

LAWMAKING AND PROCEDURES IN THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

This scientific paper will try to make a comparative analysis between the former procedure of passing laws and after the changes, that is, today's procedure which is foreseen in the Constitution of the Republic and the Rules of Procedure of the Assembly. Namely, we are talking about a more complex procedure for passing laws, namely a procedure consisting of three readings. Detailed explanations about it will be presented in the following text.

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The paper also presents information about authorized proponents of the draft law, the complete procedure and related issues surrounding the overall procedure. The founder of the Constitution, distinguishes two more different procedures, and they are emergency procedure and shortened procedure. In that point of view, it will be stated under what conditions the said procedures are foreseen and how they can be realized.

Keywords: Legislative Power, Lawmaking, Lawmaking Procedures, Rules of Procedures of the Assembly, Republic of North Macedonia.

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INTRODUCTION

The main goal was not the theory of constitutionalism and constitutional movements that began with the French Revolution in 1789 and was found in the Declaration of the Rights of Man and Citizen, the reasons were stated at different levels, namely the theory of separation of powers and the protection of human rights. From that aspect, the constitution of the state primarily protects the basic guaranteed human rights and the separation of powers. (Korbajram & Hoca, Human Rights Protection From The Perspective Of The 1991 Constitution Of Macedonia, December 2021, p. 45). The theory of separation of powers, which was refined by Montesquieu, imposes a division of legislative, executive and judicial power, which is the basic pillar of democratic regimes and the constitutionality of states. (Korbajram, The Theory Of The Separation Of Powers, The Development Process And Its Application Today, March 2022, p. 42-46).

Legislation (normative competence) is a traditional competence of parliaments. Under this competence is meant the authorization of the Parliament to enact laws that will originally regulate social relations. Within the scope of powers of the legislative authority from a wider spectrum, it is understood not only the adoption of laws, but also the adoption and amendment of the Constitution, the adoption of the republican budget and the final account of the budget, deciding on war and peace, declaring a state of emergency, electing officials of the executive and judicial authorities (such as the appointment of the public

prosecutor, constitutional judges, ombudsman, members of the judicial council, the government, etc.). Also, the assembly of the Republic of

North Macedonia, within the framework of the parliamentary system, exercises control over the executive power. Namely, it is about political supervision by asking parliamentary questions, interpellation, supervisory committees, etc. (Korbajram, Relations And Control Mechanisms Between The Legislature And The Executive Bodies In The Macedonian Constitutional Order, 2021, p. 96-104).

However, the law appears as the most important thing for the regulation of public relations as a basic instrument, and in that sense this paper will analyze the legal procedure starting from the authorized proposers to the final stage until the promulgation and entry into force of the laws from the perspective of the Constitution of The Republic and the Rules of Procedure of the Assembly of the Republic of Macedonia.

The procedure for enacting laws and other acts of the Assembly went through several stages. The procedure began with the submission of a draft law. The proposed law submitted by the authorized proponents should contain the constitutional basis, reasons, basic principles and content of the law and it should be explained. The proposal is submitted to the President of the Assembly, then the draft law is considered in the competent working body, that is, in the competent parliamentary committee, as well as in the legislative-legal committee, which gives an opinion on the necessity and compliance with the Constitution. Then the proposal law or the draft law (in the case of a complex and extensive matter) goes to the agenda of a session of the Assembly. At a session, authorized proposers have the right to propose amendments to the draft law. In that case, a special search is conducted. And finally, the laws are

adopted by voting of the deputies. The President promulgates and signs the same proposed law by decree and publishes it in the official gazette. In that way, the procedure for enacting a law is completed.

Today, in the Constitution and the Rules of Procedure, after amendments have been made, it is already a matter of a procedure of enacting laws of three stages, i.e. three readings. Previously, similar to that, the procedure referred to several stages, but it was set up differently from today's. Therefore, there is a need to highlight today's regulation of the procedure for passing laws at the Assembly of R. North Macedonia.

A. LAWMAKING IN THE NATIONAL ASSEMBLY

The power to make laws, which is defined as the main task of the parliaments, It is the connection process of the assembly, discussed at the General Assembly, endorsed by the President and after its publication in the Official Gazette obligatory to comply and changes occur in the legal order structures that make them legal. (Marković, 2012, p. 276). Parliamentary decisions are different from the law because they are not made arrangements and without the approval of the Presidents published in the Official Gazette (exp. deciding on war and peace, decision to change borders, decision to lose the parliamentary seat mandate, etc.). In Article 71 of the Constitution of the Republic of North Macedonia and the Rules of Procedure of the Assembly, Chapter IX, Articles 132-192, the method and procedure regarding the adoption of laws are specified in detail. With historical analysis, we will have the opportunity to more clearly reveal the changes made over time. The passing of laws in the Parliament of the

Republic of North Macedonia, which is part of the Yugoslav Federation, went through four stages.

Accordingly, the law-making procedure began with the proposal of the law, draft law, draft law and the adoption of the law. This situation continued even after the declaration of Macedonia's independence. The aforementioned four-stage law-making procedure has retained its current position under the 2002 Rules of Procedure. However, in relation to the procedure of passing laws, on June 18, 2008, new regulations and changes in the rules of procedure were adopted. (In the period from 1991 to 2008, the Government, as an influential part of the executive branch, proposed 2447 laws, while the deputies proposed only 22 laws. When averaged, 99.11% is easily seen as the government playing an active role in proposing laws). (Gjusheva, 2008, p. 314).

First of all, it should be emphasized that the most radical and significant change made in this regard is the necessity of three readings, that is, discussion, in the phase of passing laws. Pursuant to Article 71 of the Constitution, propose adoption of a law is given to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters (authorised instances). The Rules of Procedures of the Assembly state that the draft law should consist of a title, introduction, dispositive and explanation. Shkarikj, in his book cites the example of the Republic of Slovenia, and points out that the citizen as a proposer of the law and their number is 5,000. An important point is that the number of the total population in Slovenia is approximately that of North Macedonia. (Shkarikj, *Naucno Nolkuvanje-Ustav na Republika Makedonija*, 2014, p. 324-325).

The introductory part of the draft law includes the necessity of the regulation, which regulation is envisaged, its goals, analysis in a general sense and the financial burden it will bring. The Republic of North Macedonia, which is a candidate country for the European Union (EU), as such, in the introductory part of the draft law, can compare with the law and the similar legal norm of the EU in such a way as to cite the same norm as an example.

In the explanation section, it explains and justifies the content of the draft law. The draftlaw is submitted to the President of the Assembly. The President of the Assembly shall withoutdelay, within three working days from the day of submission of the draft law, submit it to the deputies in writing or electronically, thus starting the legislative procedure.

If the draft law is not submitted by the government, the President of the Assembly will submit the draft to the Government for an opinion. If the government does not give an opinion, the Assembly and working bodies will evaluate the draft law without the opinion of the Government. The reason is that 90% of the proposed laws are drafted and submitted by the Government. (Shkarikj, Ustavno Pravo, 2015, p. 832-833).

B. LAWMAKING IN THE NATIONAL ASSEMBLY

The first reading shall start with a review of the Draft - law by the working bodies, during which, the Competent Working Body and the Legislative Committee shall hold a general debate on the Draft – law. Prior the discussion on the Draft – law at the Plenary Session, the Competent Working Body and the Legislative Committee shall review the Law. The

Committees shall evaluate whether the Draft –law is acceptable and should be proceeded in further reading. During the first reading and following the general debate, the Assembly shall decide if the Draft –law is acceptable and can be proceeded to further reading. (<https://www.sobranie.mk/legislative-procedure.nsp?x>). A group of at least 15 MPs can request a general debate in the Parliament within seven days from the day of the adoption of the proposal - the law. If this request is not made, the first reading will be completed. If the draft law contains provisions that require financial resources, it is subject to examination by the committee responsible for budget and financial issues. The Rules of Procedure of the Assembly, Article 140 in paragraph 1, is supplemented by the Rules of Procedure for drafting and supplementing the Rules of Procedure of the Assembly of the Republic of North Macedonia ("*Official Gazette of the Republic of North Macedonia*", no. 119/2010).

The relevant committee evaluates the proposal in terms of the need to accept the proposal, the principles that should be taken as a basis, its connection with the proposed amendments and the way it is proposed. The legislative-legal commission checks whether there is a need for the adoption of a proposal - the law, that is, whether it violates the principle of necessity and the Constitution. The relevant reports of the Commission and the Legislative and Legal Commission contain an opinion on whether the proposed law is acceptable and whether further reading is required. The President of the Assembly sends these reports to all members of the Assembly, to proposers and to the Government (if he is not the proposer of the draftlaw).

For the first reading of the draft law of the Assembly, it is passed within ten days after the decision to hold a debate session, and at the latest within 20 days after the submission of the request by at least 15

deputies. After a general debate, if the Assembly decides that the Law is acceptable and should be proceeded to further reading the legislative procedure shall continue in second reading, i.e. the legislative procedure continues. If the Parliament decides that the draft law is unacceptable and cannot be re-read, the legislative procedure is stopped. The same draft law cannot be submitted again within three months. (Deskoska, Ristovska, & Hristovska, 2021, p. 575-576).

The second reading begins in the relevant working body and in the Legislative Committee within seven (7) working days after the session of the Assembly, or after the expiration of the period for submission a request for a general debate. During this reading amendments are submitted. Every Member of Parliament, parliamentary group and working body can submit an amendment. The amendments are submitted to the President of the Assembly at least two (2) workdays prior to the day scheduled for the session of the relevant working body or of the Legislative Committee. The amendments are reviewed and voted separately. The relevant working body and the Legislative Committee, after the end of the debate, and within five (5) days at the latest, prepare the text of the law proposal in which they will insert the adopted amendments (amended proposal) and submit it to the President of the Assembly.

At the second reading at a session of the Assembly, debate is held only to those articles of a law proposal that have been altered with amendments. An amendment can be proposed by a parliamentary group, every member of parliament and the initiator of the law proposal. If during the second reading at the session the Assembly adopts amendments of less than one third of the articles, the Assembly may decide to hold a third reading on the same session. (Rules of Procedures

of the Assembly of Republic of North Macedonia, article 156-paragraph1).

If the Assembly during the second reading does not adopt any amendments to the amended law proposal, the vote on the law proposal takes place at the same session. If the Assembly adopts more than one third of the articles to the amended law proposal, after the termination of the second reading the text is revised and legally and technically prepared for third reading. (<https://www.sobranie.mk/legislative-procedure.nsp?cid=1>)

Amendments to the law can be submitted by the relevant person, each MP and MP group, no later than within three days from the day of the session. If the draft law on the agenda has the status to be debated first, the amendment proposal can be made until the beginning of the second reading session. If there is no general discussion on the draft law, the representatives of the parliamentary members (groups of political parties) have the opportunity to present it at the session of the General Assembly of the Parliament in a period of at least 10 minutes. (Svetomir, Naucno Nolkuvanje-Ustav na Republika Makedonija, 2014, s. 330)

The amendment of the law will be accepted by a majority vote of the deputies in the hall of the General Assembly, regardless of the quorum for the adoption of the law specified in the Constitution, provided that 1/3 of the total number of deputies is present. If the proposal to amend and supplement the law is more than one third of the members, the text of the law will be prepared for the third reading after the second reading. (Deskoska, Ristovska, & Hristovska, 2021, p. 578).

If the proposed amendment is given by the government, or rather

the Council of Ministers, the Assembly can decide that the text should be prepared by the Government and proceed to the third reading. In addition, it should be noted that these proposals can be submitted up to two days before the day of the session. The President of the Assembly can finish the debate on draft laws, amendments and other laws and determine the day and hour for voting. (Deskoska, Ristovska, & Hristovska, 2021, p. 577-578)

The third reading of the law proposal, as a rule, is held on the first session after the session of the Assembly for the second reading. Amendments can be submitted only to the articles to which amendments have been adopted during the second reading, and the amendment can be submitted by the initiator and the MPs within 2 working days before the day determined for the session. During this reading the working bodies do not hold a debate. (Rules of Procedures of the Assembly, article 164, ph. 1). The Assembly debates and decides only on the articles for which of the amended law proposal to which amendments have been submitted for the third reading, and decides on the proposal as a whole.

Exceptionally, a law can be adopted with an **emergency procedure**.- in articles 167, 168 and 169 of the by-laws of the Assembly, the Law exceptionally provides for an "**emergencyprocedure**" on the amendments. Accordingly, in case of major natural disasters, epidemics or other urgent needs, as dictated by the interests of the security and defense of the country, in order to prevent greater troubles that may be experienced in the economy, and in case of similaremergency needs, law can be urgently discussed for amendments. (Klimovski, 2009, pp. 415-416).

In other words, a law can be adopted with an emergency

procedure when this is necessary in order to prevent and avoid major disturbances in the economy or when this is in the interest of the security and defense of the Republic, or in cases of greater natural disasters, epidemics or other extraordinary and urgent needs. If the Assembly decides to debate on the proposal for a law should to be adopted reducing the timeframes, it appoints the relevant working body and the Legislative to debate on the proposal. When the law proposal is reviewed with emergency procedure, there is no general debate on it. The second and the third reading are held at the same session. In that case, the second reading starts with review of the law proposal in accordance with the provisions of these Rules of Procedure for second reading. When an urgent procedure is dealt with urgently, there is no general discussion. The second and third readings are done in the same session.

However, in practice we see that this situation is often abused by governments. North Macedonia, which has the status of a candidate for EU membership, attracts attention because this situation is negatively reflected in the reports. (Zakonodavniot, June, 2018) URL http://mioa.gov.mk/sites/default/files/pbl_files/documents/rja/zakonodaven_proces_preporaki.pdf.

The Law can be adopted by reducing the timeframe (with **shortened procedure**). Namely, Articles 170 and 171 of the Rules of Procedure of the Assembly (171-a, 171-b, 171- c, 171-d, 171-g) include the "**shortened procedure**". The initiator of a law proposal can suggest to the Assembly to review the law proposal reducing the timeframe when: it is not the case of complex and extensive law; the law or some provisions of a law cease, or when it is not the case of complex and extensive harmonization of the law with the legislation of the European

Union.

The Assembly decides whether the law proposal is to be adopted by reducing the timeframes. When the law proposal is reviewed with reduced timeframes, general debate is not held, the procedure stipulated for second reading starts immediately and amendments may be submitted at the session, until the beginning of the second reading on the law proposal. The laws are proclaimed by promulgation, signed by the President of the Republic and by the President of the Assembly. The President of the Assembly, immediately after the adoption of the law, submits the law to the President of the Republic for signing the decree for promulgation of the Law.

The President of the Republic may decide not to sign the promulgation. In such cases the Assembly again reviews the law on third reading, within 30 days from the day of adoption, and if the law is adopted by a majority of votes the President is obliged to sign the promulgation. The President is obliged to sign the laws adopted by two-third majority of votes. Before they enter into force, the laws, the other regulations and general acts are published in the “*Official Gazette of the Republic of North Macedonia*”, seven days from their adoption at the latest. For example; The amendment to the Law on Internal Affairs, which consists of 212 articles, was accepted without a general discussion, under a shortened procedure. Moreover, the Law on Public Obligation Relations of 2014 was passed by the same procedure in the absence of an opposition bloc. In February 2014, just one day before the presidential and parliamentary elections, 112 such legal amendments were adopted. The entry into force of the laws is regulated in Article 75 of the Constitution. Accordingly, it is necessary for the laws to be published in the Official Gazette in order to enter into force.

In the Republic of North Macedonia, laws are promulgated by decree. The decree is signed by the President of the Republic of North Macedonia and the President of the Assembly. That is, immediately after the passing of the law, the President of the Assembly submits the decision for its promulgation to the President of the State for signature.

If the President refuses to sign the decree, it will be returned to the Parliament for reconsideration (within the scope of the suspensive right of veto) within 30 days of its adoption. The president is not required to explain the reason and justification for the law he rejected using the right of veto. In the event that the law sent for reconsideration in the Assembly is overvoted by an absolute majority of the total number of deputies after it is debated again at the General Assembly, the President should sign the decree. On the other hand, the president does not have the right and authority to veto laws when approving amendments that require a two-thirds (2/3) majority. (Shkarikj, Naucno Nolkuvanje-Ustav na Republika Makedonija, 2014, p. 334-335).

The law is published in the Official Gazette of the Republic of North Macedonia after the signing of the decree. Laws enter into force no earlier than the eighth day from the day of their publication. This waiting period is called "*waiting for the law (vocatio legis)*" to introduce the law to the public. As an exception to the rule stated in the Constitution, the law enters into force on the day of publication by decision of the Parliament.

The rule stated in the Constitution; Laws enter into force on the eighth day after their publication in the Official Gazette. (Constitution of the Republic of North Macedonia, Article 75) At this moment, considering that it may be useful to add as an important issue that was not foreseen by the Macedonian Constitution, which is the

"*countersignature*" rule, which is one of the basic characteristics of the parliamentary system. (Siljanovska S. D., Makedonski Model Parlamentarizma I Demokratije. Dileme I Izazovi Parlamentarizma, 2007).

The counter-signature rule, which is mandatory for the responsibility of the lineministry and the president in the procedure for enacting laws, which is within the legislative power of the government system of the Republic of North Macedonia, is an institution that is not provided for in the legal system of the Republic of North Macedonia. From this point of view, some of the constitutional lawyers pointed out that the country does not have a pure parliamentary system of governance. (Siljanovska G. Sovremeni Modeli na Organizacija na Vlasta: Dilemi i Predizvici, 2011).

CONCLUSION

The basic element entrusted to the legislative authority in the Republic of North Macedonia, in the beginning, the procedure for passing laws, was chosen the French model for passing laws. After the changes, it is noticed that the procedure takes place in three readings, which is based on the Anglo-Saxon system. Namely, England and the USA use this model of legal procedure. If we bear in mind that in these countries the Assemblies are bicameral and based on that, this model may be more adequate, but in the Macedonian case the previously used model, i.e. the French experiences, may be more adequate. This is where the liberal representation around the authorized persons, who is entrusted to the legislation, the executive power and a group of citizens, becomes an important moment. The requirement and the threshold of 10,000 voters as a submitter of a proposed law is a high number in our opinion,

and starting from the Slovenian example, which is close to the Macedonian case, and therefore the number of 5,000 voters for authorized parties as initiators of a legal procedure would be more democratic. In relation to the above, it must be highlighted the fact that the shortened and urgent procedure are also used in cases where they are prohibited by higher acts of the Republic and it is not permissible to apply them. The high number of such procedures used both by various scientists and by the European Commission is considered a negative for the Assembly. In order to stop such behavior of the majority of members of the Assembly, additional mandatory control mechanisms can be introduced within the Assembly, such as an independent commission or the Constitutional Court of the Republic. In that way, such abuses of this type of procedures will have the opportunity to be minimized, that is, to be removed in general.

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