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MAKING BETTER LAW

Improving the legislative process by better defined
urgent procedure



USAID
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CENTER FOR RESEARCH
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Within the Open Parliament initiative and supported by United States Agency for International Development (USAID) and British Embassy in Belgrade, the Center for Research, Transparency and Accountability (CRTA) conducted the survey titled "Making Better Law - Improving the legislative process by better defined urgent procedure".

The study focused on the adoption of laws by urgent procedure, as a prevailing model of legislative activity in the last decade. The aim of the research is to provide an insight into the process of adopting laws by urgent procedure, as well as to understand the factors affecting the frequent recourse to this procedure. The ultimate goal is the improvement of the legislative process in the Republic of Serbia.

The research, as well as all other activities of the "Open Parliament" initiative, is an attempt to make the parliament's work closer to citizens, representatives of civil society organizations, media, researchers and other shareholders, and to emphasize the importance of openness and transparency of institutions. The employees in the Support Service of the National Assembly of the Republic of Serbia, as well as the MPs of the tenth convocation of the Assembly who participated in the research provided great help to the researchers during the entire period of data collection.

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1. Introduction

Analysis of the legislative process refers to the content of the laws and how they are adopted. Is the democratic procedure respected or not during the process? Is general public consulted? Who prepares the laws and under which procedures? Who adopts laws? These are just some of the questions we have to answer.

Through the analysis, we follow the legislative process, from the work-in-progress version of a law to its adoption, with the aim to clarify any procedure and practice established in the legislative process, especially activities that take place in the National Assembly of the Republic of Serbia. The focus of the study is the adoption of laws by urgent procedure, as a prevailing model of legislative activity in the last decade, which has become the rule, although it should be treated as the exception. European Commission Progress Report for Serbia (2012., 2013. i 2014.), in chapter "Democracy and Rules of Law", which deals with the issue of the National Assembly, said that the "emergency procedure" used abundantly, which limits the opportunities for debate¹. Excessive use of this procedure reduces the democratic performance of parliament and also limits parliamentary control of the process of making quality laws.

The aim of the report is to provide (1) insight in procedures of adopting laws by urgent procedure, and (2) understanding of the factors affecting the frequent recourse to this procedure. The ultimate goal of this paper is to help improvements of the legislative process in the Republic of Serbia.

This research for the needs of Open Parliament initiative was commonly carried out by Center for Research, Transparency and Accountability (CRTA) and SeConS – Development Initiative Group². SeConS was formed as initiative group of sociologists, women sociologists, social scientists, who have been working on the social development issues at university and in organizations of civil society in the country and abroad for many years.

¹ European Commission Report for Serbia 2012, 2013, i 2014. godinu, page 8, page 7, page 9

² SeConS is an independent organization of experts which carries out empirical research, analyses policies and processes, challenges and specific social and economic contexts, educates, trains and strengthens various actors. Data and analyses collected and implemented by SeConS present the reliable basis for further elaboration of methodologies, recommendations and measures as important contribution for development and implementation of national, regional and local policies.

1.1 Methodology

Methodology which combines qualitative and quantitative analyses was used for this research.

Quantitative component: This component of research included analysis of legislative procedure in National Assembly of the Republic of Serbia from 1990 to 2014. The aim of the first part of analysis was to determine the percentage of all laws adopted by urgent procedure in this period. The second part focuses on analysis of contents of rationale of the laws adopted by urgent procedure in the previous five years (more exactly since May 2011). These laws were coded in accordance with procedural rationale for urgent procedure and frequency of appearance of certain replies. Coding has enabled insight into frequency of appearance of different rationales used when proposing a law under urgent procedure.

Qualitative component: Qualitative research included analysis of current legal framework and current literature on legislation activities. This component of research has been additionally improved by means of depth interviews. Analysis of current literature has enabled to map findings in this field, while analysis of legal framework has enabled adequate understanding of formal procedures and regulations for adopting laws by urgent procedures. At the end, qualitative coding of reason was made, which enabled further quantitative survey of results. Five depth interviews were made after that with MPs of National Assembly of the Republic of Serbia and one interview with the representative of Expert Service of National Assembly of the Republic of Serbia. These interviews were aimed at giving contribution to better understanding of the process itself as well as of the practice of adopting laws by urgent procedure. MPs who participated in the qualitative research gave specific angle of looking at this procedure, while interviews with the representative of Expert Service has cleared up many doubts arising during reading of the rules.

2. Birth of a law

Before a detailed analysis of the laws passed by urgent procedure, we will first see how laws are formally adopted in Serbia. In order to understand why the practice of adopting laws by urgent procedure has become more frequent, it is important to address formal procedures of passing laws, which will reveal the ways and reasons for deviations from the established rules. It is also important to get familiar with the entire procedure of drafting a legal document, before it enters the parliamentary procedure, because it can show possible factors influencing the drafting of the document, bodies involved and interests taken into account during law drafting.

2.1 Preparation of bill

Law-making procedures in Serbia are regulated by the State Administration Law (adopted in 2005), which prescribes how and who is involved in the preparation of the draft law, as well as the requirements for holding a public debate.³ In addition, the Law on Government (adopted in 2005), regulates the procedure for the adoption of draft law by the Government of the Republic of Serbia and the submission of draft law to the NARS⁴. The National Assembly Rules of Procedure (adopted in 2006) and Amendments to the

³The Law on State Administration, "Official Gazette of RS", 79/2005

⁴The Law on Government, "Official Gazette of RS", 55/2005, 71/2005

National Assembly Rules of Procedure (adopted in 2013) precisely regulate the content of draft law submitted to the NARS. The Law on the National Assembly (adopted in 2010), the National Assembly Rules of Procedure (adopted in 2010), and Amendments to the NARS Rules of Procedure (adopted in 2011) define further procedures for draft law that will be adopted or rejected by MPs.

The law-making procedure pursuant to previously mentioned laws and Rules of procedure can be divided into 8 phases:

- First phase – involves the very **initiative** for preparation of a law that can be proposed by all MPs, the Government, the Assembly of the Autonomous Province, a minimum of 30,000 voters, as well as the National Bank of Serbia and the Ombudsman within their areas of competence.

The most common bill submitter is the Government in accordance with its policies. The next phases relate to law-making process in cases where the Government is a sole bill submitter:

- Second phase – involves appointing **a body for bill preparation** that can be an individual or a working group;
- Third phase – represents the preparation of **the work-in-progress version** of a law by individuals or a working group;
- Fourth phase – implies the adoption of the work-in-progress version of the law by the relevant ministry, resulting in a **draft law**;
- Fifth phase – includes a **public debate** on the work-in-progress version of the law or a proposed bill;
- Sixth phase – involves the adoption of the draft law by the Government, formulating then a **bill**;
- Seventh phase – represents a process by which draft law is presented to **the National Assembly** and analyzed by MPs. This phase includes a debate on draft law before the committees and may include a public hearing;
- Eighth phase – represents a **plenary discussion** and voting on the bill, by which it becomes a valid regulation or not.

A law is prepared by an individual employed by the relevant state authority, or a working group is established that will prepare the draft law. The working group is usually made up of representatives of state bodies and organizations, as well as experts in different fields. A particular problem that slows down the work of these working groups is the lack of financing rule of procedure.

The working group produces **the work-in-progress version of the law**, which is then approved by the competent authority that will present the law. Once the work-in-progress version of the law is adopted by the ministry, the document becomes a **draft law**. The draft law is then submitted to the Government of the Republic of Serbia, which formulates a **bill**. The difference in terms used, such as the work-in-progress version of the law, draft law and bill, results from the fact that different bodies are involved in law-making process. The work-in-progress version of the law is prepared by a working group, the draft law is formulated by a ministry, while the bill is defined by the Government. However, it is important to emphasize that the **bill** should be accompanied with other opinions as well, i.e. from other ministries and the Republic Legislation Secretariat on bill's compliance with legislative system of the Republic of Serbia. The bill is then submitted to the NARS.

Before the bill is submitted to the NARS, it should undergo **public debates**. They are a mechanism by which the laws in the making are presented to the public and thus both positive and negative reviews are obtained. Criticism allows a more detailed insight and correction of possible errors and mistakes, which

greatly increases the quality of bills at later stages. All interested individuals and groups, experts, civil society organizations as well as government institutions may participate in public debates. This is a significant opportunity for all interested parties to review the law that is being prepared. However, the regulations governing this institution are imprecise and include interpretation ambiguities. One of the most important ambiguities is the unclear definition of which laws are subject to public debate, and which are not. The Law on State Administration contains the following wording: "*A ministry and a special organization shall be obliged to undertake public debate in the procedure of preparation of a law which essentially change the legal regime in one field or which regulates issues of particular relevance for public*".⁵ The Government's Rules of Procedure further specifies this matter. Accordingly, *systemic laws* are subject to mandatory public debate. Although it does not exactly specify what is meant by systemic law, a commonly used meaning from legal terminology is used in practice, by which a systemic law should be the basis for the regulation of certain field, i.e. a law that contains principles regulating a certain area. Also, in addition to systemic laws, public debate is mandatory for laws "*which essentially changes the regulation of an issue or which regulates issues of particular relevance for public*".⁶ The Rules of procedure does not specify what is exactly meant by "*essentially changes the legal regime*" and "*issues of particular relevance for public*".

Besides unclear definition relating to the laws that should undergo public debate, there is also ambiguity regarding mixed terms of public debate and public hearing. Therefore, it is important to explain that a public debate allows discussion on the bill before the draft law is submitted to the Assembly, while the public hearing implies the presence of interested parties and the public in the National Assembly during a debate on a particular law, and is not mandatory in the legislative process.

Unlike the public hearing, there are no clear rules for public debate regulating the following questions: when will a public debate take place, in which way will it be held and for how long will it last. The authors of the *Studies on the improvement of the legislative process in the Republic of Serbia* point out that by 2005 the draft laws already presented to the Government were submitted for public debate, which resulted in the failure to adopt objections from the public debate. After 2005, the work-in-progress version of a law or even draft laws have been submitted for public debate, which again may be too late for inclusion of views and comments of other ministries.⁷ Pursuant to the State Administration Law⁸ a public debate is typically conducted during the law preparation, i.e. before the Government formulates the draft law. However, under the law, a public debate may be held after draft law is adopted. If the law can be interpreted that most of the proposed laws should undergo a public debate, it is not held to such an extent. In fact, two studies published under Transparency – Serbia (*Studies on the improvement of the legislative process in the Republic of Serbia from 2012, and the Public debates on regulations - regulations, plans and practice, Overview from 2015*) point out a small percentage of held public debates by 2012, from 15 to 20%, while this percentage increased to 55% of observed cases in 2014 (10 laws in the observed year of 2014, more precisely by 26th October 2014). However, although public debates were held in a number of cases, all mandatory and optional elements were not complied with. In 40% of cases, the obligation of publishing a public debate on e-Administration portal was fulfilled (publications were more frequently made on the web sites of ministries), while in 30% of cases a list was published with the working group members. In the same percentage of cases, rationale was published with comments, while other optional documents were published only in one case, representing 10% of the observed cases. Transparency - Serbia concludes, inter alia, that although the Rules of Procedure of the Government are significantly improved in terms of public debates, new improvements are also important especially for making public debates possible for the initial data of the laws, relating to the publication of proposals that were received during the public debate, then improvements in solving issues when international organizations give opinions on bills so ministries

⁵The Law on State Administration, Article 77 – Official Gazette of RS", 79/2005, 101/2007, 95/2010 i 99/2014

⁶Decision on Amending the Rules of Procedure of the Government "Official Gazette of RS", 30/2013, Art. 41

⁷"Studies on the improvement of the legislative process", p.103.

⁸ The State Administration Law, "Official Gazette of RS", 79/2005, 101/2007, 95/2010, and 99/2014, Art.77, Par.2 - Conducting public debate in law-making procedure shall be in detail defined by the Government Rules of Procedure.

are later more reluctant to make changes.⁹ Conclusion of Transparency - Serbia is especially important because the proposers differently interpret the concept of a public debate, i.e. there is a problem in the formulation of "formal public debate".¹⁰

This is confirmed by a quote from one of the interviews conducted in 2012 for the purpose of study, "How laws are made in Serbia".

*"Public debate is often a simulation. Qualified experts do not participate. There is a great lack of interest. For example, there are no university professors present, unless they are from NGOs. On the other hand, bill submitters are not interested in hearing ideas. There is no mutual trust [...] The media are weak, they lack knowledge and credibility, and even the politicians themselves are not familiar with the matter and cannot understand it [...]" (interview with MP, December 2012).*¹¹

Authors of the study "Law Drafting and Legislative Process in the Republic of Serbia" stand out that international experience strongly suggests that civil society consultation on government policy, or on alternative policies under government consideration, extends the policy development process somewhat but greatly enhances the policy eventually adopted.¹²

After the law undergoes a public debate, and is adopted by the Government as the bill, it is submitted to the National Assembly. All MPs, the Government, the Assembly of the Autonomous Province or at least 30,000 voters have a right to propose laws and other general acts to the National Assembly. In addition, the Ombudsman and the National Bank of Serbia have the right to propose laws.¹³ Any bill must contain the rationale made from a set of necessary analyses and clarifications regarding the bill. The rationale shall state the reasons for the adoption of the law by use of urgent procedure. It should be noted that any bill should be accompanied with the table on the harmonization, which precisely indicates the level of harmonization with EU regulations, as well as a statement that claims: 1) that the bill has been harmonized with the European Union acquis, 2) that there is no obligation to harmonize, or 3) that it is not possible to harmonize the law with the European Union acquis.

2.2. Assembly procedure

The law-making method in the National Assembly is governed by the NARS Rules of Procedure. Pursuant to the Article 94 of the Rules of procedure, the laws and other acts of the National Assembly are adopted by a **regular** or **urgent** procedure. In addition, both regular and urgent procedures may be standard and abbreviated with regard to time period of discussion in the National Assembly. The main difference between a regular and urgent procedure is time when a bill is included in the agenda of a National Assembly session from the day of its submission. Pursuant to Article 154 of the NARS Rules of Procedure, a bill that is to be adopted by **regular** procedure can be included in the agenda of a National Assembly session no earlier than fifteen days from the day of its submission, while Article 168 of the NARS Rules of Procedure

⁹Transparency Serbia, "Public debates on regulations - regulations, plans and practice, Overview", p. 8

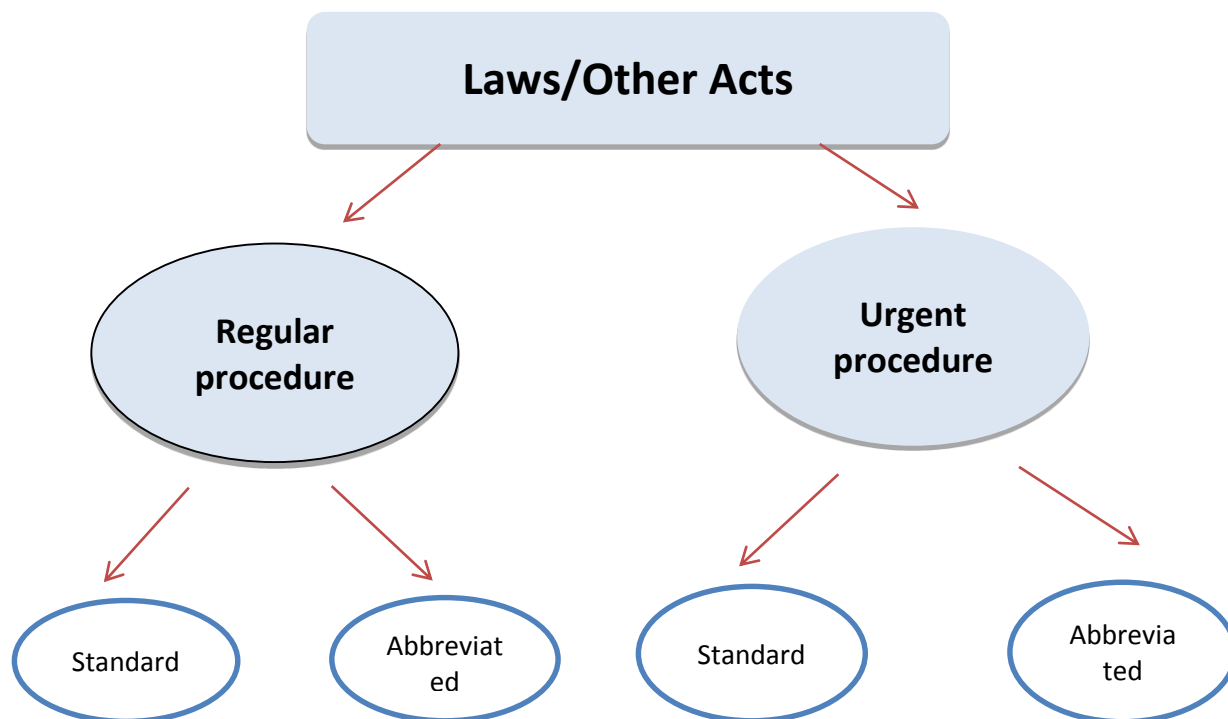
¹⁰Transparency Serbia, "Public debates on regulations - regulations, plans and practice, Overview", p. 6

¹¹Danilo Vuković, *How laws are made in Serbia?*, Secons and the Institute for Sociological Research, p. 57

¹²„Law Drafting and Legislative Process in the Republic of Serbia“, OSCE, december 2011, p.71

¹³The NARS Rules of Procedure, "Official Gazette of RS", 52/10, Art. 150

prescribes that a bill to be adopted by **urgent** procedure can be included in the agenda of a National Assembly session if it had been submitted no less than 24 hours before its submission.



As part of a regular standard procedure, the bill is submitted to the committee and thus debated for the first time by MPs that are members of the committee. Sometimes, as requested by MPs, public hearings are organized, where experts and other stakeholders are involved in the debate on the bill. Then the bill is referred to the debate at the National Assembly session, which allows MPs, according to the established rules of granting the floor to state their position in relation to the law and amendments to the debated bill. In the standard procedure, total time envisaged for the debate in principle for parliamentary groups shall amount to five hours and the total duration of the debate in detail on this basis may not exceed ten hours. In the abbreviated procedure within the regular procedure the total time for the debate is prescribed separately for each bill, if necessary, and shall amount to 50% of the time allocated for speakers.¹⁴ Besides the "summary debate" on amendments, there is a possibility of holding a "unified debate" that allows plenary session to discuss several laws at once, which greatly reduces the time devoted to the debate on each particular law.

According to the Rules of Procedure of the National Assembly of the Republic of Serbia, abbreviated procedure may be proposed, if what is concerned is:

1. ratification of international treaties,
2. minor amendments to existing laws, not altering material provisions substantially,
3. cessation of the effectiveness of a law,
4. harmonization of legislation with the legal system of the Republic of Serbia and the EU Acquis,
5. amendments to laws related to decisions of the Constitutional Court,
6. authentic law interpretation,

¹⁴Rules of Procedure of the National Assembly, "Official Gazette of RS", 52/10, Article 93

7. election and dismissal of persons elected by the National Assembly in accordance with the Constitution and the law, unless specified otherwise by the Rules of Procedure¹⁵.

The procedure hereby described represents the regular law-making procedure, both by standard and abbreviated procedure. However, although a legally abbreviated procedure should be the exception, it is more and more used in practice, as noted in the introduction.

2.3. Assembly procedure in practice

As already mentioned, when draft law is submitted to the National Assembly, it becomes a bill. Immediately upon receipt of a Bill submitted to the National Assembly, the Speaker of the National Assembly shall communicate the bill to MPs, the competent committee and the Government (if the Government is not the proposer), as well as to the National Bank of Serbia or the Ombudsman, if it regulates matters within their scope of work. Any bill must pass through the Committee on Constitutional and Legislative Issues that should determine whether the bill is in accordance with the Constitution and the law. Furthermore, a bill must be approved by other two committees, one is the European Integration Committee, which is mandatory for all laws concerning European integration, and the other is the competent committee dealing with the subject of the bill. It is important to emphasize that both by regular and urgent procedure, a bill must pass through these three committees. The only exception is the European Integration Committee, which is not obligatory if the law does not in any way relate to European integration. In the regular procedure, the law is reviewed by all three committees no less than 15 days before it is submitted to the plenary session of the NARS.

A bill is reviewed by a competent committee first within a discussion in principle, and then within a discussion in detail. During this process, the bill may be the subject of public hearing. The purpose of a public hearing is to provide the committee members with necessary information, expert opinions on a bill in assembly procedure. The competent committee or the Government shall submit an opinion and amendments to the National Assembly, as a rule, within at least five days before the beginning of the National Assembly sitting at which the bill will be discussed.

Once the bill is discussed by committees, a bill with amendments is submitted to a plenary session of the National Assembly. Discussion is held among the parliamentary groups at predetermined order of floor granting. A bill shall be initially subjected to a debate in principle, and then to a debate in detail. A debate in principle discusses the bill as a whole and enables the representatives of the parliamentary groups to speak out about the overall solution proposed by the bill. A discussion in detail is a discussion about each individual potentially amended article of a bill, and about amendments that propose the inclusion of new provisions. On that occasion, the proposers of amendments or authorized MPs on behalf of the parliamentary group who submitted amendments have the right to express their views on the amendments submitted. To begin a debate in detail on a bill, at least 24 hours must pass from the conclusion of the debate in principle.

Finally, at the plenary session of the National Assembly, after discussion in principal and discussion in detail are held for each amendment, MPs vote separately on the bill in principle, then on each amendment, and at the end on the bill as a whole.

¹⁵Rules of Procedure of the National Assembly, " Official Gazette of RS ", 52/10, Article 95

3. Urgent procedure

In this chapter, we will first consider the procedures by which it is possible to carry out an urgent procedure in the law-making process, and then the examples of how laws are adopted under urgent procedure.

3.1. Urgent procedure process

There are two ways to shorten the procedure for law adoption in the National Assembly:

- **Abbreviated procedure** within the regular procedure described in the previous chapter and which primarily relates to shortening the time for discussion;
- **Urgent procedure**, which primarily shortens the procedure from the moment when a bill enters a parliamentary procedure until it is put on the agenda; in this way, made laws pass very quickly all the parliamentary procedures (mandatory debates and committees).

Pursuant to Article 167 of the Rules of Procedure of the NARS, only a law regulating issues and relations which arise under unforeseeable circumstances may be adopted by urgent procedure. Furthermore, this Article covers the laws where the non-adoption of such a law by urgent procedure could cause detrimental consequences for human lives and health, the country's security and the work of institutions and organizations, as well as for the purpose of fulfillment of international obligations and harmonization of legislation with the European Union Acquis. The bill proposer shall specify the reasons for adoption of the law by urgent procedure.¹⁶ When approving the agenda of Assembly's sitting, MPs may reject to adopt the agenda if they believe that a law should not be passed by urgent procedure, which enables them to stop the enactment of laws under urgent procedure. In implementing urgent procedures, there is a difference between regular and extraordinary sessions of Parliament. Regular sessions are convened twice a year, where MPs have the right to vote for or against urgent procedure for a particular law, while this option does not exist in extraordinary sessions. The Speaker of the National Assembly convenes extraordinary sessions and there is no option of adopting agenda. Therefore, it cannot happen that adoption of the law by urgent procedure is rejected, as in regular sessions. In case of extraordinary sessions, there is a possibility that the session is not scheduled due to the decision of the Speaker of the National Assembly who convenes a session, and thus urgent procedure may be avoided.

A bill, for the adoption of which an urgent procedure is being proposed, may be put on the agenda of a sitting of the National Assembly if it has been submitted no later than 24 hours before the scheduled beginning of the sitting. The Speaker of the National Assembly shall communicate the bill, for adoption of which an urgent procedure is requested, to MPs and the Government, if it is not the proposer of the bill, immediately upon receipt of it.¹⁷ A bill, to be adopted by regular procedure, may be included in the agenda of sittings of the National Assembly within no less than 15 days from the date of its submittal, which is the main difference in relation to urgent procedure. Specifically, the regular procedure requires the bill to be in hands of MPs at least 15 days, whereas under urgent procedure this deadline is shortened to 24 hours. Bills which regulate defense or requested by the Government, may be placed on the agenda of a session of the National Assembly even if submitted two hours before holding the sitting.

The competent committees or the Government should submit an opinion to the National Assembly, as a rule, within at least five days before the beginning of the National Assembly sitting at which the bill will be discussed, while this time period for urgent procedure is **one** day. Amendments to the bill, which are

¹⁶Rules of Procedure of the NARS, "Official Gazette of RS", 52/10, Articles 167 and 151

¹⁷ Rules of Procedure of the NARS, "Official Gazette of RS", 52/10, Article 168, Par. 1, 2, 4, 5

considered by an urgent procedure, may be submitted even **at the moment before the beginning of the first debate in principle** on that bill, while by regular procedure this deadline is three days before the beginning of debate in principle. This leaves us with a question regarding time period available for the committees, i.e. the Government for submitting an opinion, that is, whether they have time for a quality debate in order to provide adequate opinion on the proposed act.

The adoption of a bill by urgent procedure shortens the time of a bill in assembly procedure, and the time for the debate on a bill in the National Assembly. According to the Rules of Procedure of the National Assembly, **regular** and **urgent** procedures differ in the length of the debate. The bill can be debated by the committee for one day and the next day it can be discussed at the plenary session.

Differences	Regular procedure	Urgent procedure
Type of regulation	<i>All laws</i>	<i>Only laws regulating issues and relations which arose under unforeseeable circumstances</i>
Time when a bill is included in the agenda of a National Assembly session	<i>At least 15 days as of its submittal to the National Assembly</i>	<i>At least 24 hours as of its submittal to the National Assembly</i>
Deadline for submitting opinions of the Parliamentary Committee or the Government	<i>At least 5 days</i>	<i>One day</i>
Deadline for submitting amendments	<i>3 days before the beginning of the NA session</i>	<i>Until the beginning of the NA session</i>

3.2. Urgent procedure in practice

According to the Open Parliament initiative, which keeps a record of the laws that are passed by regular or urgent procedure, in the period from 1991 to 2014, 45% of laws are passed by urgent procedure. The biggest number of laws passed by urgent procedure was in 2008, amounting to 92% of laws, while the lowest number was in 1994, when this percentage was only 9%. Prior to 2000, the percentage of laws passed by the urgent procedure amounted to an average of 42%, while after 2000 it rose to 52% and was growing, so in 2014 it amounted to 71.9% of the laws enacted under urgent procedure. In the period that is relevant to our study, namely from 2011 until 2014, there was 58% of the laws enacted under urgent procedure in Serbia.

Table 1 – Laws passed under urgent procedure by year

Year	Total number of laws published in the Official Gazette	Published laws adopted by urgent procedure	%
1991	162	37	22.8%
1992	104	61	58.7%
1993	90	49	54.4%
1994	64	6	9.4%
1995	45	23	51.1%
1996	61	19	31.1%
1997	31	18	58.1%
1998	41	21	51.2%
1999	26	10	38.5%
2000	14	6	42.9%
2001	48	16	33.3%
2002	47	23	48.9%
2003	47	29	61.7%
2004	88	59	67.0%
2005	120	30	25.0%
2006	52	26	50.0%
2007	72	46	63.9%
2008	48	44	91.7%
2009	265	90	34.0%
2010	260	72	27.7%
2011	205	92	44.9%
2012	130	88	67.7%
2013	145	68	46.9%
2014	146	105	71.9%

In the period from 2011 to the present, a total of 583 regulations were adopted. Out of the total number of adopted regulations in this period, 337 regulations were passed under urgent procedure, which makes 58%, while 42% of laws were adopted by regular procedure. Among the regulations enacted under urgent procedure, the most represented were amendments to existing laws (54%), ratification of international treaties (23%), while the new laws were made in 19% of cases.

In addition to Serbia, other countries from the region have been faced with high number of laws adopted by urgent procedure. Croatia especially stands out as the country in which 1383 laws in total were adopted in the period from 2003 to 2011, of which 1140 were adopted by urgent procedure¹⁸. As it is emphasized by the authors of the study *Research on Improvement of Legislative Procedure in the Republic of Serbia*, both Slovenia and other countries have been faced during the pre-accession period with high number of laws

¹⁸Survey on the Improvement of the Legislative Process in the Republic of Serbia, p. 72, 2012.

adopted by urgent procedure, mostly due to harmonization with European Union legislation, which was done "mechanically" as reported.¹⁹

4. Disadvantages of urgent procedure

The study reveals a number of shortcomings when it comes to passing laws by urgent procedure. These issues can be grouped into five areas which we will consider in detail:

1. time frame for the enactment of laws
2. quality of adopted laws
3. misuse of procedures
4. unclear rationale
5. urgent procedures and the general public
6. Annual Work Plan of the Government

4.1. The issue of time frame

MPs are frequently faced for the first time with proposal of the law only when it enters assembly procedure. They are not part of the work group which writes proposal of law, and they are not included in the processes referring to agenda of the new laws. This means that MPs are involved in the whole process of law preparation only to low extent. When a bill is submitted to the National Assembly under urgent procedure, according to MPs' opinion, it is quickly presented to the plenary session. Therefore, MPs do not have enough time to read the bill, debate it with committees and write amendments as in very short period they have to become familiar with the proposal of laws. MPs sometimes have only one night to read a bill and prepare the amendment, which, as they point out, reduces the quality of the submitted amendments. Some MPs claim the cases of misuse in terms of even shorter time from the bill's entry to parliamentary procedure until the first session is scheduled, because the gap between these two events is shorter than prescribed 24 hours.

Lack of time for preparation leads to a lack of time for committee's work. Within 24 hours after a bill enters parliamentary procedure and until the plenary session is scheduled, it is difficult to hold two or three sessions of the committees. Regardless of whether a bill enters the National Assembly under urgent procedure, it is necessary to hold a session of the Committee on Constitutional and Legislative Issues and a session of the relevant committee, and their duration is not intended to be shorter than of the regular procedure. In addition, if the subject law is relevant to the process of European integration, it is necessary to organize a session of the European Integration Committee. When a law should be passed by an urgent procedure, committees' sessions, as stated by MPs, sometimes last only 10 minutes. A typical example are the sessions of the Committee on Constitutional and Legislative Issues, held without a debate, and the session is reduced to a brief check of prearranged criteria. MPs point out that in these cases even relevant committees do not debate on a bill, because MPs show up unprepared for the committee's session. The fact that committee's sessions are scheduled only an hour before the beginning of the plenary debate indicates the formality of discussions by the committees in the urgent procedure. This finding is particularly important given that the committee's debate should not be different than in the regular procedure.

19 Survey on the Improvement of the Legislative Process in the Republic of Serbia, p. 269, 2012.

“The debate by committees should not vary as to whether the law is proposed by urgent or regular procedure, but then you have a problem with scheduling a committee’s session for such a short time...” (An interview, a female MP of the NARS, February 2015)

Although there is a general perception that urgent procedure often involves abbreviated procedure for debate in the National Assembly, the representatives of technical services emphasize that the abbreviated procedure under urgent procedure has not been used for years in the National Assembly of the Republic of Serbia. In addition, urgent procedure allows even longer debates than it is in practice. With this in mind, the question arises why the committee sessions are so short. Our research indicates that the reason is that the period between scheduling and holding a session is very short, only 24 hours, and thus MPs and the National Assembly do not have enough time to hold committee sessions.

4.2. Quality of adopted laws

One of the consequences of accelerated law-making procedure is the series of deficiencies that appear in the text of the law. Some of them are technical, such as typographical errors, and some are essential, for example, the discrepancy in the actual text of the law. Discrepancies also occur in amendments, so it happens that MPs submit amendments that are not mutually agreed. Given that several people read the same law and prepare amendments, due to tight deadlines, it happens that a large number of amendments is later submitted with corrections, all of which results in not only failure to adopt an amendment, but the adoption of the law with substantive errors.

Analysis made by Open Parliament which refers to the period from 16 April 2014 to 15 April 2015 indicates that 193 laws were adopted during this period, of which 124 laws were adopted by urgent procedure (64%). Out of total number of laws adopted by urgent procedure, number of adopted proposals of laws was – 26 (21%), modifications and amendments of laws – 67 (54%), number of confirmed international agreements and contracts was – 31 (25%). If we exclude international agreements and contracts, we come to the conclusion that 92 laws were adopted by urgent procedure for one year. Also, it is especially worrying that out of 93 laws, 12 ones were additionally modified and again by urgent procedure, which means that every eighth law adopted by urgent procedure was modified.²⁰

Incompatibility of a law is closely associated with insufficient commitment and lack of dialogue between MPs. The research shows that MPs do not delve into reading the law, which then leads to a large number of amendments to the law that might have been anticipated in advance. In addition, the lack of dialogue between MPs of the ruling coalition and opposition results in other types of issues: although opposition MPs sometimes point out certain deficiencies in the law, it happens that MPs of the ruling coalition ignore them.

“...laws are disastrous. In the last 9 months, the laws were returned 3 times to be corrected immediately after their adoption.” (An interview, a male MP of the NARS, February 2015)

“Since urgent procedure is done so hastily, you have a lot of errors, substantive and others, and therefore even laws comprising two articles are amended.” (An interview, a female MP of the NARS, February 2015)

²⁰ The list of 12 laws which were adopted by urgent procedure and then also modified by urgent procedure is separated in given in Annex 1.

4.3. Misuse of procedure

Urgent procedure enables the debate of the bill at the Assembly session (i.e. debate in principle) 24 hours after it enters the procedure, but this is not a mandatory path. It often happens that laws, which have been proposed for the urgent procedure, in practice, are not put on the agenda of the National Assembly of the Republic of Serbia within the prescribed time period. Some of the laws are proposed by urgent procedure, but are presented at the National Assembly session much later, and adopted only after a long period, in some cases, even 27 days after they enter parliamentary procedure. In the period from 2011 until the end of 2014, on two occasions the laws that entered the National Assembly under urgent procedure were adopted only after more than a year, while only 12 laws were adopted within three days as of entering the NARS. Out of the total number of laws enacted under urgent procedure, only 51% was actually adopted by urgent procedure, while the remaining 49% were adopted after more than 15 days as of entry into parliamentary procedure.²¹

On the one hand, this happens because the extraordinary session of the Assembly is not scheduled, which should be initiated by bill proposer, while, on the other hand, this leaves room for extending the deadline for submitting amendments. However, this practice refers to misuse of the procedure even when there is no real need for it.

Table 2 – Number of days for the laws currently proposed by urgent procedure

For how many days is the bill in the Assembly procedure	Number of bills	In %
3 to 4 days	18	5.6%
5-10 days	93	29.2%
11-14 days	53	16.6%
15-30 days	88	27.6%
31-90 days	55	17.2%
91-201 days	9	2.8%
More than 202 days	3	0.9%
total	319	100.0%

“This is the case of plain misuse of urgent procedure, because flaws in the work of the Government and MPs are concealed in such manner“ (an interview, a male MP of the NARS, February 2015)

4.4. Unclear rationale

According to the Rules of Procedure of the National Assembly of the Republic of Serbia, only a law regulating issues and relations which arose under unforeseeable circumstances, where the non-adoption of such a law by urgent procedure could cause detrimental consequences for human lives and health, the country’s security and the work of institutions and organizations, as well as for the purpose of fulfillment of

²¹ The Rules of Procedure of the National Assembly apply the abbreviated process to the urgent procedure as well as to the standard legislative procedure. A plausible interpretation of the Rules of Procedure of the National Assembly would suggest that the lack of reference to these matters implies that the rules of debate for bills considered under regular procedure will generally apply, but nevertheless it would be more desirable to specify that they apply.

international obligations and harmonization of legislation with the European Union Acquis, may be adopted by urgent procedure.²²

Having analyzed the regulation, we establish four key rationales that may be referred to by bill submitters by urgent procedure, as follows:

1. To prevent detrimental consequences for human lives and health,
2. To prevent detrimental consequences for the country's security,
3. To prevent detrimental consequences for the work of institutions and organizations,
4. To fulfill international obligations
5. To harmonize legislation with the European Union Acquis

The analysis of rationales provided for laws enacted under urgent procedure in 2011 shows they are largely unclear and do not indicate the real reason why the laws are made by urgent procedure. Rationales very often contain the presentation of the bill that does not clearly imply reason for adopting laws under urgent procedure.

In addition to this, rationale not stipulated by Rules also stand out, for example rationale which indicate that it is necessary to adopt certain regulation by urgent procedure for purpose of spending or collecting financial funds. This reason frequently appeared in the form of rationale such as: control of public finances, collection of income, spending of public finances, taxes.

Also, proposals of laws which are submitted, and which should be adopted by urgent procedure, should be subject to some of this rationale. However, it was established by analysis that not only that adequate reasons stipulated by Rules are not used, but also that they do not provide sufficiently clear rationale which could clearly indicate the reason why the law would not be adopted in regular procedure, i.e. how detrimental its adoption by regular procedure would be.

The analysis of rationales conducted on all laws that were adopted by the urgent procedure in the period from November 25, 2011 to December 31, 2014, shows differences when analyzing only adopted laws and amendments to the laws and when the analysis includes the laws pertaining to ratification of treaties and the provision of guarantees. By analyzing only laws and amendments to the law, the reasons for the enactment of laws under urgent procedure mostly relate to the possible detrimental consequences for the work of the organization (48%), while the second reason is the control of public finances, or the collection of revenue, public fund spending, taxes (18%). In addition to these two reasons, there is also the fulfillment of international obligations and harmonization with the EU Acquis (14%), while the rationale referring to human lives and health, and country's security rarely occurs (3% and 1%, respectively).

However, if the analysis includes the laws pertaining to ratification of treaties and the provision of guarantees, the picture is changed. Rationale concerning the work of institutions and organizations (56%) still holds the first place, while the second is the rationale relating to the fulfillment of international obligations and harmonization with the EU Acquis (16%). Control of public finances holds third place (13%).

Table 3 – Rationales

Rationales of adopted regulations under urgent procedure	Passed laws and amendments to laws	%	Passed regulations	%
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²² Rules of Procedure of the NARS, "Official Gazette of RS", 52/10, Article 167

1. Life and health	10	4.1%	11	3.3%
2. Country's security	3	1.2%	3	0.9%
3. The work of institutions and organizations	119	48.4%	187	55.7%
4. Fulfillment of international obligations and harmonization with the EU Acquis	34	13.8%	55	16.4%
5. Harmonization of national legislation (better implementation of regulations)	13	5.3%	13	3.9%
6. Economic crisis	4	1.6%	4	1.2%
7. Control of public finances (revenue collection, public finance spending, taxes)	44	17.9%	44	13.1%
8. Detrimental consequences for citizens (rights and freedoms)	9	3.7%	9	2.7%
9. Detrimental consequences for trade	8	3.3%	8	2.4%
10. Other	2	0.8%	2	0.6%
Total	246	100.0%	336	100.00%

1,2,3,4,5 – rationales provided by Rules of Law

6,7,8,9,10 – other rationales

MPs themselves are aware that rationales that are submitted with the proposal of laws under urgent procedure are unclear and cannot always be attributed to any of the categories of rationales of the Rules of Procedure of the National Assembly of the Republic of Serbia.

“Rationales are absolutely unclear.” (an interview, a male MP of the NARS, February 2015)

“Rationales are meaningless, regardless of who is a ruling party” (an interview, a female MP in the NARS, February 2015)

4.5. Urgent procedure and the general public

According to many MPs, one of the biggest drawbacks of the urgent procedure is that the law quickly passes through parliamentary procedure and gets adopted without informing the general public. MPs say that by trying to read the bill and *“prepare amendments, they do not have time to inform future users of the law if they will be denied any rights or not, let alone to hear their opinions”*²³. In addition, they do not even have time to consult with experts.

²³Quote from qualitative research – statement by a female MP of the NARS

“What you cannot do, no matter how hard you try as an MP, is that you cannot get to inform people about it, because this information does not reach people. This is the biggest drawback of the urgent procedure. You just don’t have time to inform anyone, and next moment the law comes into force. That’s why it should be the exception and not the rule.” (An interview, a male MP of the NARS, February 2015)

Such a work of the National Assembly decreases its democratic potential, prevents the general public from participating in democratic procedures, and consequently undermines the legitimacy of the National Assembly. Research show little ability of civil society and the media to control the work of state institutions²⁴, and the research findings indicate that this already small ability is further reduced by the extensive and arbitrary use of urgent procedure for passing laws.

In a time period of less than a year, the Law on Notary Public had entered the National assembly procedure three times, and it was adopted three times, all by urgent procedure. The law was firstly adopted on 31st August 2014, and it was amended only two months later (5th November 2014). The final version of the law was reached on 21st January 2015, when the second amended version of the Law on Notary Public was adopted.

4.6. Annual Work Plan of the Government

Article 28 of the NARS Rules of the Procedure, the Annual Work Plan of the National Assembly determined by the Speaker of the National Assembly is harmonized with the Annual Work Plan of the Government²⁵. However, according to the National Assembly data, in the last ten years the Government of RS officially submitted its annual work plan only for 2012 and 2013. The Government should prepare these plans for every year, and to our knowledge the annual plan for 2015 is available on the website of the Republic Secretariat for Legislation, but not on the Government's website, so it is difficult to be found. It is not advisable that such a document is sought by MPs themselves, but it should be officially submitted every year to the National Assembly in order to harmonize annual work of the National Assembly for purpose of harmonization with annual work program of the Assembly itself. Therefore, harmonization of annual work plan of Assembly with annual plan of the Government is important, which would contribute to the fact that MPs could prepare themselves in advance for analysis for ensuing laws. More precisely, if they would know at any moment which law is the following to enter assembly procedure, this would ensure provision of adequate preparation of MPs for debate.

However, the analysis conducted by the Open Parliament initiative shown that Government often does not respect its own Work plan, so laws do not arrive in the parliament procedure in accordance with the terms that the Government has set itself. In the period from January to March 2015 from the planned 74 legislative proposals, the Government, as the proponent, sent to the Parliament only 10 (13.5%).²⁶

5. Improving urgent procedure

²⁴Open Parliament, How do MPs make laws? Analysis of legislative activities in the National Assembly of the Republic of Serbia - the second report, available at <http://www.otvoreniiparlament.rs/aktuelnosti/kako-narodni-poslanici-donose-zakone-analiza-zakonodavne-aktivnosti-u-narodnoj-skupstini-republike-srbije-drugi-izvestaj/>

²⁵Rules of Procedure of the NARS, "Official Gazette of RS", 52/10, Art. 28

²⁶ Open parliament,

The previous chapter presented main shortcomings of the urgent procedure established in this research. This chapter will present suggestions for improving urgent procedure stemming both from the research and from interviews with MPs. Some of the proposed changes involve relatively small changes in the work of both the Government and the National Assembly, and some represent substantial changes in the work of all those involved in the decision making process. These suggestions should serve as basis for opening the debate to improve the legislative process through a better definition of procedure for urgent procedure. Suggestions for improvement and prevention of misuse of urgent procedure are:

1. Making rationales specific,
2. Establishing a mechanism for rationale check,
3. Submitting the annual work plan of the Government,
4. Increasing the efficiency of the National Assembly's work,
5. Establishing working groups and monitoring of new laws in different areas before they enter the parliamentary procedure.

1. Making rationales specific refers to reducing the scope of the rationale. In fact, some MPs believe that rationales, such as those relating to the work of institutions and organizations and fulfillment of international obligations and EU integration are unnecessary as prerequisites for urgent procedure, and advocate for their exclusion, which would reduce share of laws that are passed in urgent procedure.

Similar rationales were presented in the study "Law Drafting and Legislative process in the Republic of Serbia – An Assessment". "It is necessary that parliamentary procedures allow for bills of greater political and legal importance to be afforded more time for scrutiny and debate than those of lesser importance, and also to accommodate bills required to meet urgent circumstances."²⁷

"If we reduced the scope, and adopted only the laws preventing damage to health and safety under urgent procedure, I would not change procedure at all. But that means that only 5% of the bills, or even less than 5% would be proposed in urgent procedure, and then I would not change it." (An interview, a male MP of the NARS, February 2015)

2. Establishing a mechanism for rationale check for passing laws under urgent procedure presents the following recommendation of MPs who participated in the study. Rationales for bills proposed under urgent procedure are often confusing and do not indicate the real reasons for the need for urgent procedure. Sometimes, they do not match the rationale required by the NARS Rules of procedure. Some of the rationales come down to presentation of the bill, and it seems that the bill submitter implies the required urgent procedure, although it is not elaborated in the text of the rationale. Therefore, it is necessary to design a control mechanism for assessing the quality and justification of the rationale for the enactment of laws under urgent procedure.

3. Annual work plan of the Government is one of the most important prerequisites for reducing the number of laws enacted by urgent procedure. In this way, the Government would show a clear policy of passing laws, and MPs would know in advance which laws the Government is planning to release in the procedure that year. The need for using the urgent procedure would be thus decreased.

²⁷Law Drafting and Legislative Process in the Republic of Serbia – An Assessment, OSCE/ODIHR, str. 72

“..The Speaker of the National Assembly is not obliged under the Law to convene a collegium at the beginning of the regular session of the Assembly, and the Government is not obliged to send a work plan for that year. This would mean that the Government knows which laws will be released for the parliamentary procedure for that year, and that means you don’t have to use urgent procedure, because you have a plan.”(an Interview, a female MP of the NARS, February 2015)

4.Increasing the efficiency of the National Assembly’s work reflects, among other things, the need to make better use of all available resources of the NARS. The MPs point out that it often happens that the laws adopted under urgent procedure contain errors and inconsistencies, which entails the need for new regulations, which will then be adopted under urgent procedure. To avoid this, it is necessary that a larger number of MPs carefully read the laws. In addition, dialogue between technical services and political representatives and the Speaker of the NARS should be improved, as well as among political representatives themselves. Many MPs believe that such improvement of the NARS work would reduce the number of laws that are passed in urgent procedure, as well as the misuse of the urgent procedure.

“The problem is basically the lack of dialogue, lack of knowledge about the dialogue. Parliaments are based on dialogue, as a basic strategy, the basic mechanism. They are based on dialogue, but procedures are dead if there is no dialogue. Urgent procedure is proof of that, it’s dead procedure because there is no dialogue about it.” (an Interview, a female MP of the NARS, February 2015)

Increasing the efficiency of the National Assembly includes **more proactive stance of the Collegium of the National Assembly** that would allow MPs to prevent certain laws to be adopted by urgent procedure, especially in the extraordinary session of the Assembly. The Collegium is a unique working body of the National Assembly and, as such, has the ability to return specific laws to the submitter if a decision is made that it is not necessary to go through urgent procedure. In addition, the collegium could also decide on the same topic in regular session, which would avoid the need MPs to declare at the plenary session, when they think that it is already too late for such a law not to be passed in the urgent procedure.

“We declare our opinion when the bill comes to the National Assembly, but then it is already late, so why doesn’t the Speaker of the NA return the law under urgent procedure?”

“The Speaker of the National Assembly may do it in the collegium, which consists of the Speaker and Deputy Speakers and heads of all parliamentary groups, since it is a working body of the NARS in the strict sense. The Speaker of the National Assembly can inform the collegium on received proposal from the Government for a bill in urgent procedure. The Speaker can express his/her disagreement and reasons for doing so, and then the collegium can exchange opinions and decide on that matter, i.e. inform with a kind letter the Government or the authorized bill submitter that the National Assembly will not be convened because it is not mandatory....“

5.Establishing working groups by fields that will comprise active MPs, present a solution for improving the monitoring role of the National Assembly, on the hand, and also enable better legislative function, on other hand, because the working group MPs would be informed in actual drafting of new laws in certain fields. In this way, MPs would be familiar with the bills proposed at the very beginning, in its work-in-progress version.

“I think all of us as MPs should choose one field according to our education, as we cannot have access to all fields, but 250 of us can cover all the laws that are being prepared very easily through the work of committee, the work of the working groups.“

6. Conclusion

Since 2000, more than half of the laws have been passed by urgent procedure in Serbia. Last year (2014) even 72% of the laws was adopted by urgent procedure. The disadvantages of this procedure are numerous: MPs do not have enough time for preparing themselves for the work on the law, nor for a debate in committees and plenary session, the public may not be familiar with the law, the procedure is often misused, reducing the democratic legitimacy of the NARS, etc. In addition to the democratic deficit, one of the consequences is that the laws are adopted with various deficiencies, ranging from substantive errors to non-compliance with other regulations. In cases of real urgency, parliamentary procedure must allow for legislation to be enacted²⁸. The urgent procedure, as provided for by the NARS Rules of procedure, offers a functional procedure for the adoption of some, but not all laws. The biggest problem is that urgent procedure has become the rule rather than the exception. Therefore, the first task for the Government of the Republic of Serbia, as the most common proposer, and the National Assembly of the Republic of Serbia, as a supreme legislative body in our country, **is to reduce the number of laws adopted by urgent procedure. This would improve the quality of adopted laws, the quality of the legislative process, and thus solidify and strengthen democratic procedures in the country and the society.**

²⁸Law Drafting and Legislative Process in the Republic of Serbia – An Assessment, OSCE/ODIHR, 2011, p. 46

Annex 1

The list of the laws which were adopted and modified by urgent procedure:

1. The Law on Ministries
2. The Law on Modification of Privatization Law
3. Real Estate Trading Law
4. The Law on Modifications and Amendments of the Law on Enforcement and Security
5. The Law on Modifications and Amendments of the Law on Civil Procedure
6. The Law on Certification of Signatures, Manuscripts and Transcripts
7. The Law on Modification of Health Care Insurance Law
8. The Law on Modifications and Amendments of the Law on Notary Public
9. The Law on Modifications and Amendments of Planning and Construction Law
10. The Law on Modifications and Amendments of the Law on Budget for 2014
11. The Law on Modifications and Amendments of the Law on Pension and Disability Insurance
12. The Law on Modifications and Amendments of the Law on Tax Procedure and Tax Administration