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NEW POSSIBILITIES FOR PARLIAMENTARY OVERSIGHT: POST-LEGISLATIVE SCRUTINY (PLS), THEMATIC INQUIRY AND THEMATIC RAPPORTEUR

ABSTRACT

On 6 December of 2018, the Parliament of Georgia adopted new Rules of Procedure. The reform affected the strengthening of legislation, as well as the oversight functions of the Parliament.

Within the framework of the reform, special attention was paid to the oversight activity of the Parliament, as far as Georgia had no considerable practice in this direction. In parallel to the improvement of the standard of oversight procedures, the Rules of Procedure established such novel mechanisms as post-legislative scrutiny, thematic inquiry and thematic rapporteur. The purpose of this article is to outline the essence and significance of these mechanisms.

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INTRODUCTION

As stated, one of the main reasons for the new Rules of Procedure¹ of the Parliament is “the improvement of the oversight function of the Parliament in a way that ensures coherent work of state structures and the possibility to timely and effectively reveal existing gaps”.²

Parliamentary oversight mechanisms exist in the Georgian legislation starting from the 1990ies.³ However, the practice of their implementation was very poor and often inconsistent.

The new Rules of Procedure modified previously existing mechanisms, specified vague procedures and established new, previously non-existent procedures, which gives the Parliament the possibility to implement the function of oversight.⁴ Three mechanisms discussed in this article are among them: post-legislative scrutiny, thematic inquiry and thematic rapporteur.

POST-LEGISLATIVE SCRUTINY (PLS)

One of the most important functions of the Parliament is to create legislation adapted to the interests of citizens. Additionally, the function of the Parliament is to define how adopted legislation has worked and whether its purposes were attained.⁵

PLS is a loop, connecting fundamental – legislative and oversight – functions of the Parliament. The political process goes through a particular cycle and moves around on a certain circle.⁶ Lawmaking and oversight of the implementation of normative acts together create a sound political cycle, where adoption of the law, its monitoring and elaboration of new initiatives interchanges with one

1 Rules of Procedure of the Parliament of Georgia (webpage, 14/12/2018).

2 Explanatory notes of the initiated version of the Rules of Procedure of the Parliament of Georgia (registration N 07-3/187/9).

3 Decree of the Parliament of Georgia from 20 September 1994 on “the Rules of Procedure of the Parliament of Georgia”; Decree of the Parliament of Georgia from 17 October 1997 on “the Rules of Procedure of the Parliament of Georgia”; The Rules of Procedure of the Parliament of Georgia from 17 February, 2004; The Rules of Procedure of the Parliament of Georgia from 22 June 2012.

4 Roadmap of Parliamentary Oversight, US Agency for International Development (USAID) Good Governance Initiative (GGI), 2019, p.6.

5 Franklin De Vrieze, Post-Legislative Scrutiny – Guide for Parliaments, Westminster Foundation for Democracy (WFD), London, November 2017, p. 7.

6 Guideline on the Parliamentary Oversight, USAID Good Governance Initiative (GGI), 2019, p.3.

another.⁷ Under the UN Agenda for Sustainable Development 2030, the development⁸ of a number of directions is determined, where the PLS mechanism may assist various countries.⁹

Parliament puts a lot of time and resources into legislation. However, implementation of an adopted law is such a complex issue, that it is difficult for the Parliament to precisely predict all prospective outcomes upon the adoption of the law. During the implementation process, a number of shortcomings, ambiguity of norm or faults may emerge. Besides, in some cases, it may be necessary to newly regulate diverse relations.¹⁰ Norms may be given different meanings, and the basis for this amendment may be social-ethical conceptions or the change of various factual circumstances.¹¹

The PLS mechanism is not a novelty for the Rules of Procedure of the Parliament. It existed in the legislation before as well, however, its application in practice was not consistent. It may be stated openly that this mechanism was revived by the new Rules of Procedure of the Parliament. As an assurance of this mechanism, the obligation of committees to indicate the conduct of PLS in annual action plans, was outlined.¹² The committee conducts PLS beyond the action plan as well. Ongoing political, legal, social or other processes may evoke the necessity to use the PLS mechanism.¹³

PLS becomes similar to the regulatory impact assessment (RIA), in particular, the evaluation of the existing impact (Ex-post RIA). However, the latter mechanism, as a rule, is applied by bodies of the executive government, and PLS represents its parliamentary alternative.¹⁴

The norm of the Rules of Procedure, regulating PLS, is not strict and does not entail detailed procedures.¹⁵ This gives the possibility for the committee to maneuver, and in certain cases, to use measures adapted to needs. The history of parliamentary life in Georgia shows that the existence of a mechanism for parliamentary oversight in the legislation does not mean its actual application.¹⁶ Parliamentary oversight mostly depends on political will, traditions of parliamentarism and practice. The United Kingdom, having the oldest parliamentary practice, stands on such traditions, where the

7 Guideline for the Staff of Committees of the Parliament of Georgia, EU and UNDP, 2019, p. 34-35.

8 United Nations Sustainable Development Goals official web-page, Sustainable Development Goals. 01/06/2020, <https://sustainabledevelopment.un.org>

9 Fitsilis, Fotios and De Vrieze, Franklin, Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles (July 27, 2019). 14th Workshop of Parliamentary Scholars and Parliamentarians, Wroxton, UK, 27-28 July, 2019, p. 2.

10 Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019, p.4.

11 Reinhold Zippelius, The legal methods, Beck C.H., Munich, 2006 (in Georgian GTZ 2009), p. 31.

12 Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019, p.6.

13 Post-Legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019, p.13.

14 Expert seminar: Legislative ex-post evaluation, legislative impact assessment and Post-Legislative Scrutiny, Co-organized by the Centre for Legislative Studies of the University of Hull and the Westminster Foundation for Democracy (WFD), London, 26 April 2019; Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019, p.9-10.

15 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 38.

16 In details see Group of authors, edit. Vakhushti Menabde, Twenty years without Parliamentary oversight, second revised edition, Tbilisi, 2019.

majority of rules derive from traditions and customs and are implemented without written regulation.¹⁷ After the adoption of new Rules of Procedure, the Committee on Environmental Protection and Natural Resources and the Committee on Healthcare and Social Issues of the Parliament with the support of international partners carried out the procedure of PLS as a pilot project, which may be an attempt to establish a parliamentary tradition in this direction.¹⁸

Within the framework of PLS, the entire normative act may be selected, or only part of it. It is recommended that at least 3 years have passed, after the adoption of the normative act, to identify existent practice for making respective conclusions.¹⁹

Considering international best practices, the Georgian legislative space and reality, within the framework of PLS, the following actions may be conducted: a review of legal and other documents related to the selected normative act (explanatory note, regulatory impact assessment document, reports of the Public Defender or Audit Service, applications/letters/petitions, etc.), receive and analyze opinions from interested persons, conduct public consultations, check compliance of bylaws with the legislation of Georgia, checking bodies of work involved in the process of the implementation of the normative act and analyze court decisions.²⁰

From these actions, the innovative provision of the new Rules of Procedure must be mentioned, according to which “the Committee, within its competence, analyzes judicial practice and takes respective measures for eradication of legislative shortcomings”.²¹ In the framework of PLS, particular importance is attained to the fact – how a particular norm is interpreted by the Court, practicing lawyers or other addressees.²²

In the final stage of PLS, the Committee elaborates conclusion or recommendation. The committee itself monitors the execution of the recommendation. The necessity to elaborate legislative amendments may appear on agenda as well. PLS is basically a mechanism placed in the hands of the committee, however, if the committee deems that, considering the importance of the issue, it must be subject to discussion by the Parliament, then the committee appeals to the Bureau to take the issue to the plenary sitting.²³

17 Official web-page of the Parliament of United Kingdom, Rules and traditions of Parliament, 01/06/2020, <https://www.parliament.uk/about/how/role/customs/>

18 Official web-page of the Parliament of Georgia, Post-legislative Scrutiny, 01/06/2020, <http://parliament.ge/ge/normatiuli-aqtebis-agrulebis-kontroli>

19 Franklin De Vrieze, Post-Legislative Scrutiny – Guide for Parliaments, Westminster Foundation for Democracy (WFD), London, November 2017, p. 21; Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019, p.14, 17.

20 In details, see Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster’s Democratic Fund (WFD), 2019; Franklin De Vrieze, Post-Legislative Scrutiny – Guide for Parliaments, Westminster Foundation for Democracy (WFD), London, November 2017.

21 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 38.4.

22 Crawford, Tayla, Post-Legislative Scrutiny in New Zealand: Is a More Formal Mechanism Necessary? (April 3, 2018). Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 32/2018, p. 6-7.

23 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 38.

THEMATIC INQUIRY

The practice of thematic inquiry derives from the British Parliament and nowadays, is used in many leading countries such as the USA, Canada, Austria, Germany, Norway, Australia, New Zealand, etc.²⁴

Thematic inquiry is a kind of novelty for the Parliament of Georgia. This mechanism allows the parliamentary committee and standing parliamentary council to analyze received applications, ongoing events, make decisions to start scrutiny around particular significant issues considering public interest and other important factors. The mechanism ensures the involvement of interested persons in the process, as they can provide opinions through the established procedure and participate in the hearing of the issue.²⁵

During PLS and thematic inquiry, mostly similar actions are carried out. However, in comparison to thematic inquiry, PLS has a narrow and precise purpose – to evaluate whether the adopted normative act has worked. The purpose of conducting thematic inquiry may be much wider and complex. Its task is to identify problems in the area of the work of the committee, study these problems and respond accordingly.²⁶

Compared to PLS, the Rules of Procedure of the Parliament determine particular procedures for thematic inquiry. The reason for this is that thematic inquiry is conducted on a particular selected topic and it is relatively easier to frame it with a common standard, and the PLS relates to the implementation of normative acts of a different type and volume. Hence, in the first case, the Rules of Procedure defines particular procedures, and in the second case, the committee has more flexibility in that regard.

The procedure for thematic inquiry prescribed under the Rules of Procedure is as follows: 1. Determine an issue for thematic inquiry; 2. Form a group of thematic inquiry; 3. Stipulate technical requirements for thematic inquiry and their dissemination; 4. Receive opinions and analysis; 5. Conduct a hearing on the issue; 6. Prepare a conclusion.²⁷

Determining an issue for thematic inquiry. The issue for scrutiny may be selected considering the analysis of received applications, ongoing events, public interest and other important factors.²⁸ Thematic inquiry, in many cases, may not be related to issues regulated directly under the law, and the reason for the application of this measure may be the ambiguity and non-responded to ques-

24 Guideline on thematic inquiry, prepared and published by initiative of the Parliament, by Westminster's Foundation for Democracy (WFD), with the support of UNDP and Swedish Government, 2019, p. 6,8.

25 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.

26 Post-legislative Scrutiny – Guideline for the Parliament, USAID Good Governance Initiative (GGI), Westminster's Foundation for Democracy (WFD), 2019, p.10.

27 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.

28 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.2.

tions around this issue. For instance, in the Parliament of Georgia, thematic inquiry was conducted in relation to the following issues: “On the condition of atmospheric air in Tbilisi”, “On the participation of women in state economic programs”, “On the condition of art education in public schools and institutions outside school”, “Condition for ensuring proper dwellings for people in Georgia”, etc.²⁹

The decision on the initiation of scrutiny is made by the majority of all enlisted members of the committee/standing council.³⁰

Forming a group of thematic inquiry. In the framework of thematic inquiry, the thematic inquiry group is formed. If it appears that there is a desire to scrutinize the same issue in different committees, by the decision of the Bureau of the Parliament, Members of the Parliament participating in the scrutiny may be joined.³¹ At the same time, the Rules of Procedure does not prohibit the MP to be part of thematic inquiry group created within the framework of other committees.

We must differentiate the thematic inquiry group from other temporary commissions of the Parliament. Thematic inquiry is a tool for the committee and the standing parliamentary council, and a temporary commission is formed by the Parliament, and therefore has higher legitimacy. Moreover, their mandate is also diverse. Before the temporary commission, a particular task of national or public importance is presented, which requires a solution and the Parliament is the body that has to decide on this issue. As for the thematic inquiry group, it is formed to study different actual issues that facilitate the development of the discussion on this issue, to identify problems, encounter novelties and elaborate new approaches.³²

The thematic inquiry group must also be differentiated from the working group of the committee. The committee working group is created to support the work of the committee and prepare legislative issues in advance, as well as to address other ongoing issues. Mostly, its purpose is to support the legislative work of the committee, and the thematic inquiry group is appointed to study an actual issue and represents one of the mechanisms of parliamentary oversight.³³

the thematic inquiry group, working on the issue, develops plan and schedule for studying the issue, determines the specialist needed to participate in the study, leads the study of the issue, is responsible for processing the issue and preparing a draft decision, studies information presented by interested persons, has a right to request and receive necessary information and explanations from administrative bodies for studying the issue. Documents received in the framework of inquiry are published on the web-page of the Parliament.³⁴

29 Official web-page of the Parliament of Georgia, thematic inquiry, 01/06/2020, <http://www.parliament.ge/ge/tematuri-mokvleva>

30 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.2, 155.3.

31 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.

32 Guideline on the Parliamentary Oversight, USAID Good Governance Initiative (GGI), 2019, p.48.

33 Guideline for Staff of committees of the Parliament of Georgia, EU and UNDP, 2019, p.39.

34 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.6.

Forming and disseminating technical requirements for thematic inquiry. The thematic inquiry group is obliged to ensure the placement of information regarding the commencement of thematic inquiry on the web-page of the Parliament no later than 5 days after initiation of the inquiry. This information must include the title of the issue and its description, information regarding MP/MPs working on this issue, as well as rules and dates for presenting opinions and respective documentation by interested persons.³⁵

Considering international practice, the uniform style for elaborating these requirements was established by the Parliament of Georgia.³⁶ An important component of technical requirements is the questions prepared by the inquiry group, which derive from the theme of inquiry, and answering these questions represents the main purpose of the inquiry. Hereby, terms and dates are defined for presenting opinions related to these questions by interested persons.

Receiving and analyzing opinions. An interested person, in accordance with the rules envisaged by technical conditions for inquiry, presents his/her justified opinions. It is noteworthy that in the British Parliament, the terms witness and evidence are used for indicating an interested person and justified opinion in the framework of thematic inquiry.³⁷ In Georgian, the direct translation of these words – witness and evidence – creates an association with court proceedings, hence alternative terms were selected to adjust them to the Georgian language.

Interested persons are not required to respond to all questions of thematic inquiry. Presented opinions are published on the web-page of the Parliament.³⁸

Conducting a hearing on the issue. An oral hearing on the issues represents an important component of thematic inquiry. The thematic inquiry group invites authors of opinions and representatives of respective bodies, and a discussion is held around the topic. During the oral hearing, members of the thematic inquiry group ask questions to the authors of opinions, which gives the possibility to clarify vague issues and receive additional information.³⁹

Preparing a Conclusion. As a result of studying the issue, the thematic inquiry group prepares a conclusion. The conclusion must be prepared within a two--month period from the start of the thematic inquiry. This period, if necessary, may be extended by not more than 1 month. Based on the conclusion, the Committee or Parliament may elaborate on recommendations or execute other powers envisaged in the Rules of Procedure (for instance, prepare a legislative initiative or use other

35 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.5.

36 As an example, see technical conditions for thematic inquiry of the Committee on Environment Protection and Natural resources on the topic "Evaluating pollution of environment by lead in Georgia";

http://www.parliament.ge/ge/ajax/downloadFile/136792/TOR-კითხვარი_ტექნიკური_პირობები_დს

37 Official web-page of the Parliament of the United Kingdom, Guidance on giving evidence to a Select Committee of the House of Commons, 01/06/2020, <https://www.parliament.uk/get-involved/have-your-say/take-part-in-committee-inquiries/commons-witness-guide/>

38 As an example, see opinions presented within the framework of thematic inquiry of the Committee on Sports and Youth Issues (how to increase level of physical and sport activity of the population of Georgia) <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/sportisa-da-axalgazdul-saqmeta-komiteti-1155/tematuri-mokvleva1/dasabutebuli-mosazrebebi>

39 Guideline on thematic inquiry, prepared and published by initiative of the Parliament, by Westminster's Foundation for Democracy (WFD), with the support of UNDP and Swedish Government, 2019, p. 36-40.

mechanisms of parliamentary oversight). Developed recommendations and/or tasks are sent to the respective administrative body and is published on the web-page of the Parliament.⁴⁰

The Committee on Environment Protection and Natural Resources, already before the adoption of new Rules of Procedure, with the support of Westminster’s Foundation for Democracy, conducted two pilot thematic inquiries on the topics: “The atmospheric air condition in Tbilisi” and “Conditions existing in the area of municipal waste”.⁴¹ Sharing British experience and their involvement in the process of establishing this mechanism had a particular impact. For example, the report on thematic inquiries prepared in the Parliament of Georgia almost completely repeats the style and components of the inquiry of the UK Parliament.⁴²

THEMATIC RAPPORTEUR

One of the notions of the Parliament’s reform in 2018 is the thematic rapporteur institute. This is a particular analog to the institute of Rapporteurs existing the Parliamentary Assembly of the Council of Europe.⁴³

The institute of thematic rapporteur has several important aims: better management of legislative oversight and other activities of the Parliament; ensuring the quality of work by the Parliament and its division among MPs.⁴⁴

Thematic rapporteurs divide among themselves different directions within the committee and are responsible for the implementation of obligations envisaged under the action plan of the committee. This creates a guarantee that there always will be MPs in the Parliament working on diverse areas of government. Therefore, the study of issues in different directions and the identification of problems will be facilitated. Besides acting in the legislative direction, a thematic rapporteur has a significant role in terms of parliamentary oversight. He/she presents initiatives; gets acquainted with news, citizens’ letters or petitions in a certain direction; is constantly interested in the work of respective administrative bodies, etc.⁴⁵

40 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 155.8.

41 Official web-page of the Parliament of Georgia, 01/06/2020, <http://www.parliament.ge/ge/saparlamento-saqmianoba/komitetebi/garemos-dacvisa-da-bunebrivi-resursebis-komiteti/sakomiteto-mokvleva>

42 For comparison see Report of the thematic inquire of the Parliament of Georgia “On the atmospheric air condition in Tbilisi”: http://www.parliament.ge/ge/ajax/downloadFile/122514/3აერის_ანგარიში_საბოლოო_თგ and Report on thematic inquiry of the UK Parliament for analogous topic <https://publications.parliament.uk/pa/cm201516/cmselect/cmenvfru/479/47902.htm>

43 Rules of Procedure of the Assembly (July 2019), Code of conduct for rapporteurs of the Parliamentary Assembly, <http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=CHDBFHJD>

44 Rules of Procedure of the Parliament (web-page, 14/12/2018), article 45.

45 Guideline for Committee staff of the Parliament of Georgia, EU and UNDP, 2019, p. 23.

The chairperson for the Committee appoints members of the committee as rapporteurs, considering their initiatives. For each working area/direction prescribed in the action plan of the committee, one thematic rapporteur shall be responsible for the majority and, in case of desire, one thematic rapporteur from the members of faction and independent MPs, who are not part of the majority. For the same working area/direction, the appointment of third and every following rapporteur must be admissible by the decision of the chairperson of the committee. In case no one shows interest in being the thematic rapporteur for the working area/direction prescribed under the committee action plan, the chairperson of the committee determines the name of the thematic rapporteur personally. The unified list of thematic rapporteurs, with indications of respective the working area/direction, is published on the web-page in accordance with the committees.⁴⁶

The practice has shown that for the current stage, the institute of thematic rapporteur had more difficulties solidifying the process of implementing the novelties envisaged under the Rules of Procedure. Reasons for that may be several: the application of this mechanism depends on the activity of certain MPs; the existing practice of involvement by MPs in the routine work of the committee is rather poor; the institute of the thematic rapporteur is more of an organizational change, and it did not appear easy to shift to a new track to the end of the Parliament's authority.

CONCLUSION

By the Rules of Procedure of the Parliament of Georgia from 2018, an important step was taken forward in terms of establishing and strengthening parliamentary oversight in the country.

The purpose of this article was to show those extraordinary mechanisms established by the new Rules of Procedure, which, along with relatively familiar and standard oversight mechanisms, must accept a new word into Georgian Parliamentary life.

Currently, a conclusion with regard to the discussed mechanisms (PLS, thematic inquiry and thematic rapporteur) may be presented in three directions – expectations, existing practice and risks.

Expectations. All three discussed mechanisms give the possibility to assimilate new action areas, which in the conditions of parliamentary governance, have even more value: a) PLS gives the possibility for the Parliament to check how the adopted normative act works in reality, which is particularly important for the sustainable development of the country. b) Thematic inquiry ensures the clarification of a number of issues and seeks answers to existing questions with the involvement of society. Thematic inquiry may become a course for numerous new discoveries, new approaches or

⁴⁶ Rules of Procedure of the Parliament (web-page, 14/12/2018), article 45.

regulations. c) Institute of thematic rapporteur gives the possibility to systematically have different directions from all spheres of governance on agenda, in terms of legislation, as well as oversight of implementation.

Lack of existing practice. Less than a year and a half has passed since the enactment of the new Rules of Procedure of the Parliament. For the effective evaluation of the impacts and results of the discussed mechanisms, this period is quite short. It shall be mentioned that after the enactment of new the Rules of Procedure, other surrounding factors caused a significant obstruction of parliamentary activity. After the events of 20 June 2019, and later the failure to adopt constitutional amendments, resulted in a boycott from the side of the opposition and mass protests, thus the complete functioning of the Parliament was constrained. The spring session of 2020 was affected by the reality of pandemics and a state of emergency. This year is the year of parliamentary elections, and this obviously will reduce the intensity of Parliament's functioning in the pre-election period. Hence, profound deliberation on the weak and strong sides of these mechanisms will be possible within the activity of the Parliament of the next convocation.

Risks. The application of these mechanisms mostly depends on the activity and political will of the MPs. Considering the fact that the Parliament of Georgia does not have significant experience in terms of oversight activity, the establishment of new mechanisms has its risks. Therefore, there must be no expectation of fundamental improvement. The Parliament is a political body, which is characterized by freedom of action, consequently, practice and traditions hold an important place in parliamentary life. Legislative regulations alone cannot ensure the effectiveness of these mechanisms and there is a necessity to develop a culture in this direction, which requires some time.

It is probable that in the X convocation (2020-2024), the issue of oversight over the implementation of the new Rules of Procedure will appear on the agenda of the Parliament, and a thorough analysis of the accumulated practice and oversight mechanisms will be improved and modified.