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Challenges to Adopting a Complete Law in a Legal State

Nowadays, the law-making process in the legal state faces new challenges that are closely related to the rapid development of democratic processes in the states. Accordingly, as a key instrument to form legal states, maintain peace and unity among people and develop statehood, requires to be refined.

Keywords: *Rule of law, democratic society, law-making, law, parliament, principle.*

1. Introduction

Today, a big part of society agrees that the main value of democracy is the protection of human rights and freedom. From the perspective of protecting human rights, the complete law appears to be the most productive mechanism. Only the formal law-making process can ensure the realization of human rights. To achieve the aforementioned, it is necessary to fully reflect the fundamental elements of modern democracy in legal acts, which in turn, implies emphasizing the law-making process.

"For the law to enhance strong authority in the state and achieve effectiveness, it has to meet the requirements of modern legislative techniques. Legislative technique is a defined system of principles, and criteria, which must be followed in the process of creating legislative and legislative acts. Performing the technical side of law-making activity in a highly qualified manner is one of the essential prerequisites for making a perfect legislative base".[1]

2. Current Challenges

To obtain a complete law in a legal state, it is important to comply with the following requirements:

The clarity of the norm. The principle of a legal state ensures legal trust, which requires clarifying legal norms. The regulatory norms must be evaluated to identify a regulatory framework for interested parties to sufficiently clarify the specific legal situation and determine their actions. The regulation which refers to the restriction of a right, should be predictable and assessable for a citizen. Nevertheless, the real law-making does not always meet the requirements of the principle to clarify the norms. In this case, the court has a decisive role in determining human acts by law applying decisions, resolutions, and court rulings.

Systematicity and Non-contradiction[2]. The legal state imposes the relevant norms of the law that arrange for a citizen not to be vulnerable to conflicts of duties. This evades the norm collision leading to different and contradictory legal consequences.

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1 *Bezhashvili L.,* Legislative Technique, a Methodical Textbook of Law-Making, Tbilisi, 2012, 10 (in Georgian).

2 *Khubua G.,* Theory of Law, Tbilisi, 2015, 50-56 (in Georgian).

Legislative control through the executive bodies[3]. In many countries, the Ministry of Justice has a branch that examines whether the procedure is by the law and the requirements of good law have been followed. For example, in Britain was created a group of civil servants and scientists who provided the government with sage pieces of advice to improve the efficiency of the state. A similar special instance can be created in the parliament where the decisions might be made based on relevant laws. The Members of Parliament usually have the pertinent knowledge and competence to understand and scrutinize the multifaceted requirements of good law.

Getting scientists involved in legislative procedures[4]**.** For example, in Germany, scientists are often asked for an expert opinion on the measurement of the effectiveness of the law in compliance with the constitution and identify individual requirements of the law in terms of socio-political, economic, ecological, etc.

Getting scientists engaged in public discussions. Laws are refined by getting the interested public groups involved in the legislative public hearings. Public discussions make clear the expectations of public groups from the new legal norms of the law. Public hearings allow arranged discussions with the public circles about the goals and individual provisions of the law, which can be considered as a mechanism for promoting the adoption of a "good law"

To manage the law-making process properly and raise the quality of legislation, it is important to ensure the main principles of law-making, which "are the basic and starting provisions of making a law".[5] Among these principles, it is important to note:

Generally recognized principles:

- The principle of equality before the law
- The principle of proportionality of public and private interests
- The principle of openness and expressing the opinion by the interested party[6]
- The principle of separation of powers

Fundamental specific principles of law-making:[7] The principle of exercising discretionary powers is described as a right to set the legal regulation by way of a subject who is granted such discretionary power.

- The principle of humanism[8]
- The principle of professionalism[9]

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3 Regulatory impact analyzis, Best Practices in OECD countries, 1997, 33-89, http://www.oecd.org/gov/regulatory-policy/35258828.pdf> [01.08.2023].

4 Regulatory impact analyzis, Best practices in OECD countries, 1997, 33-89, http://www.oecd.org/gov/regulatory-policy/35258828.pdf> [01.08.2023].

5 *Bezhashvili L.,* Legislative Technique, a Methodical Textbook of Law-Making, Tbilisi, 2012, 16 (in Georgian).

6 *Sigali M.,* Seven Principles to Improve the Law-making Process in Georgia, 2005, 59-69 (in Georgian).

7 <https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.23_FundamentalLegislativePinciples.pdf >, Fundamental legislative principles, updated July 2015.

8 Fundamental legislative principles, updated July 2015. <https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.23_FundamentalLegislativePrinciples.pdf >, [01.08.2023].

- The principle of permanent technical perfection of the adopted legal act[10]
- We consider the importance of each principle to provide a complete law

The principle of equality before the law. The principle of equality before the law is one of the cornerstone principles in the legislative process. It is important to consider the precondition for the origin of the principle of equality before the law, "it was found as the basic principle of law even in antiquity. In the words of Pericles, the political leader of democratic Athens, "Athenian laws provided for equal justice to all, regardless of their private differences." (431 AD)" [11]

In 1776, Thomas Jefferson was charged by Congress with authoring the "Declaration of Independence of the United States of America". The Declaration claims: humans are created equal and that they are endowed by their Creator with certain inalienable Rights, that among them are: Life, Liberty, and the pursuit of happiness. To assert these rights, governments are formed, which receive their legitimate authority from the people.[12]

One aspect of the principle of equality before the law is equality in the legislative process. Equality in the legislative process implies the equal participation of all people in making the law that affects them. Equality in the legislative process can be direct and indirect.

The principle of proportionality of public and private interests. In lawmaking, "exercising discretionary powers, the paramount importance is attached to the principle of proportionality of public and private interests."[13] The essence of the principle of proportionality of public and private interests lies in the equal distribution of public and private interests in creating the legal norm.

In law-making, "when the bureaucratic apparatus of the ministries develops analysis and forecast of enhancement, the goals and priorities of the law which it should be based on, are determined by the parliament and the government. The goals and priorities provide information about the expected from the new regulatory norms. The goal is to strike a balance between public and private interests being in contradiction with each other and achieve a consensus-based compromise. It indicates the guidance for the law to change the social, economic, or political reality."[14]

"One of the most important conditions for the stability of the modern state is the correct and fair determination of priorities between private and public interests, the creation of a reasonably balanced system of relations between the government and people. This, first of all, finds expression in an adequate legal device of the content and scope of each specific right.[15] Adopting a specific legal norm,

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9 *Bezhashvili L.,* Legislative Technique, a Methodical Textbook of Law-Making, Tbilisi, 2012, 51-88 (in Georgian).

10 Sigali M., Seven Principles to Improve the Law-making Process in Georgia, 2005, 69-76 (in Georgian)

11 *Gotsiridze E. et al.,* "The Right to Freedom and Equality before the Law", Commentary on the Constitution of Georgia. Chapter two. Georgian citizenship, Basic human rights and freedoms,Tbilisi, 2013, 59 (in Georgian).

12 America's Founding Documents <https://www.archives.gov/founding-docs/declaration>, [01.08.2023].

13 <https://geolaw.wordpress.com/2012/11/29/დისკრეციული-უფლებამოსილ/> [01.08.2023].

14 *Wurttemberg T.,* Procedural Aspects of Legislative Initiative, Georgian Law Review, 7/2004-2/3, 256 (in Georgian).

15 Decision N1/2/384 of the Constitutional Court of Georgia, July 2, 2007, on the case "Citizens of Georgia – Davit Jimsheleishvili, Tariel Gvetadze, and Neli Dalalishvili against the Parliament of Georgia" (in Georgian).

the Parliament should correctly assess the impact of the adopted legal norm on public and private interests, whether it can give priority to any of them or lead to the unjustified restriction of private interests. In case the restriction of public interests is inevitable, then the least harmful measures need to be introduced in the legislative process.[16] The principle of proportionality is a method applied by the constitutional courts of different countries of the world to eliminate the conflict between fundamental rights. In addition to the mechanism of the Constitutional Court, for example, the European Court of Human Rights also props the issue of public and private interests to maintain the balance between human rights, which requires the interpretation of the European Convention on the Protection of Human Rights that certainly leads to the challenges of law-making.[17]

During lawmaking, particular attention should be paid to the severity of the expected threat to legal welfare. This legal good is, on the one hand, a specific right, that needs to be limited, and, on the other hand, the protection of public interest requires to interfere with the right. If all the previous conditions, grounds, or rules for interference with the right are not clear enough, not only can this cause the risk of excessive interference with the right, but also the chance of wrongly satisfying public interests. Consequently, a reasonable and proportional rate of private and public interests cannot be achieved. Even such a norm regulating interference with the right cannot meet the requirements of the principle of proportionality."[18]

The principle of openness and expressing an opinion by the interested party[19]**.** For the development of a democratic society, the openness of the legislative process is important to adopt sophisticated and complete legislative acts, get the interested parties involved in the legislative process, and consider their views. Interested parties are citizens, the associations of citizens, specialists, experts, and non-governmental organizations, those who can be affected by the new legislative acts. They have the opportunity to provide advice and information to the persons implicated in the legislative process which will help a legislator to avoid undesirable results. The members of society, including minority groups, should have the opportunity to contribute to the drafting process and analysis.[20]

To make the law-making process open, the law-maker must ensure the timely delivery of the information related to the legislative process and the copies of bills to citizens, citizen associations, specialists, experts, and non-governmental organizations. The information related to the law-making process can be actively applied to introduce interested parties to:

- Mass media, particularly: newspapers, magazines, TV-radio programs, video and
- film documentaries, bulletins, books with a circulation of more than 500 and
- other periodical or one-time publications, if they are intended for public dissemination
- of information. Publishing houses, periodical press, television and radio broadcasting

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16 <https://geolaw.wordpress.com/2012/11/29/ დისკრეციული-უფლებამოსილ/> [01.08.2023].

17 Proportionality: an assault on human Rights?, Oxford academic, international journal of constitutional law, Vol. 7, Issue 3, 1 July 2009.

18 Decision #1/3/407 of the Constitutional Court of Georgia, December 26, 2007, on the case "Young Lawyers Association of Georgia and Georgian citizen Ekaterine Lomtatidze against the Parliament of Georgia.

19 *Sigali M.,* Seven Principles to Improve the Law-making Process in Georgia, 2005, 59-69 (in Georgian).

20 Ibid.

- editorial offices, news agencies, and other institutions that produce and distribute various
- information;
- Official websites;
- Social networks;
- Communication technologies;
- Means of online dissemination of information;
- Direct meetings with citizens, citizens' associations, field specialists, experts and non-
- governmental organizations;
- Discussion about a bill in different focus groups.

The law-making process will be successful if after introducing the bill and the information related to the legislative process to the interested parties, the legislator considers their opinions, comments, and suggestions, collates them, estimates the expected results, and within the discretionary authority, makes a decision whether to take them into account or not. "The parliament has a special responsibility to protect the principles discussed above. The Parliament should ensure the publicity, clarity, and stability of laws, considering the opinions, comments, and proposals of the interested parties and make the appropriate decision" [21]

Based on the above, we can conclude that as a result of the openness of the law-making process and following the principle of presenting the opinion by the interested party, we will get refined, perfect, and such legal acts that express the interests of the voters.

The principle of separation of powers. In the process of law-making, it is important to correctly implement the principle of separation of powers and separate the functions between the branches of government. Developing laws often raises the question if the law should identify all the issues in detail during the application or if it is enough to regulate only the main issues and grant broad discretionary powers to the administrative bodies for implementing laws".[22]

To refine the law-making process, one of the challenges is to correctly implement the principle of separation of powers and functions between the branches of government. The legislative and executive authorities shall respect each other's competence which the majority of laws state today. Under the existing legal framework, the majority of laws regulate specific public relations and laws in the way of reducing instructions.

The norm of each law includes the main directions of domestic and foreign policy determined by the legislative authority. Also, it establishes the mechanisms to enforce a specific legal norm. An "optically correct means of making a decision is the circumstance when the decision is made by the body which meets the relevant prerequisites considering its organization, function, authority and procedural rules."[23]

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21 "The Rule of Law-A Guide for Politicians" Raoul Wallenberg Institute of Human Rights and Humanitarian Law and The Hague Institute for the Internationalization of Law, 2012, 16 (in Georgian).

22 *Wuttenberger T.,* Procedural Aspects of Legislative Initiative, Georgian Law Review, 7/2004-2/3, 258 (in Georgian).

23 *Izoria L.,* Modern State and Modern Administration, Tbilisi 2009, 195 (in Georgian).

I think that the existing practice in Georgia for the legislative authority to make regulations by law, particularly, the issues arising while applying the law, should be reviewed because the main function of the legislative authority is to determine the main directions of the country's domestic and foreign policy through the implementation of the legislative authority. The main function of the executive branch is to enforce laws, rule a country, and implement domestic and foreign policies. So, the legislative authority should define the policy in-laws, and the executive authority has to create the mechanisms for its implementation and enforce it.

The principle of exercising discretionary powers in the legislative process only for the purpose for which the legislator has been granted the power. "Legal decisions made within the discretionary authority are the actions which have to be carried out based on legal authority. They are legally significant if they lead to the creation, modification or termination of obligations"[24] A legislator has the obligation to regulate a specific issue in a non-discriminatory manner. This obligation follows the law-making process despite the fact that it is aimed at the regulation of constitutional rights or legal interests..."[25]

"The Parliament of Georgia is the highest representative body of the country, which exercises the legislative power"[26] and adopts the laws that facilitate the development of the country, protect the rights of citizens, etc.

"Legislative activity is one of the most important functions of the Parliament. The authority vested in it by the basic law of the country determines a central place in the system of government bodies.[27]

Legislative bodies in democratic states are equipped with similar powers. The first part of the first article of the Constitution of the US claims "All legislative power herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives". Section 8 of the same article indicates that the Constitution grants the Congress of the US the power to make the laws that shall be essential and binding for executing the powers enumerated in Section 8 of the Constitution of America, and other powers provided by the Constitution are conferred upon the Government of the United States, or any department or an official.[28]

The texts of the constitution cover the following records: "has the right", "can issue laws", and "can adopt laws." The constitutions furnish the bodies with the legislative power and discretionary authority to adopt laws. Discretionary power provides freedom to the legislature to choose the most acceptable decision from several decisions in the legislative process and make the law that corresponds to the will of their constituents, the people who gave them the legislative power.

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24 *Cipelius R.,* The Doctrine of Legal Methods, Munich 2006, 130 (in Georgian).

25 Decision of the Constitutional Court of Georgia of February 4, 2014 N#2/1/536, II-21. Citizens of Georgia – Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze against the Minister of Labor, Health and Social Protection of Georgia, (in Georgian).

26 Constitution of Georgia, The Parliament of Georgia 24/08/1995, Article 48., as of November 1, 2017 (in Georgian).

27 *Macharadze Z.,* Legislative Process in Bicameral Parliaments of Foreign Countries, Law Magazine "Sarchevi", N1-2(3-4), 2012, 154 (in Georgian).

28 Constitution of the United States of America 1787 (in Georgian).

"A state, in general, is based on justice and democratic legitimacy, not only is it important for interpretation, but also it facilitates a right choice of alternatives of action during making a decision within discretionary authority. Based on this, the administrative discretionary authority should legitimately strike a balance of interests, which is fair from the perspective of consensual representations of a majority of society. Briefly, the decision made within discretionary authority is not unquestionably free, but at least, according to its intention, it must make the right choice between different alternatives of action".[29]

To realize the mentioned principle in the law-making process, I think it is important to determine whether it is really necessary to implement legislative changes to achieve the goals and objectives, or if there are other alternative means of attaining the same goal because it is important to exercise discretionary powers only for that purpose which a legislator has been vested this authority in.

The principle of humanism. Protection of the principle of humanism in the legislative process means strengthening the rights and freedoms of citizens in the adopted legal act, respecting different opinions, and putting people of different beliefs and cultures on equal terms. Also, the principle of humanism includes adopting such legislative acts that get everyone to be treated equally, regardless of race, skin color, language, sex, religion, political and other views, national, ethnic, and social affiliation, origin, property, and rank status, place of residence.[30]

Respecting different opinions in the legislative process should be considered as a modern challenge of the legislative process. Legislators should carefully listen to people with various opinions, appreciate their views, and adopt laws by reaching a consensus with them.

As a rule, in the parliaments, one party or a union of parties has obtained the number of mandates that are sufficient to pass laws. Based on the current legislation, they legitimately have the right to adopt the laws they consider essential for the ascend of the country. The regulatory norms of the legislative process theoretically provide an opportunity to take into account the dissenting opinion of the opposition/minorities but practical provision of this has few legal guarantees. Naturally, in the mentioned case, the majority holds sizable advantages over the minority which leads to endangered humanistic value in the legislative process.

Talking about the principle of humanism in the legislative process, it is necessary to discuss the consequences of the non-fulfillment of the principle of humanism. It can lead to a rejection of the rights and freedoms of citizens, put people of different faiths or cultures in unequal conditions, and challenge comments, proposals, and dissenting opinions expressed concerning acceptable legal norms. This can cause conflict between members of society and neglect of legitimate interests of individuals with distinct views which might prevent the development of democracy and the establishment of peace and solidarity.

I think the development of law-making has reached the stage when the norms of regulating the legislative process need to be reviewed. It is essential to emerge the legal norms that will create

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29 *Cipelius R.,* Doctrine of Legal Methods, Munich 2006, 134 (in Georgian).

30 *Steiner J., Woods L., Twigg-Flesner C.,* Textbook on EC Law, Oxford, University Press, 2003, 51-56, <http://www.open.edu/openlearn/ocw/pluginfile.php/637921/mod_resource/content/1/w100_4_reading18.pdf, [01.08.2023].

legislative guarantees to adopt legislation through accommodating an agreement with the people having different perspectives. For example, in the relevant legislative acts must be made a reservation that a bill will be considered adopted if it is supported by at least "X" deputies of the majority and more than "Y" deputies of the minorities. The members of the Parliamentary majority and minority must justify their decision and should not artificially prevent the adoption of laws aimed at the normal development of the country, and the realization of universally recognized human rights and freedoms in life.

Professionalism principle. In terms of legal techniques, the creation of sophisticated legal bills depends on professional lawyers, their skills, and practical experience. In democratic countries experienced lawyers successfully promote legislative activities. Developing countries are lacking in professional law-making lawyers which directly affects adopting legislative acts.[31]

It does not require additional reasoning that "A law is as precise as it uses the formal and plain language".[32] This means that concerning legal techniques laws must be sophisticated, complete, and properly redacted. The law should be drafted in such a way as to be intelligible, above all, to those directly affected by it because people cannot obey laws if they do not understand their meanings. Laws must not disclose gaps or conflicts in the light of certain interpretations.

Law-making can be a form of art; there is a space of creativity within the law because a lawmaker tries to express the will of a legislator concisely and comprehensively.[33] The law-maker has to incorporate the hypothesis, disposition, and sanction of law into one legal norm. Also, the law-maker should indicate the conditions and circumstances in the norm of law because their occurrence is necessary for implementing the rule established by the norm (hypothesis), developing a direct rule of conduct (disposition), and establishing coercive measures for violation of the rule of conduct provided for by the disposition (sanction).[34]

A legislator has a special responsibility as he/she has to ensure the conciseness and completion of laws and correctness in their editing which requires a lot of mental work, theoretical knowledge, and practical experience.[35]

Parliament members, civil servants, non-governmental organizations, experts, and specialists are involved in the legislative process. That is why these persons should have the appropriate education, knowledge, and experience to perform the work. Lawyers must be involved in the legislative process because the legal educational program includes those components that develop important skills for law-making.

We can consider the involvement and aspiration of states in the professional training of lawmakers for the improvement of their qualifications as a modern challenge to the legislative process.

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31 *Sigali M.,* Seven Principles to Improve the Law-making Process in Georgia, 2005, 71-76 (in Georgian).

32 *Cipelius R.,* Doctrine of Legal Methods, Munich 2006, 136 (in Georgian).

33 Legislation handbook, The drafting process, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process.aspx>, [01.08.2023].

34 *Intskirveli G.,* General Theory of State and Law, Tbilisi University Publishing House, 2003, 155-165 (in Georgian).

35 *Sigali M.,* Seven Principles to Improve the Law-making Process in Georgia, 2005, 73 (in Georgian).

The principle of permanent technical completion of the adopted legal act. Many laws have been created throughout the history of humankind. Many of them laid the foundation for the legislative process and established new rules in life, which became the basis for the development of the legislative process and its completion.

The history of law-making has developed along with the state. The tradition of law-making has always been in coexistence with the formation of political power of a state. For example, based on the annals, Georgian statehood and law were formed in the first millennium BC which has experienced a lot of changes.

Friedrich Carl von Savigny, one of the founders of the historical school of law, believed that law developed over time and space along with society, its customs, culture, political system, and economic structure.[36]

Supporters of natural law believe that law does not change over time and it cannot be different in various societies. According to them, the improvement of legislation and making changes in it cannot occur in parallel with ascending society and states.[37]

Humanity has experienced amazing technical progress from the Stone Age to nanotechnology, therefore, the issued legal acts have been revised or require to be revised as well as new legal relationships need to be regulated. Adopted legal acts demand constant technical improvement following the development of civilization. It is necessary:

a) revise the applicable laws;

b) the existing legal framework should be brought into compliance with the requirements of modern society;

c) create a legislative basis for the establishment of new democratic governmental institutions;

d) New public relations should be regulated by legislation.

e) As the legal philosopher Lon Fuller said, laws should be general.[38]

According to all mentioned before, raising the quality and efficiency of the legislative process is of grea

3. conclusion

To conclude, in order to obtain efficiency in law it is essential:

Openness of the legislative process which means arranging consultations with interested parties and the public in an early stage of law-making. It is important to have a regulatory framework that identifies the details of consultation.

Based on the principle of equality the maximum involvement of citizens in the legislative process excludes the adoption of legislation that does not express their will.

Adopting a specific legal norm, the Parliament should protect proportionality and assess the impact of the adopted legal norm on public and private interests. If the restriction of private interests is

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36 *Garishvili M.,* The Introduction to the Philosophy of Law, the Course of Lectures, 2010, 110 (in Georgian).

37 Ibid, 76.

38 <https://www.civiceducation.ge/ka/lessons/2-25> [01.08.2023].

inevitable, there should be used the least damaging means for private interests and compensation for the damage.

Making balance between branches of government. For this purpose, the legislative power should define the policy in the laws, and the executive power should have the means to enforce the laws, and the domestic or foreign policy of the country.

In the legislative process, discretionary authority should be exercised only for the purpose for which the legislator has been granted this authority.

Legislators shall listen attentively to people with different opinions, respect their views, and impose laws in a way of reaching a consensus.

Thus, to ensure the realization of human rights, it is important to fully deliberate the basic elements of modern democracy in legal acts, which in turn, implies accepting the principles of making a law in the law-making process.

We think that the democratic society has reached the stage of development when it is important to regulate issues to create a guarantee for the fulfillment of the tasks defined by the strategic documents of a country. For this, from the regulation defined with detailed legislative acts, we should move to legislative acts reflecting principles and policies.

Also, for the law-making process to be a productive mechanism for protecting human rights, it is necessary to:

Executive authorities should develop enforcement mechanisms for the laws imposed by legislative authorities.

The legislative authority must effectively use the control function of the government and monitor how well the executive authorities implement the main directions of the country's domestic and foreign policy defined by the laws.

We think that the observance of the above-mentioned universally recognized principles in the legislative process will create the legal guarantees and basis to establish a high standard of the legislative process and lead the entities involved in the legislative process to a new stage of development.

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