



## PUBLIC CONSULTATIONS AND POLICYMAKING IN SERBIA FORM OVER SUBSTANCE

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Public consultation is the process employed to involve the public and stakeholders in policymaking. The core values of this process are participation and transparency – in a process open to the public, the competent authorities, together with the target groups and stakeholders, come to policy solutions and define the desired change. According to the Organization for Economic Co-operation and Development (OECD), public consultations are one of the crucial regulatory tools used to improve the transparency and effectiveness of regulations and policy documents.<sup>1</sup>

Being part of the wider public administration reform (PAR), policymaking reforms in Serbia entail improvements in implementing consultations with stakeholders, and public debates on policy documents and legislation (hereinafter: public consultations), throughout the drafting process. By consulting the target groups throughout, the effects of the proposed solutions are assessed, and the costs minimized, which makes public consultations one of the most valuable tools in the preparation of draft policy documents and legislation. Moreover, involvement positively impacts sustainability of policies and ensure their responsiveness to real needs of the society.

However, public consultations are still insufficiently widespread in policymaking in Serbia, and when they are conducted, it is often *pro forma*, without ensuring the quality of the process. As a result, policies are often not adapted to the citizens' needs, and their implementation degree is low. This further contributes to the reduced citizens' trust in institutions<sup>2</sup>, resistance to policy implementation, and ultimately, makes policies unsustainable.

The results of the National PAR Monitor 2019/2020 for Serbia indicate that there has been no progress in conducting public consultations compared to the baseline PAR Monitor for the period 2017/2018. In other words, public consultations have not been consistently conducted, there is a lack of continuity in reporting, and the real influence of public participation is limited due to minimal adoption of suggestions and comments. In addition, the competent authorities are insufficiently engaged in proactive informing and involving of stakeholders in the various stages of these processes.<sup>3</sup>

1 See: OECD, *Background Document on Public Consultation*, Available at: <https://tinyurl.com/59kkme32> p. 1. (8 November 2021).

2 For example, *Balkan Barometer Serbia 2020* showed that almost 60% of citizens in 2020 didn't have trust in the Government's work. Available at: <https://tinyurl.com/22rpuww8> (13 January 2022).

3 Miloš Đinđić, Milena Lazarević, Dragana Bajić, Stefan Stojković, *National PAR Monitor Serbia 2019/2020*, European Policy Centre, 2021, page 60, Available at: <https://tinyurl.com/yuxd6a6z> (8 November 2021).

## The administration only partially interested in the opinion of stakeholders and general public

The Law on State Administration (LSA) and the Law on the Planning System (LPS) normatively regulate stakeholders' participation in policymaking processes. Both laws prescribe that public consultation should be conducted when drafting laws and policy documents, in a way that ensures transparency, openness and effectiveness of public participation.

Nevertheless, the scope of implementation of public consultations is, in general, still at a low level. The results of PAR Monitor 2019/2020 show that out of 13 analysed public policy documents, seven went through some form of public consultation (54%), while in the case of laws the share of public consultations in the same observed period was just over one-third, considering that public debates preceded 32 out of 92 law proposals (35%).<sup>5</sup> Although the European Commission has noted improvements in terms of their frequency in its latest report for Serbia,<sup>6</sup> the PAR Monitor 2019/2020 data show that regular public consultations on draft policy documents, as well as regulations, are still only partially present.

Additionally, when it comes to the PAR strategic framework, public consultations have not been entirely conducted either – extensive consultations were held during the e-Government Development Programme for 2020-2022 drafting; however, neither general public nor civil society were consulted during the revision of the Public Finance Management Reform Programme for 2016-2020.<sup>4</sup>

Also, LSA and LPS prescribe the obligation of conducting consultations in the early stages and oblige state administration bodies to announce the beginning of the process of drafting, and to ensure public participation.<sup>7</sup> This practice has not yet taken root in the policymaking system and is more an exception than a rule. Namely, for only one out of the 39 policy documents and laws, which were the subject of any form of consultations in the analysed period, early consultations were conducted before production of the final draft.<sup>8</sup> Additionally, the perception survey of civil society organisations (CSOs) in Serbia showed that over half of the respondents (52%) confirm that public consultations are not conducted early in the drafting stages and that the authorities, in most cases, rarely or never consult them in these stages, while almost a quarter of CSOs state that this happens "sometimes"<sup>9</sup> Altogether, the data clearly show that there is an insufficiency of essential public contribution to policymaking, not only before the production of the final drafts but also before the adoption of the key policy directions.

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In addition, public consultation processes are characterised by insufficient inclusiveness, i.e., involvement of stakeholders representing the views and interests of various social groups, especially the most vulnerable ones. Nearly half of the surveyed CSOs (48%) believe that the involvement of various groups and their interests is lacking,<sup>10</sup> which is reflected in insufficient inclusion and openness.<sup>11</sup> Although various sectoral CSOs participate in the consultation processes, the insights from organisations that focus on specific or horizontal issues, such as gender equality and disability issues, or even from representatives of unions or the business community,

are often missing. In this regard, PAR Monitor 2019/2020 found that authorities do not use all available informing channels to ensure the broadest possible participation.<sup>12</sup> Furthermore, no ministry keeps a comprehensive record of the stakeholders who have taken part in consultations, and individual reports from consultations often do not contain a complete list of participants.<sup>13</sup> One of the consequences of insufficient representation of various stakeholders in public consultations is a poor consideration of the policy impact on different social groups. This leads to a lack of sensitivity to gender perspectives and potentially discriminatory effects as well, that could be manifested in the policy implementation.

4 National PAR Monitor Serbia 2019/2020, p. 30.

5 National PAR Monitor Serbia 2019/2020, p. 58. The analysis covers all public policy documents (strategies, action plans, programmes), as well as Government draft laws, adopted between July and December 2019.

6 See: European Commission, *Serbia 2021 Report*, page 14, Available at: <https://tinyurl.com/at4u6k22> (7 December 2021).

7 National PAR Monitor 2019/2020, p. 64.

8 Ibid, p. 58.

9 Ibid, p. 59.

10 Ibid.

11 A focus group with civil society organisations was held on October 15, 2020, for research purposes for the National PAR Monitor Serbia 2019/2020.

12 National PAR Monitor Serbia 2019/2020, p. 58.

13 Ibid, p. 64

## Poor-quality reports as a depiction of public consultations

Responsible authorities are obliged to provide information on the results, participants, and scope of public consultations, as well as on the issues discussed and consideration of comments.<sup>14</sup> A report containing all these elements should be published on the authority's website and the e-Government portal, no later than 15 days from the end of public debates, and consultations with stakeholders alike.<sup>15</sup>

Yet, despite being legally regulated, reporting is inconsistent and non-standardized. PAR Monitor 2019/2020 showed that reports are published in just over two-thirds of cases (more specifically, in 71% of cases when it comes to public policy documents, and in 72% of cases relating to laws).<sup>16</sup> Also, these reports often do not list all the comments received, nor are the reasons for their acceptance or rejection sufficiently explained.<sup>17</sup> The results of the latest SIGMA report for Serbia confirm that consultations are not announced in advance and it is not always clear whether stakeholders have submitted comments, and if other communication formats were used in addition to online consultations, predominately used due to the COVID-19 pandemic.<sup>18</sup> The same report states that detailed information on the participants' suggestions, to be presented together with information on whether they were accepted or not, are missing<sup>19</sup>, while the EC makes the similar observation that consultation reports are not systematically published nor the explanations on the status of the comments are given.<sup>20</sup> Although the mentioned elements are present in some of the reports analysed in PAR Monitor 2019/2020, generally speaking, there is a lack of uniformity in approach that would make the whole process consistent and clear from the beginning.<sup>21</sup> The weaknesses of the current reporting practices undermine the participants' trust and reduce the quality of future consultations, given that participants do not have insight in whether and how their comments have been considered, which may lead to reduced interest in the future. Thus, in the long run, the whole process is reduced to a *l'art pour l'art* exercise, without any essential importance for the quality of decision-making and public policies in general.

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In addition to all the above, the institutional conditions for improving the quality of public consultations are not currently met either. Quality control is lacking, as this role is not entrusted to any state administration body. The jurisdiction of the Public Policy Secretariat (PPS) includes, among other things, assisting proposers in monitoring and impact assessment of regulations during their implementation, as well as providing opinions on the content and quality of impact assessments and of the

reports on the implementation of policy documents.<sup>22</sup> If the importance of quality control of impact assessments is recognised and entrusted to the PPS, it would be natural to add the quality control of implementing public consultations to its jurisdiction. SIGMA also identified this shortcoming, pointing to potential reasons for the low reporting quality, and noted that there is no administrative body responsible for overseeing the public consultation process. It was pointed out that "the PPS does not have the mandate to give an opinion on the results of the consultation process, and draft documents can be submitted to the Government for adoption even when they do not meet the requirements for a successful public consultation".<sup>23</sup> The absence of the quality control regarding public consultations indicates that there is no pressure on policymaking authorities to improve these processes.

Finally, precisely because of the mentioned shortcomings in reporting, it is impossible to determine the impact of public consultations on policymaking. Based on the analysed reports, that contained the necessary elements, it was found that the rate of rejected comments in the observed period was very high (78%).<sup>24</sup> The low impact of public consultations on policymaking was confirmed by the 56% of surveyed CSOs representatives.<sup>25</sup> It stems from the above mentioned that the suggestions of stakeholders are generally ignored and that, when consultations are conducted, the focus is primarily on the form rather than the substance. This practice of rejecting and disregarding the received comments undermines the will and motivation of the public and civil society to participate in consultation processes in the future, and further confirms *l'art pour l'art* approach.

14 Article 34, *Law on the Planning System*.

15 Article 34, *Law on the Planning System*; Article 41; Rules of Procedures of the RS Government, Article 44, Regulation on the Methodology of Public Policy Management, Policy and Regulatory Impact Assessment, and Content of Individual Public Policy Documents.

16 *National PAR Monitor Serbia 2019/2020*, p. 58.

17 *Ibid*.

18 See: SIGMA, *Monitoring report*, The Principles of Public Administration – Serbia 2021, p. 55.

19 SIGMA, *Monitoring report*, Serbia 2021, p. 55.

20 European Commission, Serbia 2021 Report, p. 14.

21 *National PAR Monitor Serbia 2019/2020*, p. 58.

22 See: Article 38. Law on ministries, Official Gazette No. 128/20.

23 See: SIGMA, *Monitoring report*, Serbia 2021, p. 55.

24 *National PAR Monitor Serbia 2019/2020*, p. 58.

25 *Ibid*, p. 60.

## Basic but necessary steps towards improving public consultations

Public policies should aim to improve society and achieve better living conditions. If the community does not participate in their preparation, the quality of policy documents can be adversely affected, and implementation will be hindered due to citizens' mistrust in institutions that have not allowed them to participate through public consultation process.

In Serbia, the space for improvement of public consultations is visible in all aspects – from regular implementation at all development stages, through proactiveness in informing stakeholders, to reporting. In line with the identified shortcomings, PAR Monitor 2019/2020 lists the following recommendations for the improvement of these important processes:

- In the process of drafting documents, **authorities should organise consultations with CSOs as early as possible** in order to gather essential contributions before the final drafts are produced and before the adoption of the main policy directions.
- **Consultations should be widely announced**, and all interested CSOs should have the opportunity to participate.
- **Reports on the results of the consultations should be standardised**, with a clear indication of all submitted comments and contributions.
- **Proactive involvement of various stakeholders**, which represent different interests, **should become a regular practice**.
- **It is necessary to keep and update the records of CSOs and individuals who have previously participated in the consultations**, ensuring the continuity of inviting already engaged and interested organisations and individuals.
- **Competent authorities, without exception, should inform participants about the consultations' results**.
- **Additional consultations should be considered when the consultation process has resulted in unresolved, disputed, or important issues** for civil society and the public, and when no comments have been received in the first attempt.

The implementation of these recommendations would greatly change the way authorities are currently consulting stakeholders and the public. Keeping in mind that the analysed problems have been present for years, if the authorities do not accelerate the work on their solution soon, they will send a definite message that inclusive policymaking is not a priority of PAR in Serbia. Simulating reforms without the desire for real change, but only for the purpose of the formal fulfilment of the reform goals, further undermines institutions, harming the rule of law too, as it reduces chances for the citizens to exercise their right to good governance. Also, it directly promotes the mistrust in institutions and decreases participation as the essential element and a catalyst for change when it comes to guaranteeing that citizens' needs are taken into account. Finally, the feeling that the citizens' needs are not being considered stimulates not only dissatisfaction and mistrust but also increasing inclination to non-institutional ways of achieving public interest, such as taking to the streets.

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