

Transparency of parliamentary activity - a precondition for the legitimacy of power

Standards and law

According to generally accepted standards, Parliament, throughout its work, must be guided by a number of key principles, namely¹: representativeness; transparency; accessibility; responsibility; efficiency.

Transparency, along with accessibility, increase the credibility and, finally, the legitimacy of the Legislature. A transparent Parliament is open to the public and accountable to the public. An accessible Legislature trains citizens in the legislative process. A non-transparent and inaccessible Parliament fails to fulfill its mission of representing citizens as well as guarding their aspirations, interests and needs.

Through transparency and accessibility, fundamental rights are effectively guaranteed - the right to information (art. 34 of the Constitution of the Republic of Moldova) and the right to administration (art. 39 of the Constitution of the Republic of Moldova).

Moreover, by virtue of art. 10 para. (1) letters j) and k) of the Integrity Law, no. 82/2017, ensuring transparency in the decision-making process and access to information of public interest are measures that must be applied by all public entities in ensuring institutional integrity.

Certainly, pursuant to art. 3 para. (2) of Law no. 239/2008 on transparency in the decision-making process, the Parliament is obliged to ensure the transparency of the activity. Moreover, under the conditions of art. 11 para. (3) of the cited law, starting from the specifics of the activity, the Legislature had the obligation to regulate the procedures it applies in the public consultation process. Unfortunately, Parliament does not carry out its duties diligently.

In order to ensure decision-making transparency, there are certain provisions in the Rules of Procedure of the Parliament, adopted by Law no. 797/1996. However, these regulations are insufficient and ineffective. The provisions deal with transparency tangentially, in fact related to:

- the attributions of the standing commissions (art. 27);
- presentation of reports and opinions approved by the standing committees (art. 29);
- the conditions for exercising the right of legislative initiative and the subjects of this right (art. 47);
- the organization by the standing committee notified in substance of the public consultation procedures (art. 49/1);
- the deadline for the debate of the draft legislative acts and the debate of the legislative proposals by the standing committee notified on the merits (art. 52);
- the inclusion of draft legislative acts on the agenda and the transmission to the deputies and authors of the report of the committee notified on the merits of the opinions (art. 57).

¹ Inter-Parliamentary Union, Parliament and democracy in the twenty-first century – a guide to good practice, 2006, p. 10, <https://www.ipu.org/resources/publications/handbooks/2016-07/parliament-and-democracy-in-twenty-first-century-guide-good-practice>

According to the regulations, the standing committee is the body that must ensure the public consultation of draft legislative acts and legislative proposals with stakeholders through the organization of public debates and hearings, through other consultation procedures established by the legislation on transparency in the decision-making process. The Commission is to establish the procedure for consulting draft legislative acts and legislative proposals, taking into account the nature of the draft, the concerns of stakeholders on the subject, and other relevant issues. In the event of public meetings being held for consultation, the Commission shall lay down the rules for their organization and conduct. It is also the committee that orders the summary of the recommendations received during the public consultation on Parliament's website.

Obviously, the provisions are not comprehensive and do not ensure effective and efficient consultation of draft legislation. The lack of clear rules on applicable procedures, the delegation of parliamentary powers to regulatory committees - all these shortcomings make Parliament unpredictable in its interaction with stakeholders.

The expectation remains that the Legislature will comply with the Concept on cooperation between Parliament and civil society, approved by Parliament Decision no. 373/2005. Even if the act, from the perspective of the Law on Transparency in Decision-Making, needs to be revised, it still offers minimum standards of cooperation.

Practice

The practices are discouraging - the legislature fails to assert itself as a transparent authority, prompting criticism from national and international organizations, most recently from the Group of States against Corruption (GRECO) in the fourth round of evaluation.² GRECO recommended to the Republic of Moldova: (i) the timely publication of all draft legislative acts, amendments received and accompanying documents provided by law; (ii) meeting the appropriate deadlines to allow for public consultation and genuine parliamentary debate, the urgency procedure being used only in exceptional and duly justified circumstances.³

Unfortunately, the recommendation remains valid for the current parliamentary term. As an example, we will refer to the recent anti-corruption initiatives, namely:

- The draft law for the modification of some normative acts, no. 169/2021;⁴
- The draft law for the amendment of article 8 of Law no. 1104/2002 on the National Anticorruption Center, no. 178/2021;⁵
- The draft law for the modification of some normative acts, no. 180/2021;⁶

² The Group of States against Corruption is a Council of Europe body set up in 1999 to enhance Member States' anti-corruption capacity through a dynamic process of mutual evaluation and pressure. The fourth round of evaluation of GRECO was dedicated to the Prevention of Corruption among deputies, judges and prosecutors, the evaluation topics being: Ethical principles and deontological rules; Conflicts of interest; Prohibition or limitation of certain activities; Declaration of assets, income, liabilities and interests; Control of the application of the rules regarding conflicts of interest; Awareness raising.

³ Group of States against Corruption, Fourth evaluation round, Second compliance report, Republic of Moldova, 2020, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809fec2b>

⁴ Parliament of the Republic of Moldova, Draft law amending some normative acts (Law no. 132/2016 on the National Integrity Authority; Law no. 133/2016 on declaring wealth and personal interests), <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5561/language/ro-RO/Default.aspx>

⁵ Parliament of the Republic of Moldova, Draft law amending Article 8 of Law no. 1104/2002 on the National Anticorruption Center, <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5563/language/ro-RO/Default.aspx>

- The draft law for amending Law no. 3/2016 regarding the Prosecutor's Office, no. 181/2021.⁷

All projects were promoted in violation of the law. Moreover, the projects contained questionable provisions, which is why they really needed real consultations.

The draft law no. 169/2021 proposed amendments to several normative acts, the most essential being related to Law no. 132/2016 on the National Integrity Authority and Law no. 133/2016 on the declaration of wealth and personal interests. The project included several controversial aspects, these referring to:⁸

- declaration and control of expenditure;
- suspension of the subject of the declaration from office for a certain period;
- change the composition and mandate of the Integrity Board;
- 40% share of verified statements and controls performed;
- excessive bureaucratization of control procedures;
- initiating the control of property and personal interests based on anonymous petitions;
- extending control over persons other than the subjects of the declaration;
- declaring and determining the market value of goods.

The project was also blamed for insufficient economic and financial substantiation. Thus, contrary to the requirements established by art. 30 para. (1) lit. e) of Law no. 100/2017 regarding the normative acts, the project was not economically-financially substantiated, although the implementation requires additional allocations from the state budget - it was proposed to grant the integrity inspector the right to request expertise or assessments to determine the market value of goods subject to control, the expenses to be covered by the state budget.

The second draft, the draft law amending Article 8 of Law no. 1104/2002 regarding the National Anticorruption Center, not being sufficiently substantiated, is contrary to the international standards in the field, to the jurisprudence of the Constitutional Court, to the national framework of public policies, to the exigencies of the legislative technique.⁹

The third project - The draft law for the modification of some normative acts, no. 180/2021 - even if it does not raise issues related to compliance and constitutionality, it could still be improved.¹⁰

Regarding the Draft Law amending Law no. 3/2016 regarding the Prosecutor's Office, it just raised major issues of compliance with international standards, but also of constitutionality.¹¹

⁶ Parliament of the Republic of Moldova, Draft law amending some normative acts (Law no. 947/1996 on the Superior Council of Magistracy; Law no. 514/1995 on the organization of the judiciary; Law no. 3/2016 on the Prosecutor's Office), <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5571/language/ro-RO/Default.aspx>

⁷ Parliament of the Republic of Moldova, Draft law amending Law no. 3/2016 on the Prosecutor's Office, <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5572/language/ro-RO/Default.aspx>

⁸ See: Transparency International - Moldova, Opinion on the Draft Law amending some normative acts (no. 169/2021), http://www.transparency.md/wp-content/uploads/2021/08/TI_Moldova_Aviz_la_proiectul_de_lege_ANI.pdf

⁹ See: Transparency International - Moldova, Opinion on the Draft Law amending Article 8 of Law no. 1104/2002 on the National Anticorruption Center, http://www.transparency.md/wp-content/uploads/2021/08/TI_Moldova_Aviz_la_proiectul_de_lege_CNA.pdf

¹⁰ See: Center for Analysis and Prevention of Corruption, Opinion on draft law no. 180 of 10.08.2021, https://www.capc.md/wp-content/uploads/2021/08/Scris-Opinie-CAPC-proiect-nr.180_CSP_aug-2021.pdf

With regard to all the projects mentioned, the haste with which they were examined is to be blamed. In accordance with points 3.5 letter b) and 4.3.1 of the Concept on cooperation between Parliament and civil society, one of the forms of cooperation is permanent consultation. Parliament undertakes to make draft legislation available to civil society by placing it on the website. In this way, civil society organizations can freely access the information and present expertise, impact analysis, comments, opinions, evaluations, proposals and other materials within 15 working days from the date of placement. In the case of the projects we are referring to, Parliament did not meet this deadline, which did not give interested parties enough time to comment on legislative initiatives. All projects were debated at first reading shortly after registration. Even if, at the insistence of public associations¹², public consultations were held, however, they took place after the adoption of the projects in the first reading, shortly (1-2 days) after the announcement of the consultations.¹³ Thus, the interested parties were not given a reasonable time to state their views.

	Registration	Adoption in the first reading	Public consultation	Adoption in the second reading
The draft law for the modification of some normative acts, no. 169/2021	04.08.2021	16.08.2021	19.08.2021	08.10.2021
The draft law for the amendment of article 8 of Law no. 1104/2002 on the National Anticorruption Center, no. 178/2021	10.08.2021	16.08.2021	19.08.2021	24.08.2021
The draft law for the modification of some normative acts, no. 180/2021	10.08.2021	16.08.2021	18.08.2021	24.08.2021
The draft law for amending Law no. 3/2016 regarding the Prosecutor's Office, no. 181/2021	10.08.2021	16.08.2021	18.08.2021	24.08.2021

It should be noted that under the terms of Section 4.3.2 of the Concept on Cooperation between Parliament and Civil Society, the 15 working day period may be reduced, but only in case of urgency or when it is obvious that civil society organizations may and expresses a more operational point of view.

The argument of the authors of the legislative initiatives that the projects are urgent cannot be fully retained, being elaborated for the execution of the Memorandum of Understanding between the Republic of Moldova and the European Union on macro-financial assistance for the Republic

¹¹ See: Transparency International - Moldova, Public Policy Observatory, no. 32, August 2021, Opinion on the Draft Law amending Law no. 3/2016 regarding the Prosecutor's Office, no. 181 of 10.08.2021, http://www.transparency.md/wp-content/uploads/2021/08/TI_Moldova_Observator_32.pdf

¹² See Public appeal: Civil society organizations call on Parliament to respect decision-making transparency, https://crjm.org/wp-content/uploads/2021/09/2021-08-13_declaratie_Parlament_transparenta.pdf

¹³ See: Parliament of the Republic of Moldova, Announcements on the organization of public consultations, <https://www.parlament.md/Actualitate/Anun%c8%9buri/tabid/285/ContentId/6306/Page/1/language/ro-RO/Default.aspx>, <https://www.parlament.md/Actualitate/Anun%c8%9buri/tabid/285/ContentId/6305/Page/1/language/ro-RO/Default.aspx>

of Moldova, ratified by Law no. 167/2020. However, most of the legislative amendments promoted did not relate to the Memorandum.

According to the Memorandum, Moldova had assumed obligations related to:

- Public finance management;
- Good governance and the fight against corruption;
- Business climate.

On the part of Good Governance and the Fight Against Corruption:

- The Government was to approve the draft law on amending the Constitution of the Republic of Moldova (the provisions on the Superior Council of Magistracy), revised in accordance with the recommendations of the Venice Commission;
- Parliament was to adopt amendments to the legal framework for the declaration and control of assets and personal interests, in order to extend the powers of integrity inspectors by allowing them to request the valuation of assets in control procedures from independent appraisers, to extend the scope of control of affiliates. justified suspicion, in order to oblige the subjects of the declaration of assets and conflicts of interest to declare the market price of the assets;
- The authorities were to update the Strategy for the recovery of financial resources stolen from the banking system in order to establish a new mechanism for recovering assets.

Moreover, according to paragraph 17 of the Memorandum, it may be amended by agreement of the parties by a written amendment.

After all, the way the projects were debated violated not only the requirements to ensure decision-making transparency, but also the requirements of the legislative process in general. Thus, contrary to several provisions of the Rules of Procedure of the Parliament, the draft laws were included in the agenda, debated and adopted in the first reading in the absence of the opinion of the Legal Directorate General of the Parliament Secretariat, anti-corruption expertise, Government opinion - gaps damage to the authenticity of parliamentary debates.

	Opinion of the Directorate-General for Legal of Parliament's Secretariat	Anti-corruption expertise	Opinion of the Government
The draft law for the modification of some normative acts, no. 169/2021	25.08.2021	19.08.2021	22.08.2021
The draft law for the amendment of article 8 of Law no. 1104/2002 on the National Anticorruption Center, no. 178/2021	11.08.2021	20.08.2021	-
The draft law for the modification of some normative acts, no. 180/2021	12.08.2021	23.08.2021	19.08.2021
The draft law for amending Law no. 3/2016 regarding the Prosecutor's Office, no. 181/2021	12.08.2021	21.08.2021	19.08.2021

Recommendations

Violation of the requirements of the legislative process, including those aimed at ensuring decision-making transparency, devastates the whole process. However, not only the interested parties, but also the deputies, the standing committees, the Secretariat of the Parliament (General

Directorate of Legal Affairs), the Government, are deprived of the possibility to comment in advance on the draft legislative acts. The haste of the procedures signals problems in the parliamentary activity. Violation of the requirements of the legislative process erodes the trust of the citizens in the good intention of the legislator, who does not take into account the legitimate expectations of the citizens to benefit from a representative, transparent, accessible, responsible and efficient Legislative. Laws need to be well-designed, well-founded, publicly consulted, genuinely debated, consciously voted on and held accountable.

Parliament should emphasize a few important things:

- improving the internal procedures designed to ensure transparency in the decision-making process: either by supplementing Parliament's Rules of Procedure with comprehensive provisions, or by systematising the rules in a separate normative act - a possible Regulation on ensuring parliamentary decision-making transparency;
- the provisions on decision-making transparency should contain regulations on: the forms and procedures of public consultations; receiving, analyzing and synthesizing recommendations; preparation and publication of the Report on transparency in the decision-making process; responsibilities of key actors; exhaustive list of documents required for web-site placement, including documents relating to the work of parliamentary factions, the Standing Bureau and standing committees; express deadlines; control mechanisms, etc .;
- strict compliance with the requirements of the legislative process.