



ПРОГРАМА ЗА ПАРЛАМЕНТАРНА ПОДДРШКА
PROGRAMI PËR MBESHETJE PARLAMENTARE
PARLIAMENT SUPPORT PROGRAMME



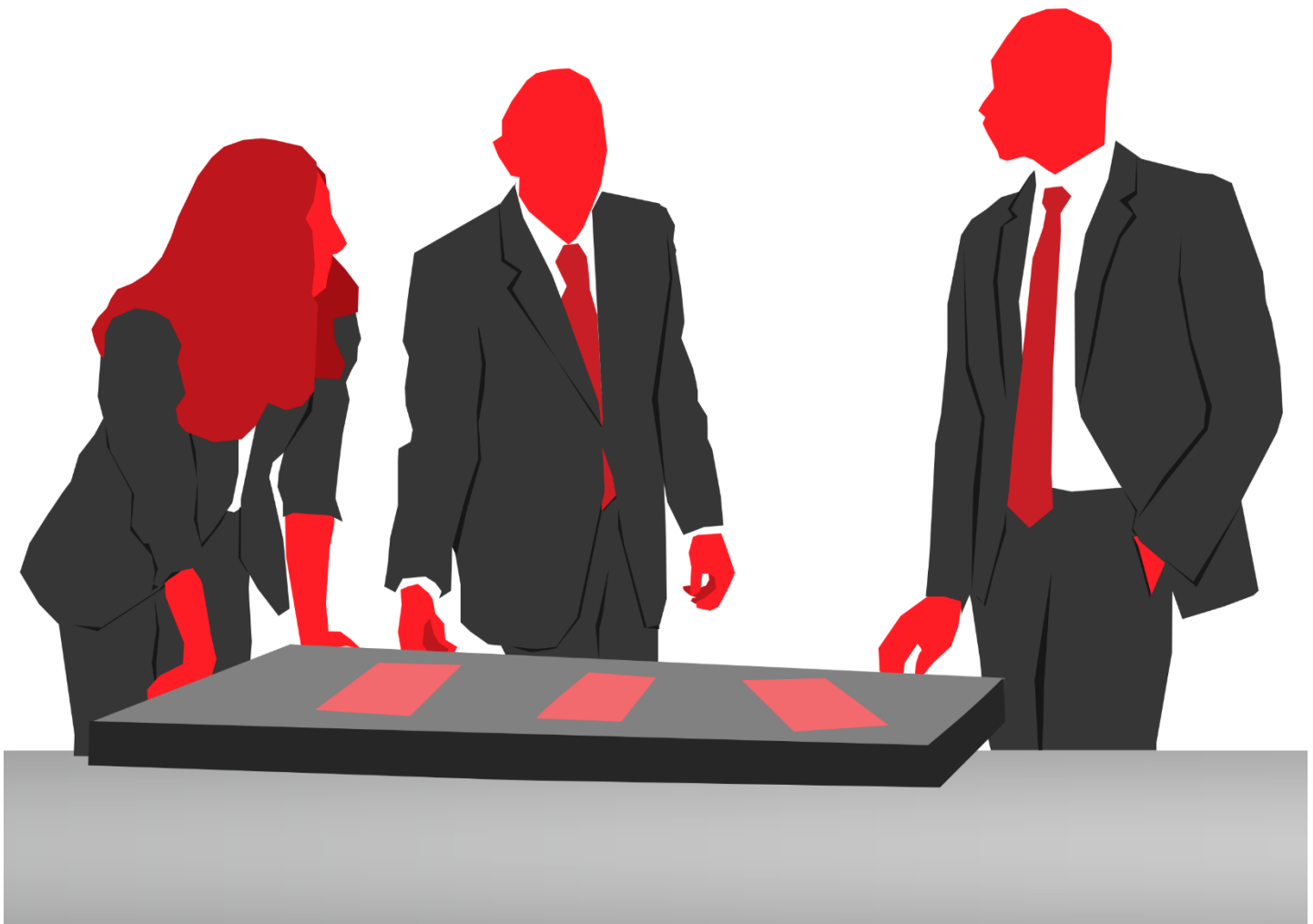
СОБРАНИЕ НА РЕПУБЛИКА СЕВЕРНА МАКЕДОНИЈА



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Recommendations for Amending and Supplementing the Laws and By-Laws in Order to Establish a Coherent Mechanism for Ethical Conduct and Accountability of The MPs



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ANALYSIS OF THE SITUATION

There is currently inconsistency and overlapping of the subject of regulation in both key laws that regulate the work of the Parliament of the Republic of North Macedonia and the MPs, namely:

1. The Law on Parliament of the Republic of Macedonia (“Official Journal of the Republic of North Macedonia” No. 14/20) and
2. The Law on Members of Parliament (“Official Journal of the Republic of North Macedonia” No. 84/05, 161/08, 51/11, 109/14, 140/18 and 27/19).

Namely, although Article 1 from the Law on the Parliament of RM stipulates certain issues on the functioning of the Parliament as a subject which is regulated by this Law, it also contains two chapters that regulate issues concerning the status and the work of the MPs, as follows:

- CHAPTER II. Start and end of the mandates and incompatibility of the function Member of Parliament with performing other public functions or professions and
- CHAPTER III. Organizing, work conditions and data on the assets of the Members of Parliament

If Article 1 from the Law on MPs is taken into consideration, which stipulates that this law regulates issues of performing the function of MP, as well as the rights and obligations of the MPs, it is clear that these two chapters from the Law on Parliament belong to the Law on MPs. Even more so that Chapter II from the Law on MPs is titled “START AND END OF THE MANDATE OF A MEMBER OF PARLIAMENT”, and Chapter III is titled “INCOMPATIBILITY BETWEEN THE FUNCTION OF MEMBER OF PARLIAMENT WITH PERFORMING OTHER PUBLIC FUNCTIONS OR PROFESSIONS”, which means that there is complete overlapping of these two chapters with what is regulated by Chapter II from the Law on Parliament, referred to above.

Additionally, Chapter V from the Law on MPs is titled “WORK CONDITIONS AND OTHER RIGHTS OF THE MPS DURING THE MANDATE”, which is partly the same with Chapter III from on the Law on Parliament, quoted above.



As can be seen, there is parallelism in regulating the same matter in two laws, and the Law on Parliament regulates matter outside of its scope of regulation. Namely, it is undisputable that the duties of the MPs concern the work of the Parliament, that is, that their work reflects the work of the Parliament, but since two separate laws are adopted, one on the work of the Parliament and another on the MPs, then it is best for the matter to be regulated precisely and in unison, so that the Law on Parliament should regulate all that concerns the work of the Parliament, whereas the Law on MPs should regulate all that concerns issues of the status of the MPs.

An additional problem is the fact that the Code of Ethics for the Members of Parliament of the Republic of Macedonia, adopted in 2018 does not have its legal ground in the Law on MPs, where it is supposed to be, instead Article 184 Paragraph 1 from the Rules and Procedures is stated as the basis of this act, which stipulates the following:

“Each MP, MP group, working body and the Government has the right to propose adoption of declarations, resolutions, decisions, recommendations and other general acts.

In the procedure for the adoption of declarations, resolutions, decisions, recommendations and other general acts, the provisions of the Rules and Procedures are applied, respectively, that refer to the proposed law in second reading, and a general discussion is mandatory.”

As can be seen, this is a general article on proposing acts, and it does not have any specific relation to the adoption of a Code of Ethics for the MPs. What is additionally confusing is the fact that the Code of Ethics itself also stipulates measures for not adhering to the Code, as well as authority of the Committee on Procedural and Mandate and Immunity Related Issues of the Parliament for pronouncing these measures.

PROBLEMS IN THE AREA

The following problems have been identified in the analysis of the provisions of the Law on Parliament, Law on MPs and the Code of Ethics for the MPs:

1. Inconsistency and overlapping of the Law on Parliament of the Republic of Macedonia and the Law on MPs that regulate the matter that refers to the status and the work of the MPs;
2. The Code of Ethics for the Members of Parliament was adopted without a specific legal ground, that is, on the basis of an article from the Rules and Procedures, which is a basis for proposing acts, and is not specifically connected to adopting a Code as a general act;
3. The Code of Ethics for the Members of Parliament also regulates issues that are legal matter, such as rules of conduct of the MPs;



4. The Code of Ethics for the Members of Parliament also stipulates measures for not adhering to these, above all legal, obligations of the MPs, which can be disputable from an aspect of constitutionality of the Code itself;
5. It is unclear what the legal force of the provisions of the Code of Ethics for the Members of Parliament is, that is, whether the courts would consider the Code to be a source of law if the MPs request legal protection for measures that are stated on the basis of the Code rather than on the basis of a law.

WHAT ARE THE OBJECTIVES THAT WE WOULD LIKE TO ACHIEVE?

A general objective is to secure systematicity, coherence and consistency in regulating the status of the MPs, and to establish an applicable framework for ethical conduct of the MPs, as well as a mechanism for accountability in case of failing to adhere to the established ethical rules.

Specific objectives that derive from the general objective are:

- Overcoming the constant state of overlapping of the regulations which regulate the status of the MPs;
- To regulate clearly and precisely the rights and duties of the MPs;
- To establish a specific ground for determining the ethical rules and norms for the MPs and
- To establish applicable mechanisms and measures in case of failing to adhere to the legal obligations and the ethical rules and norms for the MPs without violating the constitutionally guaranteed status of the MPs.

WHAT ARE THE POSSIBLE SOLUTIONS FOR ACHIEVING THE OBJECTIVE?

POSSIBLE SOLUTION 1: "Don't do anything"

If nothing is undertaken, the current situation will persist in which there will be overlapping of the provisions from the Law on Parliament with those from the Law on MPs, and the Law on Parliament will still contain provisions that fall outside of the subject of its regulation.

If nothing is undertaken, the Code of Ethics for the Members of Parliament will still exist as an act adopted without a specific legal ground, so its legal authority will remain disputable, especially if it is taken into consideration that the measures stipulated in it, although of informal characters, will not have legal ground and will practically remain inapplicable.



Possible influences and potential risks

- There are no further financial implications
- Incompatibility and overlapping of the relevant legal solutions and
- Incompatibility of the provisions from the Code of Ethics of MPs.

POSSIBLE SOLUTION 2: Amending the Law on Parliament of the Republic of Macedonia, the Law on Members of Parliament and adopting adequate by-laws that include a new Code of Ethics for the Members of Parliament

This solution is the most adequate one, but it stipulates interventions in the adequate legal acts, which may require additional time and resources for its realization.

This solution stipulates removing Chapter II and Chapter III from the Law on Parliament, thus making this law regulate only issues connected to the work of the Parliament. In such a way, this Law will no longer contain provisions that refer to the rights and obligations of the MPs.

Moreover, there will be a need to additionally regulate in Law on Members of Parliament all issues that are now regulated in Chapter II and Chapter III from the Law on Parliament. The recommendation is to regulate the following in the Law on Members of Parliament:

- One article – Rights of the MPs (listing all rights of the MPs related to their work as is now done in Article 14)
- One article – Responsibilities of the MPs (one article, listing in one place all responsibilities of the MPs that derive from other laws – Law on Prevention of Corruption and Conflict of Interests, Law on Prevention and Protection against Discrimination, Law on Protection against Harassment at the Workplace, Law on Treatment of State-Owned Property, etc.). The responsibilities of the MPs will also include the obligation to follow the Code of Ethics. This article would also include legal ground for adopting one Rule Book that would regulate the procedure for carrying out the responsibilities of the MPs, which would also stipulate all necessary forms for the realization of these obligations (reporting gifts, recording gifts, reporting conflict of interests etc.), as well as legal ground for adopting the Code of Ethics for the Members of Parliament, which would give the Code legal ground, which, in turn, would strengthen the obligation for compliance with it.



- One article – Competent body and legal mechanism for pronouncing measures for the MPs in case of neglecting their duties (When determining the measures, care must be taken that they are constitutional, that is, they must not to violate the status that the MPs enjoy, i.e. the measures should be of informal character, such as confidential counseling, warning, public warning etc., and avoid sanctions that would violate the status of the MPs. Mechanism for implementing, not only declaring, the measures should also be established, and in this context authority can be given to the President of the Committee on Procedural and Mandate and Immunity Related Issues with the support of the professional service of the Parliament to carry out the confidential counseling). This article will also give legal ground for adopting Rules and Procedures of the body that would carry out the procedures for determining the responsibility and pronouncing measures for the MPs, in which details would be regulated regarding the procedure itself. The measures should refer to violation of the legal duties, and adhering to the Code is only one of those legal duties, in which only ethical rules of conduct would be contained.

In this way, the Code would have legal ground and force, and will be applicable in practice.

Possible influences and potential risks:

- Full coherence of the legal regulations,
- Systematic regulation of all status issues of the MPs,
- Legally grounded ethical rules of conduct of the MPs,
- Legally grounded mechanism for responsibility in the case of MPs failing to perform their duties,
- Risk of lack of consensus among the MPs on the kinds of legal solutions that would envisage their responsibility, as well as blocking the procedure for adopting legal amendments.

POSSIBLE SOLUTION 3: Amending the Rules and Procedures of the Parliament and adopting a new Code of Ethics

This solution is simpler to implement because it does not require amendments to laws, but it has smaller legal force than the possible solution 2.

This solution stipulates amending and supplementing Chapter III in the Rules and Procedures of the Parliament with several articles that would be determined systematically:

- The rights of the MPs (by listing all rights of the MPs related to their work)



- Responsibilities of the MPs (by listing in one place all responsibilities of the MPs that derive from other laws – Law on Prevention of Corruption and Conflict of Interests, Law on Prevention and Protection against Discrimination, Law on Protection against Harassment at the Workplace, Law on Treatment of State-Owned Property, etc.). The responsibilities of the MPs will also include the obligation to follow the Code of Ethics. This article would also include legal ground for adopting one Rule Book that would regulate the procedure for carrying out the responsibilities of the MPs, which would also stipulate all necessary forms for the realization of these obligations (reporting gifts, recording gifts, reporting conflict of interests etc.), as well as legal ground for adopting the Code of Ethics for the Members of Parliament, which would give the Code legal ground, which, in turn, would strengthen the obligation for adhering to it.
- Competent body and mechanism for pronouncing measures for the MPs in case of neglecting their duties (When determining the measures, care must be taken that they are constitutional, that is, not to violate the status that the MPs enjoy, that is, the measures should be of informal character, such as confidential counseling, warning, public warning etc. and avoid sanctions that would violate the status of the MPs. Mechanism for executing, not only pronouncing, the measures should also be established, and in this context authority can be given to the President of the Committee on Procedural and Mandate and Immunity Related Issues with the support of the professional service of the Parliament to carry out the confidential counseling). This article will also give legal ground for adopting Rules and Procedures of the body that would carry out the procedures for determining the responsibility and pronouncing measures for the MPs, in which details would be regulated regarding the procedure itself. The measures should refer to violation of the legal duties, and adhering to the Code is only one of those legal duties, in which only ethical rules of conduct would be contained.

In this way, the Code would have legal ground and force, and will be applicable in practice.

Possible influences and potential risks

- Systematic regulation of all status issues of the MPs,
- Ethical rules of conduct of the MPs, which are based on the Rules and Procedures,
- Mechanism for responsibility in the case of MPs failing to perform their duties, which are based on the Rules and Procedures,
- Risk of lack of legal force of the newly established solutions, which in any case would have greater legal force than the existing Code of Ethics which is now applied in practice.



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Information about the project

The Swiss Program for Parliamentary support (PSP) will support the efforts of the Assembly of the Republic North Macedonia for independence through building consensus, structural reforms and building of capacities in institutional development the Assembly; in its legislative and supervisory roles and in his institutional transparency and accountability. PSP are implemented by the National Democratic institute, the Institute for democracy "Societas Civilis" – Skopje and the Center for Change Management, for support of the strategic planning of The Assembly; for reforms in the management of human resources; for improved assessment the impact of regulation and processes for procurement; for commitment to open data and through the measurement of public opinion and the monitoring of efforts for reforms, including for greater civil engagement in the processes of creation policies.

Information about CCM

The Center for Change Management (CCM) is a think tank, non-governmental organization that believes that strengthening the capacities of public administration, the civil sector, the business community, Euro-integration and investing in people are the main agents for change in society. This document was prepared by the CCM in cooperation with NDI, the Commission on Rules of Procedure and Mandate-Immunity Issues and representatives from the parliamentary groups in the Parliament, which refer to the application of the Code of Ethics for Members of Parliament in the Parliament of the Republic of North Macedonia, and in the direction of improving the system for ethics in the RNM Assembly.

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