The anti-democratic structures existing in the internal dynamics of political parties add further obstacles to individual self-expression and accountability in the political arena.

The Turkish parliament adopts numerous laws but is less strong in terms of parliamentary control. (Neziroğlu, 2007, Participation of NGOs Panel). Statistical data on its 22<sup>nd</sup> term show that 1,324 laws were adopted. 441 of them are international treaties, 521 of the remaining 883 are omnibus laws. This means that altogether 600 laws were adopted in the four-year period. This is a relatively high rate of law-making in the parliament. As a consequence, it leads to a very fast implementing process. And keeping track of this process is one of the most important issues. Such a rapid pace breeds problems in terms of following the information and the production of documents, as well as the involvement of different actors in the decision-making processes.

The purpose of this study is to offer various suggestions, while presenting the current situation and referring to the general issues.

### **Legal and Institutional Framework for an Open Parliamentary System**

There are specific criteria for measuring the openness of legislative and administrative mechanisms. In general, if we summarize these elements, three points stand out (Inac & Unaldan: 2007). One of the indispensable factors of an open system is the existence of a legal framework and regulations, known to the citizens. The second is freedom of inquiry. The last, but not least, is the open decision-making meetings of the administration.

Some problems notwithstanding, a sufficient legal ground for accessing information and developing a transparent administrative and parliamentary system exists in Turkey. The transparency of the parliament is firstly determined and regulated in the Constitution, and based on that, other laws are adopted. In addition, free access to information is regulated by the Law of Right to Information. However, the existence of a legal framework does not guarantee the effective controlling mechanism by the public over parliament and other public institutions; i.e. it does not guarantee a transparent, accountable and participative structure.

The right to information and transparent, open and participatory government will be discussed in relation to the legal framework as follows:

1. The Constitution of the Republic of Turkey
2. The Internal Standing Orders of the Turkish Great National Assembly
3. The Law of Right to Information (No. 4982)
4. The Electoral Law
5. The Political Parties Law
6. By-Law of Legislative Draft Procedure and Principles

There is no specific article in the Turkish Constitution on the right to free access to information. However, the Law on Right to Information is based on Article 26 of Turkish Constitution and this article provides that *“Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities.”* This article also determines the limits of the right to receive information: *“The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”.* These limits are mentioned in the Law on Right to Information as well.

### **Publication of Parliamentary Activities**

The publication of activities of Parliament has been regulated under the title of *“Provisions on the activities of Turkish Great National Assembly”* in Article 97. The article states the publication procedure of debates of the plenary sessions: *“Debates held in the plenary session of the Turkish Grand National Assembly shall be public and shall be published verbatim in the Journal of Records. (...) Public proceedings of the Assembly may be freely published through all means, unless a decision to the contrary is adopted by the Assembly upon a proposal of the Bureau of the Assembly.”*

As written in the Article, plenary sessions of the parliament are open to the public and the

publication of the sessions is free, unless the assembly decides to the contrary. State Television Channel is broadcasting the sessions live nationally. Moreover, the minutes are published in the Journal of Records after the expiration of the objection period of the MPs to the minutes. The same procedure is also valid for web-based publishing; all the minutes of the plenary sessions are published in the official web-site of TGNA. Beside all speeches, daily digest, single titles of auditing activities and other activities in the Parliament are included into the minutes; i.e. the agenda of the Parliament and various activities of individual MPs as well as party groups.

However, as the texts are quite long, it would be useful to develop searching mechanisms that would order the information and make it more user-friendly. If the Assembly decides for a closed session, broadcasting of the session and the publication of the minutes is not realized. Yet, as stated in Article 97 of the Constitution, minutes of closed sessions are to be published in the Journal Records as determined by the Assembly.

The circumstances for closed sessions of General Assembly are regulated by Article 70 of Internal Standing Orders of TGNA. According to this article, the Prime Minister or a minister, a political party group or 20 MPs may present a written motion for a closed session to the General Assembly. During the voting on this motion, people who are not permitted to be in the closed session are asked to leave and then the statement of the motion is presented to General Assembly for a vote. The motion is accepted or rejected by absolute majority of all MPs. Closed sessions are important for the transparency of parliament because unless the Parliament decides to the contrary, minutes of the closed sessions are kept in secret in the national archive for ten years. Closed sessions are not transparent and although this method is not used usually, it can be resorted to in a relatively easy procedure.

### ***Internet as a Means of Publishing Activities of Parliament and the MPs***

Internet has become an important tool of accessing information about parliamentary activities. Although not all, but some specific activities of Parliament are published on the Internet right away. The minutes of plenary sessions, oral and written question motions, introduced bills by MPs, Governmental Bills, decrees having the force of law, decisions, committee reports, bills before the committees, a brief résumé of each MP and their individual legislative and supervisory activities, the contact numbers of the departments and each MPs are published on internet. Moreover, The Activity Report of TBMM, Access to Information Reports presented to General Assembly are published by the Parliamentary Presidency and are also announced on the web-site; however, the activity reports are not published regularly and on time.

TGNA website is useful for accessing the activities of the Parliament and MPs. But unfortunately, some documents, which are important for controlling and monitoring activities, are not published there. For example, absenteeism of MPs in both General Assembly and steering committees, steering committees' minutes, motions given in the committee meetings, list of MPs who are alleged to have committed an offence before or after elections, and the voting patterns are not published on the Internet. On the other hand, some of these documents can be demanded in the scope of Law of Right to Information. During this study, absenteeism of MPs has been demanded from the department of Right to Information in Parliament and the department sent the documents in 15 days as mentioned in the Law. In addition, the list of MPs who are alleged to have committed an offence has been also demanded.

### ***Announcement of Colour of Votes (Voting Patterns, Voting Record)***

One of the important criteria for transparency and openness of the parliament is the announcement of individual MPs' votes. When the colour of the votes is public, voters can comment on MPs decisions and can call on deputies to give an account; they could also affect MPs' decisions in Parliament. Yet, the disclosure of the voting record of MPs is not legally regulated in Turkey.

Three voting methods are used in the Turkish Parliament: voting by show of hands, open voting and secret voting. In voting by show of hands, MPs show their decisions by raising their hands and the absolute majority of MPs present at the plenary session determines the results. It is not possible to determine the colour of the vote for each MP, when this method is used. In open voting, on the other hand, MPs use a voting paper on which their name, surname and election district are written; or MPs use buttons on the table before them and register their votes electronically; or the Chairperson of the session reads the names of each MP and the MPs declare their decision to the General Assembly orally. In the open voting system, therefore, it is possible to determine the colour of vote for each MP. Colour of the vote of each MP is attached to the minute of the session but this attachment is only published in the Journal of Minutes and not distributed outside of Parliament. That is to say, it is not easy to access the attachment that shows the MPs' decisions. Finally, secret voting system is realized by voting, using coloured papers from the bench (Internal Standing Orders, Article 139).

If there is no mandatory regulation for an issue to be voted in open or secret voting, voting by show of hands is used in plenary sessions as a general rule (Inner Standing Order Art. 140). The issues, which are obligatorily voted openly, are regulated in Inner Standing

Orders, Art. 142. The laws that have to follow the open voting system are generally related to the budget. Furthermore, if the secret voting system is not obligatory, 15 MPs may present a motion to the Speaker of Parliament for using open voting. When the open voting and voting by show of hands is not compulsory, 20 MPs may request a secret voting. The principles and procedure of secret voting are regulated in the Inner Standing Orders, Article 147 and 148.

The colour of the vote can only be specified in open ballots. However, this information is published only as a file attached to printed minutes. Therefore, as mentioned above, it is not easily available.

From another perspective, it should be mentioned that there are general concerns about disclosure of the colour of votes. In Turkish political life, political parties have a strong position and the decisions taken by the party leaders and the foremost people in the parties have influence on the decisions of the rest. Most of the times decisions are made by the party and so, MPs could not decide independently. Unfortunately, there are some non-democratic practices in the political parties which are served by certain laws as well. For example, because of the provisions in the Election Law, the parties' leadership have the right to determine the nominees in the elections, and consequently, members of the political parties are promoted by the parties' administrative bodies and, therefore, party leaders and their cadre have become very influential. As we will see in the following sections of the report, malfunctions in the electoral system and some non-democratic practices of political parties may have an impact on the decision-making process in the Parliament. In such a leader-based system, individual deputies are forced to use their discretion in a manner appropriate for the party administration. Otherwise, MPs not acting in accordance with the party group may even be excluded from the party in question. Therefore, because of the non-democratic structures with-

in parties, issues such as the disclosure of the colour of vote are often disregarded. Therefore, in assessing the transparency of Parliaments, it is important to know the party structures and to consider the political tradition of the country.

### **Law on Right to Information**

The legal framework of free access to information of public and semi-public institutions was regulated rather late in Turkey. Turkish Law on Right to Information was published in Official Gazette in 2003.

According to Article 4 of the law, "everybody has a right to information" and foreigners also have the right to access the information under certain limitations. The applications are answered within 15 working days if the institution has the relevant information, but if the desired information or the document should be taken from another department, the answer can be given within 30 working days.

The scope of the information subject to right to information is regulated in the Law. One of the limitations is that, if the required information needs further analysis or investigation, the institution may reject the application. The required information should exist and be relevant for the institution (Article 7). In addition, already published or announced information cannot be subject to requests. For example, since the minutes of the Assembly sessions are published on its web-site, the minutes cannot be subject to the requirements of the Law on Right to Information; but the institution may inform the applicant about the publication details.

The Law on Right to Information has provisions on the limitations of free access to information. They may be categorized into four groups: information defined as state secret; information that may be fostering unfair competition or is considered dangerous for the financial interests of the country; information that may affect the judiciary processes; information

about personal lives of individuals. Definitely, the first two titles are significant limitations on the information produced by TGNA. These limitations are regulated in the Articles 16 and 17 of the Law on Right to Information. If the interpretation of the desired information is considered dangerous for the national security, international relations, or the document concerns a state secret, the information will be out of the scope of free access to information (Article 16). In addition, if the information may foster conditions of unfair competition or is considered dangerous for the financial interests of the country, it remains out of the scope and hence is not to be announced (Article 17).

Information on documents described as "state secret" should be based on legal regulations. However, this legal framework for state secrets has not been adopted in Turkey. One of the distinct definitions about the secret information and documents is regulated in Article 326 of the Turkish Penal Code as "*information and documents have to be in secret for the sake of national security or domestic and foreign political utility of the country*".

If an application is rejected by the institution, the applicant can apply to the "Evaluation Board of Access to Information" (Article 14). This board has been established to evaluate the rejections and the decisions. The board has nine members: one member of the Supreme Court and the General Assembly of the State Council recommends two candidates from within their respective institutions, professors or associate professors with degrees in the fields of criminal law, administrative law and constitutional law, two members of the Bar Association (eligible to be elected president of the Bar), upon the recommendation of the Minister of Justice and appointed by the Council of Ministers; and a member from the Ministry of Justice working on administrative tasks. The board organizes its meetings monthly but the chairperson of the board might call extra meetings.



### ***Inner Practices and Controlling Mechanisms of Parliament***

Good inner-control mechanisms of Parliament and their announcement to the public are important preconditions for an open and transparent legislative system. Monitoring activities of individual MPs or the political parties make the executive and the legislative power accountable and transparent. With respect to this, focusing on the inner procedures of the Turkish Parliament and on MPs' auditing activities will be useful in determining the level of accountability of Parliament and MPs.

One of the most important frameworks, providing transparency and accountability of Parliament defined in the Constitution, are the provisions about Parliamentary control over the executive power. Article 98 of the Constitution, under the title of "Ways of Collecting Information and Supervision by the Turkish Grand National Assembly", states the mechanisms for supervisory activities in Parliament. These are the question motions, the parliamentary inquiry and the general debates.<sup>176</sup>

The procedure of presentation, content, and scope of collecting information and supervision, and the procedures for answering, debating and investigating, are regulated by the Rules of Procedure. MPs have a right to request information or demand an investigation from the Parliamentary Presidency or the Government.

Oral and written question motions are significant supervisory activities of individual MPs. These motions are given by a single MP to Ministers and published on the website. Because it is a publicly announced activity the question motions are an important monitoring mecha-

nism. Both the questions and the answers are published on the website. Questions are asked by an individual MP, then sent to the Parliamentary Presidency and if it is accepted by the Speaker of the Parliament, the question is sent to the President or the relevant minister on behalf of the government (Inner Standing Orders, Article 96). If the subject of the question is accessible from several resources or is similar to previously held general debates, or if the question only aims at a consultation, the questions are not accepted by the Parliamentary Presidency (Inner Standing Orders, Article 97).

The other important supervisory activities in the Parliament are the Motion of Censure and Parliamentary Investigation which are held by political party groups or a group of MPs (at least 20 MPs) in parliament. These activities are also defined in the Constitution, Articles 99 and 100.<sup>177</sup> Similar to other activities, the procedures are defined in the Inner Standing Orders (Article 106 and 107). The members of previous governments could be subjected to parliamentary investigation as well.

<sup>177</sup> *Article 99* – A motion of censure may be tabled either on behalf of a political party group, or by the signature of at least twenty deputies. (...) In order to unseat the Council of Ministers or a minister, an absolute majority of the total number of members shall be required in the voting, in which only the votes of no-confidence shall be counted.

*Article 100* – In order to unseat the Council of Ministers or a minister, an absolute majority of the total number of members shall be required in the voting, in which only the votes of no-confidence shall be counted. (...) In the event of a decision to initiate an investigation, this investigation shall be conducted by a commission of fifteen members chosen by lot on behalf of each party from among three times the number of members the party is entitled to have on the commission, representation being proportional to the parliamentary membership of the party. The commission shall submit its report on the result of the investigation to the Assembly within two months. If the investigation is not completed within the time allotted, the commission shall be granted a further and final period of two months. At the end of this period, the report shall be submitted to the Office of the Speaker of the Turkish Grand National Assembly. (...) Following its submission to the Office of the Speaker of the Turkish Grand National Assembly, the report shall be distributed to the members within ten days and debated within ten days after its distribution and if necessary, a decision may be taken to bring the person involved before the Supreme Court. The decision to bring a person before the Supreme Court shall be taken by a secret ballot only by an absolute majority of the total number of members. Political party groups in the Assembly shall not hold discussions or take decisions regarding parliamentary investigations.

<sup>176</sup> A *question* is a request for information addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers. A *parliamentary inquiry* is an examination conducted to obtain information on a specific subject. A *general debate* is the consideration of a specific subject relating to the community and the activities of the state at the plenary sessions of the Turkish Grand National Assembly. (Constitution, Art. 98)

Supervision of activities depends on the General Assembly's decision. Implementation of an inquiry motion about removing the Cabinet or ministers, or sending them to the Supreme Court depends on the decision of the General Assembly, for which absolute majority is required. Therefore, the distribution of seats in the Parliament becomes important in these activities. That is to say, if the absolute majority is held by the Governmental Party, inquiry motions or parliamentary investigation motions given by the opposition are likely to be blocked.

Some of the most common methods of citizens' participation in the legislative and the monitoring activities are "citizen initiatives", "referenda" and "citizens' veto on legislation". However, there is no regulation about citizens' control over Parliament in Turkey. There, citizens cannot call their representatives back: there is the so-called imperative mandate. In addition, citizens do not have a right to legislative initiative. The only mechanism used by the citizens as a check on the parliamentary activity is the referendum, which can only be used regarding amendments to the Constitution, however.

### ***Committee Meetings in the Legislative Processes***

There are seventeen standing committees in TGNA. Both the governmental and MPs' bills are first sent to committees for detailed discussions and then sent to the General Assembly.

The committee stage represents the first and most important pillar of the legislative process. MPs proposed by the party groups and selected by the General Assembly as committee members, prepare the draft laws, discussing the drafts from all perspectives. Therefore, the body of the laws is actually formed in committee meetings. Furthermore, MPs have better chance to express their opin-

ion effectively in the committee meetings than in plenary sessions. Undoubtedly, Turkey's current political party structures constitute an obstacle for MPs to take independent decisions in the committees or group meetings. However, in any case, committees are an important area for the active participation of individual MPs into the legislative process.

The procedure of committee meetings is regulated in Article 37 of the Inner Standing Orders. The draft proposal, the decree referred to Committee should be concluded within 45 days. If the committees are unable to present their decisions to the General Assembly by the end of the period, the draft law and proposals are taken directly to the General Assembly agenda by the sponsors of the law or the government. Thus, a draft law, bill or decrees can come to the General Assembly's agenda and become a law even if not discussed in the committees.

While the commission reports are published on the TBMM website, the minutes of committee meetings are not. In fact, the summary of the commission meetings are kept by the commission clerk, but to keep the full records is left to the commission decision. Moreover, motions given by the MPs in committee meetings are also not published on the web-site. Thereby, monitoring the committee meetings is not possible in the Turkish Parliamentary system.

In terms of citizens' participation, commission meetings are also very important. Participation in committee meetings is regulated in Article 30 of Inner Standing Order. According to this article committees may invite experts to their meetings. However, there is no clarity on the procedure of participating in the meetings. In addition, inviting citizens to committee meetings is not an obligation in committee's decision-making process. This depends on the general approach of the commission. In this regard, especially controversial is the

practice when the head of the commission has the initiative in terms of citizens' participation in the legislative process. Even invitations just to audit the meetings of the committees are at the discretion of the chairperson of the Commission. Therefore, this figure has a significant role in this area.

### **Legal Framework and Practices: Transparency in Parliament and Participation in the Legislative Process**

#### ***Lack of Confidence in Parliament and MPs***

The legal framework is not sufficient to provide transparent and accountable politics. For a transparent and accountable parliamentary system both the elected officials' and electorates' consciousness needs to be taken into consideration and they must be aware of the responsibility attributed to them by the representative system.

Unfortunately, there is quite a substantial lack of confidence in Parliament in Turkey. The major factors of this situation will be explained below.

#### *Electoral system, political parties and problems of the representative system*

The current problematic situation of political parties and the election system has important consequences for the attitude of the electorate. Anti-democratic practices of political parties and laws that pose obstacles to a pluralist democratic system prevent the development of responsible attitudes in the electorate.

One of the important problems of Turkish democratic system is the 10% electoral threshold. According to the Article 33 of the Election Law, parties that cannot reach the 10% of the total votes, cannot send their representatives in the Parliament. Because of this high threshold, many parties are not able to enter Parliament. The threshold is effectively shaping the voters' will. Many citizens do not have representatives in Parliament. The political parties, an indispensable actor in democracies, are not put in fair political conditions. Thus, on the one hand political parties do not have the chance to become effective in the parliamentary system, and, on the other, the will of the voters is not represented fully in the parliament.

At the same time, parties developed different strategies to overcome the 10% electoral threshold. For example, they participate in elections with independent candidates and then after the elections the independently voted MPs gather under the umbrella of a party. Another strategy is the merging before the election as a single party, and then separating after the election. The reason for using this method is that, building coalitions during the election is forbidden according to the Election Law, Article 16.

Unfortunately, developing such kind of strategies does not lead to a democratic, pluralist system. So, the Election Law has provisions which are not in accordance with democracy and the Law has to be revised for the advancement of a healthier, participative and open parliamentary system.

### Vote Rating of Parties and Distribution of Seats According to the Last Three General Elections

	1999						
	DSP	MHP	FP	ANAP	DYP	CHP	HADEP
<b>Vote Rating (%)</b>	<b>22,1</b>	<b>17,9</b>	<b>15,4</b>	<b>13,22</b>	<b>12</b>	<b>8,7</b>	<b>4,7</b>
<b>Seats in the Parliament</b>	<b>136</b>	<b>129</b>	<b>111</b>	<b>86</b>	<b>85</b>	<b>-</b>	<b>-</b>

	2002						
	AKP	CHP	DYP	MHP	GP	DEHAP	ANAP
<b>Vote Rating (%)</b>	<b>34,4</b>	<b>19,4</b>	<b>9,5</b>	<b>8,3</b>	<b>7,2</b>	<b>6,1</b>	<b>5,1</b>
<b>Seats in the Parliament</b>	<b>365</b>	<b>177</b>	-	-	-	-	-

	2007				
	AKP	CHP	MHP	DP	Independents
<b>Vote Rating (%)</b>	<b>46,5</b>	<b>20,8</b>	<b>14,2</b>	<b>5,4</b>	<b>5,3</b>
<b>Seats in the Parliament</b>	<b>341</b>	<b>112</b>	<b>71</b>	-	<b>26</b>

Another important problem, which has occurred in the election period, is the unfair distribution of state aid from the treasury to parties. According to Political Parties Law, Additional Article 1, Parties, which have more than 7% of the total votes in the previous election, can get state aid for the election. The proportion of vote is important in the distribution of the financial aid: parties with big political support get more financial aid.

The unequal distribution of benefits that parties receive before the elections raises problems in terms of creating a democratic environment in the election period. Some parties have the chance to reach voters and to conduct an effective election campaign, while others remain deprived of this option. Furthermore, the nomination practice of the major parties of receiving money, election assistance and donations from candidates' own budget, is not controlled and this also leads to awkward situations.

The nomination method which is one of the most important criteria for internal party democracy is crucial for the achievement of the democratic process and for the better reflection of public will in the parliament (Aydin, 2007). Provisions about

assignment of candidates are stated in Article 37 of Political Parties Law. According to this article, political parties may use several methods in identifying their candidates. Within the scope of free, fair, closed voting, open sorting principles, parties may define several methods and procedures in their regulations. In fact, identifying candidates was re-regulated in 1986 and restriction for identifying candidates with primary election was removed; using this method has been left to the party's decision. By leaving identification of candidate procedures to the party, "center poll" has become the common method. When we look at the general scheme, almost all of the parties which are exceeding 5% of the total votes prefer to use "center poll" procedure. In this method, candidates are determined by the party's supreme council. Therefore, top party committees' members, or people close to party leadership, have a greater chance. In other words, close relations with the power groups in the parties are important for becoming a candidate.

Determination of candidates by the party may have effects on the free will of MPs in the Parliament. MPs who do not want to lose their

position, are obliged to comply with the decisions of party leadership. So, parties' decisions become significant in the legislative process. In addition, leaders of the parties become stronger in this system. In Parliament, especially MPs from the ruling party show very little interest in the majority of proposals and projects (Aydın, 2007). Apparently, it can be seen that a large part of the reasons of MPs not to act outside of the party decision is the method of nomination. Therefore, it is impossible to speak of the parliament as an accountable, transparent and reflecting the will of the voters.

Instead of the party management decision, using a democratic method such as pre-election would make deputies more independent and more accountable and more responsible to voters.

To conclude, although elections are defined by law and held in a democratic atmosphere, because of the practices of nomination of candidates, an open, transparent and accountable political process could hardly be achieved. The electorate choose from what is presented to them rather than from candidates of their own volition. The parties' impact on the legislative process is greater than MPs'. This situation has a significant impact on the development of accountability mechanisms both for the MPs and the electorate. In addition, the unfair conditions of competition among political parties arena are also problems in the democratic system. Moreover, the distribution of seats in parliamentary law-making process, especially in a parliamentary system where the party decisions play a great role, has some anti-democratic consequences. For example, because of having the majority in the parliament, bills given by the government or members of the governmental party are passed by the Parliament, whereas the bills or motions of the opposition are always likely to fall. Therefore, from the very beginning, problems are likely

to appear against an accurate open, transparent system. So, transparent and fair election processes, development of democracy in the party structures are significant matters for the strengthening of the confidence the parliamentary system.

### *Parliamentary immunity*

The issue of parliamentary immunity which is found in Article 83 of the Constitution emerges as an important problem in Turkey.<sup>178</sup> Interestingly, it prevents MPs to stand trial for their alleged crimes before they have become MPs. Except when suspect of committing a major crime against the state integrity, MPs are immune from prosecution.

The immunity of MPs goes beyond the existing scope of "functional immunity" which is sine qua non for a parliamentary system. Immunity which impedes MPs to stand trial for crimes committed before they have been elected, remains one of the crucial obstacles against accountability. MPs who have allegedly committed a crime, cast a shadow on the prestige of the parliament. Although some MPs are willing to limit the legal immunities,

<sup>178</sup> Article 83: Members of the Turkish Grand National Assembly shall not be liable for their votes and statements concerning parliamentary functions, for the views they express before the Assembly, or unless the Assembly decides otherwise on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly.

A deputy who is alleged to have committed an offence before or after election, shall not be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a heavy penalty and in cases subject to Article 14 of the Constitution if an investigation has been initiated before the election. However, in such situations the competent authority shall notify the Turkish Grand National Assembly immediately and directly.

The execution of a criminal sentence imposed on a member of the Turkish Grand National Assembly either before or after his election shall be suspended until he ceases to be a member; the statute of limitations does not apply during the term of membership.

Investigation and prosecution of a re-elected deputy shall be subject to whether or not the Assembly lifts immunity in the case of the individual involved.

Political party groups in the Turkish Grand National Assembly shall not hold discussions or take decisions regarding parliamentary immunity.



sincere and sustained attempts have not been made and MPs continue to enjoy rather exaggerated legislative immunities.

The shielding effect of the immunities damages MPs' reputation. One of the most important results of this situation is the declining trust of the voters in the parliament.

### ***The Media in Transparent and Accountable System***

One of the most significant instruments to sustain the openness and transparency of the parliament is the media. The media are an important instrument in shaping political life and informing the voters on the activities of the MPs. Lack of independent and free media impairs the democratic system.

The media have a strategic status keeping track of the parliament activities. There is a need for impartial and free media environment as well as an environment where the media members have access to information. In this regard, the Turkish Parliament tries to sustain an appropriate environment for parliamentary media representatives. Parliamentary activities as mentioned above are broadcast live by the state TV channel. Parliamentary press members set up a group called "Association of Parliament Reporters". This association is regulated by the law on the working of the press members, in conjunction with Head of Parliament, and this is an important example of public participation in the legislation processes.

The media professionals who were interviewed within the scope of the project convey that they do not have any complication in covering the activities of the parliament, and use their right to obtain information as much as possible. The media professionals report that there is improvement in the handling of the right to obtain information compared to times when it was first implemented and al-

though in some instances adequate responses cannot be obtained, the activities of the parliament are within the scope of the right to obtain information.

### ***Participation of Civil Society in the Legislative Process***

One of the components of a transparent and accountable parliament is its accessibility to NGOs. The accountability mechanisms are assumed to develop as long as participation in the legislative process is provided. While reviewing the legislative and managerial frameworks concerning participation processes, the stances of the institutions regarding the subject were explored in a number of interviews. At the same time, the minutes of the panel "NGOs' Enhancement in Legislative Processes: A Quest for a System" held by the Parliament Presidency and Legislative Association were quite useful in terms of reflecting the views of 26 NGOs.

Participation in the legislative process constitutes one of the subjects which the Parliament continues to discuss. Although different model proposals are put forth, differences between parliaments should not be omitted. For instance, participation processes are not identical in big and small countries.

The primary point to be emphasized in regard to participation in the legislative processes is that in Turkey, citizens do not have the right to initiate legislative proposals. Legislative proposals are only brought to parliament by MPs. In this sense, NGO participation in the legislation emerges as a main form of consultation with the public, a main instrument of assessing the will of the public.

Participation in the legislative processes can be assessed in two levels. The first is participation in the preparation of the draft law. Contribution to draft law by the prime minister, ministers or MPs is one level of participa-



tion. This level was prepared by the By-Law of Legislation Preparation Procedure and Principles. This By-law encompasses all the legislative arrangements that are done by the public institutions. According to Articles 6 and 7 of the By-Law, if regulatory drafts such as laws, decree-laws, statutes, covenants that are prepared by public institutions concern the public, they can be submitted to consultations with the citizens via media and internet before transmitting them to the office of the Prime Minister. In this manner, after considering the public opinion, a proposal can be issued. The views of the local governments, universities, labour unions, chambers of commerce and NGOs, on the drafts usually are considered carefully by the authorities. If views are not declared within 30 days, it is assumed that there is a positive answer to the draft.

As revealed by the corresponding articles, participation in legislation processes is in the nature of receiving opinion, but these opinions are in no way binding on the authorities. NGOs have expressed a demand to set up a feedback mechanism on the evaluation process of these opinions for the formation of a transparent and monitored process via meetings (Minutes of NGOs Enhancement Panel, 2007).

One of the crucial innovations of the By-law is its "regulatory impact analysis". With the exception of issues concerning national security and the laws on the budget and the final account, applying the regulatory effect analysis on each draft law, the cost of which is expected to exceed 10 million TL, is a must. The Regulatory impact analysis is a method, which scrutinizes the policy effects of the protocol (which is thought) to be implemented on market, society, environment and other protocols. Both the scrutiny and the communication dimension constitute important features of the regulatory impact analysis. The communication dimension defines the process of sharing and consulting

the information provided by the consultations with decision makers and people subject to the decision. For a healthy functioning of the regulatory impact analysis, administrative capacity studies are performed. Instead of NGOs delivering opinions on ready drafts, their aim is to provide opportunity to express their opinions in the process of the preparation of the draft law.

One of the crucial steps in the participation in the legislative processes is attending committee meetings. However, as explained above, participation in them is up to the decision of the respective committee. Moreover, in participation in commission meetings the most influential authority is the head of the commission (Bakırcı, Minutes of Panel, 2007) The head of the commission usually invites popular and easily accessible NGOs and allows only the most popular ones to deliver an opinion. In interviews, within the scope of this study, a non-governmental organization, which works with local authorities, requested to attend the committee meetings and had a negative response. Therefore, inviting NGOs to commission meetings should be regulated in the By-Law. At present, there is a preparation of a By-Law in the Parliament with amendments concerning the issue.

Participation of too many NGOs does not guarantee the effectiveness of meetings. Both, the working procedures of the commission and the intensity of NGOs participants require the development of an effective method for attending commission meetings. One of those methods is setting up a mechanism to form civil society consultations before the drafts are sent to the commission.

The interests of civil society should also be considered in the legislative process. The existing state structure in Turkey so far and the relationship between state and society today would determine the roles of civil society organizations within the participatory mecha-

nisms. Within this scope, the example given by the head of the Parliament in the panel of “NGO Participation to Legislation: Quest for a System” is striking. In the elaboration of the Criminal Penal Code Draft Law, the Draft and then sub-committee report were sent to a thousand of institutions, and only 65 of them replied, which is less than 10 per cent. The Turkish Commercial Law was also sent to 600 institutions, out of which only 60 provided comments. Therefore, concerning citizen participation in the legislative process, together with criticising the positions and intentions of public institutions, the non-governmental organizations must also be addressed.

In the context of this study, one of the NGO representatives said that the state does not trust NGOs, NGOs do not trust the government, the private sector does not rely on both mechanisms of participation, so, an environment of mutual trust, indispensable for a healthy participation, is not created in Turkey. In the panel organized, by the Legislative Association and the Head of Parliament, it is mentioned that NGOs are still perceived as an obstacle to the process rather than as a part of it (Neziroğlu, 2007). In addition, because of the lack of collaboration between NGOs or between the state and the public, difficulties in establishing an active participatory structure still exist (Interview with TUSEV).

Furthermore, to start the process of participation NGOs need access to reliable information within reasonable time. In Turkey, laws are enacted very quickly. Therefore tracing the process is most of the time hard even for the bureaucrats and the MPs. So, in such a fast process, the effective participation of NGOs is unlikely to occur. Unless the drafts are announced and opened to the public by the Parliament or the Ministries, the civil society is likely to remain excluded.

In Turkey at the moment steps are taken towards guaranteeing the participation of civ-

il society in the legislative process. Particularly, the Parliament is trying to develop a legal and administrative framework for an effective civic participation. One of the arrangements to be introduced is amending the Inner Standing Orders. In order to strengthen civil society efforts to participate in the legislative process, one of the steps taken is the “The Active Civic Participation in the Legislative Process in Turkey Project” signed in 2008 by the Government of the Republic of Turkey and the United Nations Development Program. The project has three partners: the Prime Ministry, the Parliamentary Consultant Association, and the Legislative Association.

The aim of the project is: “the preparation of the necessary environment concerning civil society participation in the legislative process, increasing awareness on this issue, and thus by reducing limitations for participation to contribute the increasing demand in this direction.” (UNDP, Project Document, 1) Yet, there are serious difficulties to be met: on the one hand, this is the established political culture in the country, and, on the other, it is the lack of understanding of active citizenship on the part of the general public.

Finally, for a transparent and open parliamentary system, participation should be emphasized from the outset. NGOs’ delivering opinions on draft laws alone cannot be assessed as participation since law making is a technical process (though it involves ethical issues and aims at reaching public agreement). Creating a ground to widely and publicly discuss societal needs and requirements of lawmaking will ensure transparent and accountable management. Otherwise, the civil society may fall into a position in which it gives an opinion and approves the legislative power only when it is considered necessary by the politicians.

### **Relevant Stakeholder Analysis**

Within the scope of our work, transparency and openness of Parliament constitutes an important point to look at the existent legal practice as well as reviewing documents. The existence of the legal framework does not in itself mean that civil society has an efficient access to information produced by Parliament.

In this framework, relevant NGOs were interviewed and questionnaires were sent to trade unions, employer's organizations and media channels. Unfortunately, although surveys have been sent to many people/institutions, many of them failed to respond. Questionnaires were sent to 30 civil society organizations (CSOs), 6 trade unions and 5 employers' organizations, as well as their networks via e-mail. More than 60 questionnaires were also sent to media channels, journalist and reporters. However, responses to the questionnaires are very low and almost impossible to evaluate. Only 6 CSOs, 1 trade union, 1 employers' organization and two media channels responded to the questionnaires. Therefore, it is hard to make a generalized assessment with these; but the interviews and other resources<sup>179</sup> have been taken into consideration in determining the opinions of NGOs.

Interviews held during the study were useful for the assessments. In addition, the minutes of the panel called "Participation of NGOs in the Legislative Processes: Quest for a System", which was organized by the Legislation Association (YASADER) in 2007, was also a useful source for reading the opinions of NGOs. 26 NGOs of all attendants declared their opinions about participation into legislative activities and also

their assessments about the transparency of Parliament.<sup>180</sup> Although the number of returned questionnaires is very low, they will be examined in the study as well.

In terms of parliamentary activities, the interests of the most organisations and individuals that responded to the survey were "General Assembly and Commission Meetings" and "Law and Documents Produced by the Assembly." None of the institution is interested in "The colour of individual MPs' Vote" option (voting record). As the colour of vote is not transparent in TGNA and it is not easily accessible information, institutions cannot deal with the colour of votes.

The results of the questionnaires show that, one of the most important tools for accessing the information and documents produced by Parliament is basically the Parliament's web site. The web-site has been mentioned in all of the answered questionnaires. Minutes of plenary sessions and other documents about legislative process are the most interesting sections of the web-site. The reports of steering committees are also followed from the web-site. In addition, 50% of the institutions declare their interest in parliament as level 3 mentioned in the questionnaire, they are also following the agenda of the General Assembly from the web-site of the Parliament. Moreover, it is mentioned that accessing the activities of individual MPs and their contact number is also easy from the web-site.

Information gathered from media channels is also an important means of accessing Parliamentary works. 60% of relevant stakeholders mentioned that they are using several media channels for accessing the information. Another two important means

<sup>179</sup> The literature and reports and studies of NGOs have been investigated during the study. The resources are detailed in the references part of the study.

<sup>180</sup> Details of panel can be found in [http://www.yasader.org/say-fa/index.php?option=com\\_content&view=article&id=47:panel-19112007&catid=35:yasama-dernei-faaliyeteri](http://www.yasader.org/say-fa/index.php?option=com_content&view=article&id=47:panel-19112007&catid=35:yasama-dernei-faaliyeteri)

of accessing information are “Law on Right to Information” and “Personal/ Institutional Relations”. 50% of participants declare that they use the Law on Right to Information. The same percent is also valid for the ones who use their personal/institutional relations. Information gathered from the committees is relatively low and the ones who have relations with committees generally use their personal/institutional relations with committee members.

Some problems about accessing information from Parliament have been mentioned both in the questionnaires and during the interviews. If we make a classification, the first reason for the existing problems in accessing information is the insufficient interest in it and not having enough information about the procedure to be followed to exercise the right to information. The second and the most important one is that many do not trust Parliament to share information and be a transparent representative body. Many mention that one of the important reasons that lead to difficulties both in monitoring Parliament and accessing information is the intense and fast work of parliament. This intense and fast tempo also affects the access to information on time. The other important concern is that due to lack of understanding of participatory democracy in Turkey, the other actors outside Parliament are not taken seriously by the Parliament.

Regarding the transparency of Parliament 56% of the answers obtained indicate an intermediate level. 22% of the answers are at level 4 and the rest of them level 1 and 2 (22%). It is indicated in the questionnaires, in the first place, that MPs' votes should be more transparent. In the second place it is indicated that the General assembly and the committee meetings should be made more transparent. As we

mentioned above, none of the institutions is interested in the colour of votes because of lack of transparency, but transparency is demanded by NGOs. It is also mentioned that the agenda of both the General assembly and the committees should be accessible for monitoring the parliament work. However, although the agenda may often be announced on time, it may nevertheless later be changed with the motions by the party groups. So, it is sometimes difficult to follow the agenda of Parliament.

As mentioned above, it is difficult to assess the opinions of civil society with just a few responses. However, when we look at the results of interviews and other sources, certain points are emerging regarding transparency of the Parliament. First of all, it is demanded that Parliament should consider and meet the needs of the actors outside of the Parliament. With respect to this, it is looked for a more effective and informative network between parliament and civil society. One of the important lessons from the study is the key significance of personal and institutional relations in accessing information produced by Parliament and also participation in parliamentary activities. Although the official web-site of parliament is used effectively, media and personal relations are important means of accessing the information. Another point is that the fast and intense tempo of parliament and lack of effective sharing of information about the legislative process from the very beginning to the end impede parliamentary openness and transparency. Last, but not least, is the need for access to individual MPs' votes – it is a must for a transparent democratic structure. To sum up, although there are problems, some of them are likely to be overcome in a relatively short time.

### ***Conclusions and Recommendations***

This study shows that a good legal framework is not enough for the establishment of a transparent and open parliament. On the one hand, the disruptions in the system itself must be removed and the responsibilities of the elected officials towards the electorate need to be fulfilled. On the other hand, both the electorate and the elected officials should be aware of their responsibilities for building a system of accountable politics. In this sense, the Turkish Parliament needs to make significant changes in order to become more transparent and accountable.

As it was mentioned several times in the different parts of the study, in order to make the system more transparent, structural changes need to be considered. For these changes, the Political Parties Law and the Electoral Law should be revised. First of all, the 10% threshold, which hinders a healthier representative structure in the parliament, should be removed or decreased as soon as possible. Besides this, the Political Parties and Election Laws amendments must be made; they should put an end to identifying candidates by senior managers of parties in the elections; democracy should be established within the parties. Thus, the will of the voters will be reflected in a healthy way in the Parliament and more accountable structures will be established.

Another important point is the revision of the "Parliamentary Immunity" of MPs; at present it is too extensive and this negatively affects the confidence of the electorate in parliament. Parliamentary immunity needs to be limited to functional "Bench Immunity". A revision in parliamentary immunity will increase the esteem of MPs and Parliament. The list of the deputies whose

parliamentary immunity was requested for removing and their alleged crimes and also the publication of the General assembly and Commission absence of the deputies are important steps, which need to be taken. Moreover, in order to make MPs more accountable, their attendance in plenary sessions and committees should be announced as well.

The right to information was established legally in Turkey relatively late and it is hard to talk about a tradition of using this right. Nevertheless, the Law on Right to Information is being used. However, the limits of the Right to information should be reconsidered and defined more clearly in the Law.

Some further steps need to be taken for more transparency as well, especially regarding possibilities for public participation at the committee level in the workings of Parliament. Steering committee meetings should be participative and monitored very closely by the public.

One of the other important problems is the fast speed of the legislative process. This speedy tempo which is hard to catch up with even by the MPs, MPs' consultants or TGNA's bureaucrats, is a problem for an open system, because it is difficult to follow and monitor the legislative process. It also affects the effective participation and control mechanisms within the Parliament. As a result, amendments to regulation often remain unknown to the public.

There are various problems of civil participation in the legislative process more generally. A legal arrangement is not available for civil society participation in the legislative process. First, creating the standards regarding the civil society participation in the legislative process should be a priority. Secondly, the civil society should be informed about the legislative process

for providing an effective participation. A unit should be created within the Parliament, ensuring and facilitating NGO participation, so that active participation can be provided. Moreover, from the beginning of the legislative process the civil society views need to be taken into account. Debates on draft laws should be done in the public sphere and the consequences of regulations should be discussed from different positions. It is important to create a feed-back mechanism for civil society in order to inform them about the consequences of their contributions to the legis-

lative processes. This is likely to provide a reliable, open and transparent mechanism for participation of civil society in Parliamentary activities. Thus, it is important to establish a participatory mechanism which is sustainable. Another significant point in the enhancement of civil society are the financial contributions from the state to the NGOs. Many of the NGOs are not able to afford to attend activities.

Thus, both long-term and short-term steps are needed in order to provide a more democratic and open parliamentary system in Turkey.



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## By Way of a Conclusion

Daniel Smilov

On April 21, 2010, the Friedrich Ebert Foundation and the Regional Secretariat for Parliamentary Cooperation in SEE held a regional conference in Sofia - *Open Parliaments – Transparency and Accountability of Parliaments in South-East Europe*. One of the goals of the conference was to discuss the case studies presented in this publication with members of the parliament of the countries of the South-East European region, as well as with representatives of the non-governmental sector, journalists and others.

The conference was open by the vice-president of the Bulgarian National Assembly Georgi Pirinski, who spoke after the introductory remarks by Marc Meinardus, Director of the FES Office in Bulgaria, and Vladimir Danchev – former chair of the Secretariat for Parliamentary Cooperation in SEE. After the presentation of the policy paper and the case studies, there was an open forum in which practices and experience regarding parliamentary transparency were shared. The feedback provided by parliamentarians was especially important since it helped the authors to finetune some of the theses advanced in this book. Without the claim of being exhaustive, the following remarks provide a summary of some of the main points raised at the event.

The discussion was multi-layered: it addressed both conceptual issues concerning the role of openness and transparency in contemporary politics, as well as more practical matters related to the actual implementation of policies of openness. At the outset, it needs to be stressed that all of the participants acknowledged the importance of the principles of openness

and accountability of parliamentary work. In other words, there was full recognition of the fundamental principle advanced in this publication:

*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 state secret or other classified information, the decisions taken (with records of the votes of MPs), their finances – private and those of their parties, should be available to the public.*

Yet, the discussion was very useful in determining more concretely the meaning of this principle in concrete situations. A first important set of ideas clarified what transparency and openness are *not*: these are the outer limits of the concept, so to say. In the first place, as stressed in the publication, there was an agreement that *transparency, as a formal procedural value, should not be used as a substitute for good substantive politics*. A number of participants expressed the concern that in contemporary politics preoccupation with procedural values has led to neglect of substantive political debates on socio-economic issues. The rise of populism in Eastern Europe is also associated with a specific emphasis on anticorruption, transparency and personal integrity rhetoric. Thus, in focusing excessively on openness and transparency there is the implicit danger of fanning populist sentiments at the expense of substantive politics.

Although these concerns are valid, the answer to them is that transparency issues should be addressed in a balanced and considered way. There is no claim that openness is the main value of contemporary parliamentarism – indeed, there could be open but substantively incompetent par-

liamentary governments, and one should be aware of this unfortunate possibility. But all this does not mean that transparency issues and concerns should be just dismissed: on the contrary, they are essential and indispensable for the political process. It is the task of politicians to find the proper measured and balanced way, allowing them to pursue important policies by simultaneously being open to the public.

Secondly, a related concern was expressed regarding the link between party discipline and transparency. It is one thing to have open parliaments, it was argued, it is quite another to have open parliamentarians. One of the aspects of this distinction touches on the issue of the loyalty of the individual parliamentarians to their party faction. It was argued that party discipline could sometimes stand in the way of transparency and limit the possibility of MPs to be open to the public. Again, there is much truth in these observations, but when considered in-depth, they hardly present any insurmountable problems to the agenda of transparency. *It needs to be stressed that this agenda should not be understood as an attempt to undermine the central position of political parties and factions in parliamentary government.* Party discipline and the coherence of parliamentary majorities and opposition groups are essential for this form of government. So, there needs to be a proper balance between these values and openness. This balance should be searched in all relevant individual cases. Consider for instance the problem of MPs' individual websites. These websites should not be used as instruments undermining party discipline, but rather as tools for communication with the constituency, and for the articulation of policy and legislative initiatives. Of course, one could hardly avoid tensions between individual MPs and

their factions: such tensions will always exist and they are one of the distinctive features of parliamentary government. What is more, the lack of transparency will not eliminate these tensions. Quite in the same vein, it is probably an exaggeration to believe that openness and transparency in themselves are going to increase such tensions and ultimately ruin party discipline. Thus, openness and transparency are not in a conceptual conflict with the cohesiveness of party factions: after all, in the example considered above, individual MPs can actually use their personal websites to further promote their party positions, and this will be by far the most typical cases. Where tensions do flare, the reasons for them should be looked for not in the instruments ensuring openness, but in other sources of political disagreement.

Thirdly, one of the focuses of discussion was the possibility to monitor the performance of parliaments and parliamentarians, as well as the ways to measure and compare this performance. A number of NGOs in Turkey, Romania, Macedonia and Bosnia and Herzegovina have carried out important monitoring projects of the work of parliamentarians. They have counted the legislative initiatives, speeches, parliamentary questions and interpellations of MPs, as well as other elements of parliamentary work. The public significance of these monitoring exercises cannot be overestimated: they provide the public with clear, concise, quantifiable expression of the legislative activity. *Yet, the principle of openness and transparency should not be turned into some rigid system of quantification.* Such systems just inspire creative accounting urges among parliamentarians: for instance, in a number of cases where parliamentary speeches are counted, there was a flood for applications by MPs to

make presentations in the plenary. Is this good for transparency and openness in itself: probably not. It will lead to significant waste of parliamentary time, and may further alienate the public from parliamentary proceedings. Therefore, any system of measurement should take the complexity of parliamentary work seriously into account. It should give sufficient possibilities for MPs to demonstrate the significance of their own initiatives. It should also try to add a substantive evaluation to the mere numbers: after all, some parliamentarians may be the initiators of crucial policies by simultaneously failing to register impressive numbers of speeches or questions to ministers. So, monitoring and measuring of activities is valuable and important: it triggers public interests and puts pressure on MPs to justify their presence in the representative body. These measurements, however, should not be turned into formalised accounting rules insensitive to the substance of parliamentary politics.

Apart from the negative delimitation of the concepts of openness and transparency, the discussions of the regional conference *Open Parliaments* focused on the positive definition and practical implementation of these principles. Firstly, it was many times stressed that the principle of transparency is an essential precondition for accountability of parliamentary government. Also, it was argued by many of the participants that there is an intimate link between transparency and public trust in representative institutions – a point which features prominently in all of the case studies in the publication. It was a point of agreement that trust in parliaments and parliamentarians in the region is generally low. In such circumstances, increasing transparency can be understood as a trust-restoring measure. It was made clear that parliaments should

not be passive subjects of transparency policies: they should not present themselves as institutions under siege by NGOs and civil society actors requiring openness. On the contrary, parliaments should be the active side: the positive example of Scandinavian countries was given, where very pro-active parliamentary information centres constantly inform the public for the activities of the national legislature. The European Parliament is another very positive example in this regard, whose practices could be emulated in the region.

Secondly, it was convincingly argued that parliamentary transparency should be understood more broadly, as reaching well beyond the walls of the parliamentary building. In order for the public to be truly informed and engaged in parliamentary work, it needs information for the activities of the political parties and the government as well. The clearest example is the legislative process: there, a lot of the action takes place in a pre-parliamentary stage. The bulk of the drafting of legislation is done by the executive: the transparency of this process is of key importance for parliamentary transparency as well. The same, although to a more limited degree, is true of proceedings within the political parties as well. Sometimes important initiative and decisions are taken in party or coalition context: these decisions should, in principle, be accessible as well. Of course, the matter here is more complex since the political parties – as partly civil society organisations – have constitutional privacy rights. A proper balance between privacy and openness should be achieved in all constitutional systems, however. Related to this issue, the question of lobbying was raised. Among the participants in the discussion there were fervent proponents of legislation on lobbying. The argument in support of this legislation is

simple: lobbyists should be known to the public. Apparently, in many countries in the region such legislation is either adopted or is under consideration. Some concerns about the effectiveness of such innovations were also advanced, however. It was pointed out that regulated lobbying works well in big countries with diversified markets, as in the US (or the EU at the supranational level). The merits of such regulation in small countries with numerous informal links between business and politicians is debatable, however. If a specific politician cannot choose among a variety of possible sponsors, but is very much limited to a small set of donors, regulating lobbying might provide just a facade behind which the same old informal practices continue to flourish.

Thirdly, the discussion made clear the variety of forms of implementation of the principles of openness and transparency in contemporary parliamentarism. A lot of time was spent debating the opportunities provided by the internet and the new forms of communication. Internet websites and social networks create new forms of 'virtual representation', and new forms of interaction between representatives and the represented. The significance of all these new developments is difficult to evaluate conclusively at this stage, however. On the one hand, it is clear that these developments lower dramatically the costs of disclosure and dissemination of information. On the other hand, these means of communication are not yet accessible to everybody, and there are important age- and social status-related differences in their use. Thus, the fear is that they could become exclusive, serving the interests of some privileged groups. These are valid concerns, especially in societies with literacy problems, and socially marginalised groups. Yet, the advent of the new electronic era could hardly be

dismissed on such grounds, and the pressure on parliamentarians to use them will only increase in the future. Therefore, the task of the policy makers is to design such electronic openness instruments, which do not target specific privileged groups, but enable the public at large to form more considered judgments about the political process. Such policies are by all means possible: one of the ways is to combine the new media with the traditional ones, and to attempt to influence the agenda of the traditional media through the internet and its various incarnations.

Finally, at the end of these remarks, one very traditional concern – expressed by all parliamentarians – should be also acknowledged. Openness and transparency require funding. This simple truth is of special significance in times of economic crisis, when cuts in the public budget are in order. Much of the policies discussed in this volume require public funds for their implementation. Compared to other public expenses, these funds are not huge, but the sad tendency is to start cuts and any austerity measures with these funds as 'non-essential'. Consider for instance the issue of developed information centres at the parliaments, or the issue of personal assistance and researchers for the MPs. Without staff, the parliament can be easily turned into the proverbial rubber-stamp institution, an extension of the government in the legislative setting. Without staff and researchers, the quality of parliamentary debated will be predictably very low: even if you televise such debates, they will not do good service to the popularity of parliamentary government. It is true that small countries cannot afford the same level of investment in the quality of parliamentary work as big ones. But still, some minimum standards of institutional capacity should be preserved: this volume and the discussion at the region-

al conference indicate that these minimum standards are not actually observed in all of the countries in the region. Even EU member states have underfunded parliamentary institutions, which affects negatively the quality of parliamentary work.

The conference discussions also outlined the areas where further research and analysis needs to be done, opening opportunities for follow up projects and volumes. The present publication provides a snapshot of the situation regarding parliamentary transparency in the SEE region. One of the ideas, expressed at the conference, was to start the elaboration of periodic reviews of developments in this area in the form of concise updates. With the establishment of a research network already achieved, this task is organisationally possible. Secondly, the conference discussions pointed out the need of some expansion of the scope of transparency to include especially the governmental stage of the legislative process. This expansion could become the focus of future projects. Thirdly, it is already

possible to advance a simple quantitative measurement device for the activities of individual parliamentarians, common for all SEE countries. This device might provide some interesting comparative perspective for the analysis. This idea could be seen as part of the first one: the quantitative measurements may be included in the concise updates of the present case studies.

All in all, the organisers of the conference and the project were satisfied to see that the present volume opened up new space for fruitful discussions and policy exchanges in crucially important aspects of parliamentarianism. All of these were marked by the conviction that parliament is at the centre of contemporary democracy, that contemporary democracy stands or falls with the success of the parliamentary institutions. As in all discussions, the focus on the existing problems is inevitable. It should not conceal, however, the enormous progress that our region as a whole has made towards the consolidation of successful parliamentary government.





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