



p o l i c i e s f o r c u l t u r e

GUIDE TO THE POLICY MAKING PROCESS

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Romania

Introduction

This guide has been prepared by one of the experts on the Policies for Culture Programme, Mr Virgil Ștefan Nițulescu, legislative expert in the Committee on Culture and Mass Media in the Romanian House of Deputies.

It is a very useful tool for all artists, professionals, cultural operators and administrators who intend to tread the path of lobbying the state institutions, as well as for those who are simply interested in the workings of the legislative process.

The guide aims to:

- 1) explain briefly how policy-making works, which bodies are involved and how they interact;

- 2) explain what the role of the third sector can be in the policy- making process (i.e. commenting on legislation, initiating legislation, lobbying and advocacy)
- 3) indicate how the process works within a temporal framework (what happens to a legislative draft?);
- 4) indicate how and where to attend plenary sessions, committee meetings (what are the procedures; who are the people and departments to contact?)
- 5) indicate how one can gain access to legislative drafts.

Learn the tricks of the trade in Romania – An Introduction!

I THE MAKING OF A LAW

The “actors” involved

The actors that take part in the process of making laws include:

1. political parties
2. the Executive
3. the Legislature
4. the President
5. the “Third Sector” or civil society

1. Political parties

Each of the parties competes in electoral campaigns with a certain programme, which includes an “offer” made to the voters, about the measures that the party intends to take in order to change the way culture is administered.

In Romania, the main parliamentary parties are: Romanian Social Democratic Pole (an alliance of three social-democrat parties, the most important being the Social Democracy Party of Romania), Great Romania Party, Democrat Party, National Liberal Party and the Democratic Union of the Hungarians from Romania.

2. The Executive

The Executive is the highest executive body; it has the power to administrate the country, under the provisions of the law. It also adopts certain acts of delegated legislation – ordinances – and decisions for enforcing laws and is entitled to initiate the adoption of laws by drafting, deliberating and forwarding bills to the Legislative. The Executive is the expression of the political will of the electorate, its composition being decided by the Legislature that approves, also, the programme under which the Executive will govern. Theoretically, this programme should be the one that holds the

main characteristics of the programme presented during the electoral campaign by the party/parties that won the elections.

In Romania the Executive level is called the Government and includes the Prime Minister and 25 ministers.

3. The Legislature

The legislature debates and approves the bills sent to the Parliament by the Executive, after which it presents these laws to the President for promulgation.

The Legislature is elected by a system of proportional representation by universal adult suffrage for a four-year term. In Romania it is called the Parliament and it has two chambers (the Senate and the Chamber of Deputies).

4. The President

The President promulgates the laws, making them come into force, after having being published in the Official Gazette.

The President is the head of the State and is elected directly by the electorate under a system of majority representation every 4 years, for a maximum of two four-years terms.

5. The third sector and the civil society

Leaving apart the state administration and the business community, the rest of the (independent) organisations that comprise the cultural sector are considered to be the “third sector” of the society. Many of them have civic and cultural goals, some of them being considered to be important representatives of civil society.

Some of the persons active in these organisations are full time employees of public cultural institutions. Others work in private cultural organisations. Many are members of professional bodies and/or trade unions.

The process of drafting laws

The Minister

In most cases, a bill is drafted by the personnel from a Ministry, at the request of the Minister.

In Romania, the Ministry of Culture and Religious Affairs establishes a team that has the duty to draft a bill, using persons working outside the Ministry for expert advice (depending on the capabilities of the in-house employees) or not as the case may be. If the subject of the draft bill is connected with social – economic problems, the Ministry has the obligation to ask employers and trade unions active in the cultural field to express their opinions. If the subject of the draft bill is linked to the activity of certain non-governmental organisations, the Ministry has to ask their opinions also.

When the Minister approves the draft bill, it has to be sent to different ministries that have competence on the matter, in order to let them express their opinions. In Romania, after all the stakeholders have accepted the draft bill, it needs more approvals - from the Legislative Council and the Economic and Social Council (the latter, if the draft bill deals with social – economic problems). Then, the draft bill has to be approved by the Government and it is sent to one of the two Chambers of the Parliament.

The Parliament

Furthermore, one or more parliamentarians may initiate a draft bill, in which case, it is sent, directly, to the Standing Bureau of one of the two Chambers. Then, before coming to the Committees, it obtains a visa from the Legislative Council and, if it would have financial consequences, it is sent to the Government for an opinion.

The Citizen

A draft bill may be, also, initiated, in Romania, by a number of at least 250,000 citizens entitled to vote. Citizens manifesting their right to legislative initiative must belong to at

least one quarter, of the country's counties, and in each one of these counties or in Municipality of Bucharest (the Capital city), there must be registered at least 10,000 signatures in support of the respective initiative. Fiscal issues, international questions, amnesty, and pardon may not form the object of the citizens' legislative initiative. Legislative proposals involving a modification of the state budget or of the budget of the state social insurance must be substantiated on the information compulsorily required from the Government.

The Procedure

In Romania, the procedure for the adoption of laws is the same in both Chambers of the Parliament, because they are equal in power.

The bills may be presented to one of the two Chambers, by the choice of the initiator. The initiatives are registered in the order of their presentation. After they have been received and registered, the Standing Bureau of that Chamber will distribute them to the parliamentarians and send them to the standing committees for examination in the substance and formulation of an advisory opinion.

After they have received the **draft bills** (initiated by the Government) the **legislative proposals** (initiated by parliamentarians) or **the legislative initiatives (by citizens)**, the parliamentarians may advance motivated amendments in writing, which are transmitted to the standing committees at least 5 days before the date they have to conclude their report.

At the request of the chairman of the parliamentary committee informed of the matter, the Legislative Council analyses and issues an advisory opinion on the amendments submitted to the debate of the committee and the draft bills or legislative proposals received by the committee after their adoption by one of the Chambers of Parliament.

The Standing Committee informed of the matter draws up a report including proposals with regard to the amendments presented, to the adoption or rejection of the draft bill or legislative proposal as well as to the advisory opinions communicated by the committees informed to this purpose.

The Standing Bureau distributes the report drawn up by the committee informed of the matter to the members of the respective Chamber and to the Government.

The draft bills and legislative proposals for which the committee informed of the matter has drawn up a report are entered on the agenda of the Chamber of Parliament. **Before it is entered on the agenda, the author of the legislative initiative may withdraw it.**

After approval of the agenda by the Chamber, the draft bills and legislative proposals are submitted to debate and adoption in the order in which they were entered on the agenda.

The development of the legislative procedure in the plenum of the Chambers involves a general debate on the draft bill or of the legislative proposal and a debate by articles. The general debate is preceded by a presentation by the initiator or his representative, of the motives that have led to the promotion of the legislative initiative.

The initiator's intervention is followed by the presentation of the report of the standing committee informed of the matter. A rapporteur designated by the committee presents the report. After presentation of the report, the president gives the floor to the parliamentarians in order of their names entered on the speakers' list. **The initiator has the right to take the floor before the closing of the general debate.**

At the general debating stage of the legislative initiative amendments can be neither proposed, nor adopted. If the report of the standing committee informed of the matter proposes the rejection of the legislative proposal, after closing the general debate, the president of the Chamber may put the matter to the vote.

After exhaustion of the general debate, the Chamber passes to the debate of the legislative initiative by articles, only if there are modifications proposed in the report of the standing committee informed of the matter. In the discussion of each article, parliamentarians may take the floor to express their own opinion or that of the group to which they belong. The initiator also may take the floor. In the speeches only amendments can be suggested regarding clarity of expression and style or issues which do not affect the substance of the case and which are of lesser importance.

The discussion of the articles begins with the amendments. During the debates, the parliamentarians or the Government may raise for discussion the amendments rejected by the committee informed of the matter or the amendments handed in to the committee, but not appearing in its report. By way of exception, new amendments may be handed over during the debates in plenum as well. Amendments must refer to the contents of a single article.

In case the amendment has important consequences on the draft bill or on the legislative proposal, it may be decided to send it for an advisory opinion to the competent committees. **The initiator of the amendment has the right to be heard at the proceedings of the committee.** The discussion begins with the amendment proposing the elimination of some texts included in the article submitted to debate, and continues with those regarding their modification or supplementation. In case there are several amendments of the same kind, they are submitted to the vote in the order in which they were presented.

The Chamber decides by distinct vote on each amendment. At the request of the Government or on its own initiative, the Chamber may adopt draft bills or legislative proposals by an expeditious procedure established according to the standing orders of each Chamber. At the closing of the debate by articles of each draft bill or of each legislative proposal the Chamber proceeds to their final voting. Draft bills or proposals

for the revision of the Constitution are adopted by a majority of at least two thirds of the number of members of each Chamber. Drafts of organic laws are passed by the vote of a majority of the members of each Chamber. Ordinary draft bills are passed by the vote of a majority of the members present in each Chamber.

If the draft bill or legislative proposal has been adopted, it is signed by the president of the Chamber and sent for debate to the other Chamber of Parliament. A draft bill or a legislative proposal adopted by one Chamber and rejected by the other is sent to the Chamber that has rejected it with a view to a new debate. A new rejection is final. If one of the Chambers has adopted a draft bill or legislative proposal in a wording different from that passed by the other Chamber, the presidents of the two Chambers initiate the procedure of mediation through the agency of a parity committee. The mediation committee would try to eliminate the texts on which there is division of opinion by drawing up a formulation acceptable to the two Chambers. The proposals of the Mediation Committee are entered in a report, which is submitted for debate and adoption to the two Chambers in separate sittings.

In case the Chambers adopt the Mediation Committee's report, the law is sent for promulgation.

In case the Mediation Committee fails to reach an agreement with regard to the issues on which there is division of opinion, or if one of the Chambers does not approve the Mediation Committee's report, as a whole or in part, the texts on which there is division of opinion are submitted for debate in a joint sitting of the two Chambers, according to the standing orders of these sittings. The laws adopted are submitted to a preliminary control as to their constitutionality at the intimation of the President of Romania, of one of the presidents of the two Chambers of the Government, of the Supreme Court of Justice or of a number of at least twenty-five senators, or at least fifty deputies. In order to exercise this right, the law is handed to the secretaries general of the two Chambers, it is communicated to the interested parties, and, after passage of a term of five days, it is sent to the President of Romania for promulgation. Intimation of the Constitutional Court suspends the term for the promulgation of the law.

If the Constitutional Court has been informed and has declared the law unconstitutional as a whole or in part, the Constitution provides the release of the re-examination procedure. This procedure presupposes an examination of the objection of unconstitutionality first in the Juridical Committee, and then, on the basis of the report of this committee, in the plenum of the Chamber, where the law declared unconstitutional is submitted to a single vote only. The objection of unconstitutionality of the Court is removed only in case that both the Chamber of Deputies and the Senate have adopted the law in the same form, with a majority of at least two thirds of the number of members of each Chamber. In case in one of the Chambers the two thirds majority is not obtained, the provisions declared unconstitutional by the Constitutional Court are removed from the law, and the necessary technical and legislative correlations are operated with the Chamber's approval; if the law as a whole is declared

unconstitutional and the Chambers once more fail to adopt it by at least two thirds majority, it will no longer be sent to the President of Romania for promulgation.

The laws adopted by the two Chambers of Parliament with identical texts are sent for promulgation to the President of Romania. The promulgation is made within 20 days at the most after its reception. Before promulgation, the President may ask Parliament, once only, to re-examine the law within not more than 20 days after the law was received for promulgation. If, after re-examining the law, both Chambers adopt or reject the objections of the President of Romania, the President is obliged to proceed to the promulgation within 10 days after the reception of the law adopted after re-examination. The same promulgation term operates also in the case in which the President of Romania has received the decision of the Constitutional Court by which the law is declared constitutional.

See annex 1:

Legislative Process in the Romanian Parliament

In Romania, the law comes into force on the day of its publication in the Official Gazette of Romania, or at the date provided in its text, which date may not be previous to the publication.

Importance of the third sector

During the communist regime, the artists had a kind of dual status in society. On the one hand, they – exactly like the entire society – had to obey the dictatorship. There was no question of liberty of creation or of autonomy of art in relation to politics. On the other hand, culture was almost entirely supported by the state and even the few artists who worked as freelancers had a certain material support to count on. Simultaneously, the artists were the only ones who had the possibility to express some truths about the society they lived in, but only by indirectly using their artistic “language”. In many cases, the artists formed the only visible opposition to the regime.

Nowadays, artists are not anymore in the position of forming the “opposition” and there is still a process of adapting to new realities. Though this process started in 1990 already, it has not ended, even today. Some artists are not interested in legal matters, considering that it is not their duty to think about legislation, either that it is useless – because they would not solve their problems by being involved in the legislation process. Of course, first of all, it is their right to think so and, secondly, not everybody has the same abilities and interests to act inside a non-governmental organisation and/or to spend time and energy in (often boring) debates about legal documents and administrative problems. However, those who have made this effort have learned some facts about it:

1. **There is nobody who knows better the needs of an artist than an artist himself.** Somebody, inside the profession, has to sacrifice a creative time, to tackle administrative problems. It is unfair to always stay on the touchline and criticise those who, at least, have tried something.
2. The best way to defend the artists' rights is through an **association of artists**, with at least one clearly defined goal (for instance, managing authors' rights).
3. Artistic value has no importance in legal matters. A law cannot make a distinction between a masterpiece and a no-value-at-all piece of art. Before the law, a work of art has the same appearance, irrespective of the author or of its value. That is why an association that is trying to obtain the recognition of certain rights for the artists (authors), it is very important to have as many members as possible. Obviously, it is preferable to place famous and respected artists in the honorary positions, in order to attract the public interest. But there is no point in transforming such an organisation in an elitist organisation. "As many members as possible" and "the best managers in the highest executive positions" are two good principles for each such organisation.
4. Politics has nothing to do with professional organisations. A third sector organisation that is trying to influence the legislation has to stay out of politics. If it is identified with a certain political party, it is not trusted by the others and it is rejected when political change occurs (it will always happen!). On the contrary, it is at its best when it has members sharing different political opinions, because it will always have an audience on the side of the parties. A professional organisation has to have allies in all the political parties, irrespective of their orientation, in spite of the fact that some parties may look quite "non-friendly" for artists, for creators and for the intellectual elite.
5. If an organisation has enough members who could pay a yearly contribution, it may hire independent counsellors (lawyers, accountants) to pledge its needs in front of the official bodies. The leaders of an association have to understand the laws and the legislative or/and financial mechanisms, but they do not need to become experts in these fields.
6. Each law is the expression of a particular interest. In order to accomplish a certain objective by the mean of a law, an organisation should think about starting a campaign for each of its targets. The media should be a partner in such a campaign from the very beginning. **Media and the artists, together, are making the most influential force of the society.**
7. The campaign should be carried out for as long as it takes: from the issuing of the problem and the first analysis with the personnel of the Ministry, up until the moment that the new law is promulgated.
8. After promulgation, the law has to be explained to the professional body that the law was made for. Sometimes, it is not so easy to understand a law, even for the lawyers, let alone the artists. A professional community has the need to know what could be its benefits from a law.

The importance of the third sector organisations is not always recognised by the authorities, even though the state cannot properly regulate the system of cultural

administration without their help. Many times, the authorities seem to be deaf to the requests of those working in cultural institutions. Ironically, when the same requests are sustained by civil society - there are more chances for success. The relationship between the Ministry and the institutions is one of subordination. The relationship between the Ministry and the non-governmental organisations is that of partnership. No Minister would like to have a bad relationship with the civil society.

Important areas for third sector organisations

There are some fields for which third sector organisations have to have special attention.

The very first of them is that concerning the **legal status of the non-governmental organisations**. It is important because it defines the limits of action the associations, leagues, unions and all the other are offered to exist in. Also, the law concerning the trade unions is important, because some of the rights of those working in the cultural institutions may be obtained only by using the powers the trade unions have.

According to a UNESCO definition (contained in the 1980 Recommendation on the Status of Artist), an artist is “any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognised as an artist, whether or not he is bound by any relations of employment or association”.

For every person considering himself/herself an artist, one of the most important parts of legislation is that concerning **the authors’ rights** and the **neighbouring rights**. It is worthy to mention that not only those considering themselves artists need to be aware about the provisions of this specific legislation. Publishers, curators, owners of galleries and newspapers, translators and librarians – to mention just a few – are or should be equally interested in this legislation.

The **financial legislation** is, maybe, the most difficult to be understood. However, it is of extreme importance. Not only the annual **budgetary law** or the **law on sponsoring**, but, also, other laws should stir up the cultural community interest: the laws on value added tax (VAT), on excise duty, on income tax, on local taxes and that of the fiscal stamp applied to different cultural services and products in the benefit of the artists.

The legislation on **education** is, also, of interest. It may affect arts' education.

Of course, the laws concerning all kind of cultural institutions have to capture artists’ interest, irrespective of very content of the law. Often visions concerning a whole category of organisations or artists may be issued in laws with economic or very general issues. That is why, the title of a law is not, always, indicative about all its details.

II LOBBYING – STEP BY STEP

Although it has not as yet been settled by the means of a specific law, the action of lobbying is a common custom. There are many organisations that have already obtained certain abilities in lobbying: such as the Association for the Defence of the Human Rights – the Helsinki Committee, the Group for Social Dialogue, the Association for the Protection of and Promotion of the Press Liberty, the ACCEPT group and many other similar organisations that are very active in the field of defending all human rights and the constitutional provisions. We may add to this a long list of trade unions and a special organisation that is bringing together several professional organisations of artists: the **National Alliance of Creators Unions**.

As a noun, **LOBBY** means **ANTECHAMBER**, and, as a verb, means **TO INFLUENCE**. In fact, both meanings are important. The interested organisations have to influence the Executive and Legislature and their only chance to do this – being not parts of these bodies – is to make it in the *antechamber*, with all sort of influence.

First of all, it should be said that the process of lobbying asks for a lot of energy, efforts and patience. It is almost impossible for a law to appear in only one year in Romania. If the process of lobbying starts at a certain T moment (the first stage), the initiators of the process should expect to read the law in the Official Gazette in T + 2 or even 4 years! A shorter time should be considered almost a miracle. However, if it takes more than 4 years, it means that something went wrong during the lobbying campaign.

The first stage of the lobby is an **initiative** (this verb is extremely important during all the process). The interested professional organisations have to have the initiative. Maybe, not everybody is aware of the fact that the Executive and the Legislature are in the service of the society (and not the vice versa!), the original meaning of the word *minister* (for instance) being *servant*. Developing the governmental programme is not enough. During the process of delegating the powers (Electorate → Legislature → Executive), parts of the will and interest of the voters may be lost or misunderstood. Those in power have to listen and respond to civil society's initiatives – that are not the expression of a privilege, but of a right. That is why, the third sector's structures have the moral duty to be the partner of the Executive, and offer it ideas and solutions and, when possible, even draft bills or draft governmental decisions.

One of the reasons for which it is desirable that the professional organisations have their own legal adviser is the fact that some of civil society's problems could be solved with the help of only a simple ministerial order. In other cases, the problems' solution lies only in the issue of a new law. A kind of “natural impulse” for the third sector is to super-evaluate its role and ask, almost always, for amending the laws, when things may be solved with simpler methods. A fault in the target of the initiative may be equivalent with a polite NO – as the answer of the authority.

Sometimes, the Executive may not be so interested in the initiative presented to it. This should not be treated as a complete defeat. There are, at least, two other solutions.

The first one is the appeal addressed to the **press**. Mass media is the natural ally of the third sector organisations, being a part of the civil society. No journal should be left aside in this effort and no distinction should be made (political or cultural) and no journal or newspaper should be identified, exclusively, with the positions of the interested non-governmental organisations.

The second is to address the **parliamentarians**. As each of them, in each of the countries, has the power to initiate a bill, they have to be asked to do this and many of them would be proud to do it. However, the organisation has to check, first of all, if the problem is, really, to be solved using a law and not a lower power act (such as a governmental decision). It would be the best if the organisation could convince parliamentarians from different parties to sign the draft bill. Usually, it is easier to convince those from the Opposition to sign these kinds of bills; many of those from the majority may be tempted to send the initiators, back, to the Ministry. If, by any means, the initiators would have no other choice than to come back to the Ministry, it would be preferable to ask parliamentarians from the Majority to support them in their discussions with the governmental experts or dignitaries.

After the draft bill initiative (if it was decided to draft a law and not only a governmental decision) was accepted by the Executive or by one or more parliamentarians, this does not mean at all that the fight for that initiative should come to an end. On the contrary, this is only the beginning.

The draft bill has to be “followed” in all the institutions where it comes for a visa. Each of these institutions has a certain term (in days) in which it has to answer to the initiative. Usually, the state bodies have the tendency to postpone their answering, if they are not under a certain pressure – and they should be under pressure (by mail, fax, email or phone) – starting with the very first day after the answering term has come to an end.

When, finally, the draft bill has arrived to the Legislature, the professional organisation first of all has to check if the text that has been presented to the parliamentarians, was that in the form convened with the governmental partners. The public relations departments have the obligation to send the texts of the draft bills by request. They are public documents and no secrecy should be tolerated in these cases. If the text proved to have inconvenient provisions, they still may be changed. The organisation should send a letter to each of the members of each of the standing committees where the bill has been sent for an advisory opinion or for a report. More than that, the letter – having strong arguments – should be sent to each of the leaders of the parliamentary groups, asking them to instruct their members in the interested standing committees to support the organisations’ positions. All the names of the members of the standing committees and

those of the leaders of the parliamentary groups (and many other information) may be found out from the Parliaments:

Camera Deputatilor – House of Deputies

Palatul Parlamentului
Str. Izvor 2-4, Sector 5
706471 BUCHAREST
Tel.: +40.1.4021444
Cable: Camera Deputatilor, Bucharest
Telex: 11893 PCAMD R
Fax: +40.1.3126600
E-mail: secretar.general@cdep.ro

Web site: <http://www.cdep.ro>

Senatul - Senate

Piata Revolutiei 1, Sector 1
BUCHAREST
Tel.: +40.1.3123079
Cable: Senatul României, Bucharest
Telex: 11916 ROSEN R
Fax: +40.1.3121184
E-mail: gsterea@unix1.senat.ro

Web site: <http://www.senat.ro>

If the campaign is properly followed, there are chances that the lobbyists could be invited to a private discussion (previous to the debates) or even to the debates. If so, the lobbyists have to come with very precise amendments to each paragraph they want to change and with sound motivations.

A further attempt may be made even when the bill arrives in the plenary debates, but only on an individual basis (address to each of the parliamentarians, if it is necessary).

Finally, if the law proves to be an extremely serious peril to the existence or to the survival of certain third sector structures, they are fully justified to address the President and to try to send back the law in the Legislature, before promulgation.

One final principle that any lobbyist has to remember: there is no permanent law! Sooner or later, each law, good or bad, will be amended. If, against all efforts, an inconvenient law has been promulgated, the first thing the (temporarily defeated) organisations have to do is to start a campaign for the immediate amendment of that law. If the cause is right, eventually, they will succeed.

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