

Meeting of the Association of European Senates

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INTRODUCTION

The National Council of the Republic of Slovenia is the upper house of the Slovenian parliament. This is not expressly stated in the Slovenian Constitution but may be derived from constitutional theory, the international comparison of its competences and the role that the National Council performs. The first decade of its existence has demonstrated the justification and rationality of the upper chamber's function within Slovenia's constitutional system. It has proven its capacity to fulfil its constitutionally defined competences and shown its ability to operate in spheres are not expressly delegated to the Council in the Constitution, yet which are also not forbidden. It has affirmed its deep-seated and direct relations with citizens and civil society, which form the basis of a representative democracy.

CIVIL SOCIETY INFLUENCES THE NATIONAL COUNCIL'S COMPOSITION

The National Council is, in accordance with the Constitution, the representative of social, economic, professional and local interest groups. The forty-member National Council comprises 22 representatives of local interests, six representatives of non-commercial activities four representatives of employers and four of employees and four representatives of farmers, crafts and trades and independent professionals. According to some Slovenian constitutional theoreticians it is better served by indirect rather than direct elections. A characteristic of indirect elections is the closer link between members of interest groups and their representatives. This is the reason that the influence of political parties is lessened in indirect elections. The electoral procedure set out in the National Council Act, adopted in 1992, means that every interest group votes in its own indirect manner.

The basic principle of the election procedure for the representatives of every interest group is that the members of the National Council are indirectly elected via electoral bodies (electoral colleges). These colleges take various forms. In elections to the National Council the principle of functional representation is used instead of the one-person one-vote principle. The size of the electoral body and the selection procedure are unimportant. What is of importance is that sections of society with specific functions select a representative from amongst themselves via indirect elections. When members of the National Council are elected by an individual interest organisation or an individual local community, then the members of the representative body of that interest organisation or that local community form an electoral body. If a member or members of the National Council are elected by a group of interest organisations or a group of local communities then the representatives of those organisations or communities form the electoral body. A relative majority system is used in these elections. This means that the candidate with the most votes wins. In the case of a tie then the winning candidate is selected by the drawing of lots.

In accordance with the National Council Act all Councillors are elected indirectly. The first elections to the National Council were somewhat different. The first paragraph of Article 66 of the National Council Act stated that local interest groups should vote directly in the first elections to the National Council. In the 1992 elections, the members of local interest groups were directly elected by the voters and not a special electoral body, formed by the municipal councils of the local communities in question. In 1997 the National Council submitted a draft Act Amending the National Council Act into the legislative process. The National Council wanted this act to ensure direct elections in the 1997 elections as well but it was rejected by the National Assembly.

Some of the National Council's strengths arise from its actual composition. Today, as political parties increase their influence on the functioning of the state, representative democracy is entering a crisis. The traditional ideal of a representative system is disappearing. Members of parliaments can only rarely defy the will of party lobbies. Given the complex nature of state structures, the popular will of the voters cannot be directly expressed and is always mediated by political parties. The influence of political parties is weaker within the National Council. Parties can only become involved in the election

of representatives of the local interest groups that comprise over half of the National Council's members.

Numerous associations and organisations participate in the elections to the National Council. The interests of these associations are politically independent and are largely connected to their professional field. This is an interesting approach, the consequences of which find expression in the National Council's work. Every interest group is involved in legislation from its own field of interest and continually monitors the progress of such legislation.

THE CONSTITUTIONAL AND LEGAL COMPETENCES OF THE NATIONAL COUNCIL

The Slovenian bicameral structure is an "incomplete bicameral system", meaning that the upper chamber does not have equal competences with the lower chamber but instead has less authority. The purpose of upper chambers in incomplete bicameral systems, which on the world scale are more common than complete bicameral systems, is to supervise the work of the lower chamber. A weaker upper chamber can only supervise the work of a more powerful chamber if its composition is different to that of the lower chamber and if it has appropriate competences that differentiate it from the lower chamber, which holds true in the case of Slovenia's upper chamber. The National Council is a weaker upper chamber, even among incomplete bicameral systems, yet it enjoys certain competences that some of the more powerful upper chambers in Europe do not have at their disposition.

The Constitution provides the National Council with a rather modest, but nevertheless important, range of competences. Through legislative initiatives the National Council can participate in the initial phases of the legislation process. Notwithstanding the fact that the legislative initiative is a very important National Council competence, in practice it rarely executes this function. Over the ten years of its existence, it has used its authority to propose laws on a little over twenty occasions and the National Council's level of success is even lesser in respect if one just considers those legislative initiatives that have been passed by the National Assembly. The reason for the rare application of the legislative initiative instrument is the small size of the National Council's expert services, which are unable to provide National Councillors with sufficient legal assistance in the preparation of legislation. Another reason is that the National Councillors do not perform their functions on a professional basis. As the representatives of various interest groups, they maintain contact with the people and interests they represent while continuing to perform their original profession. This means they are unable to focus entirely on performing their official duties. Their work within the National Council is concentrated on monitoring the area of interest they represent and drawing attention to errors, which is the traditional role of upper chambers within an incomplete bicameral system. A third reason is the lengthy nature of a legislative process, where a draft law can be held up for a number of years. The effects of any work performed by a National Councillor may only be seen over a longer time period. From the constitutional competence of legislative initiative arises the procedural competence whereby the National Council has the right to adopt a binding interpretation of a law.

The National Council can convey its opinion to the National Assembly on individual matters, as it deems fit or on the request of the National Assembly. Although not expressly stated in the Constitution, it is comprehensible that the National Assembly can only request an opinion from the National Council in matters that fall within National Assembly competences. An opinion is not binding on the National Assembly, however its members are aware that they must deliberate and respond to it and inform the National Council of the National Assembly position. The opinions conveyed by the National Council have been exceptionally useful. In this manner the opinions and positions of the National Council have been directly incorporated into laws that have later been adopted.

In practice, most attention has been attracted by the constitutional institution of the suspensory veto, which the National Council may submit against a law within a period of seven days after its promulgation in the National Assembly. The National Assembly can reject the National Council's veto with an absolute majority vote (46 votes). Over ten years, a total of 55 suspensory vetoes have been submitted, of which a little less than a quarter were successful, i.e. the National Assembly did not vote to reject the suspensory veto. The number of vetoes submitted in Slovenia is rather high. This is a consequence of the fact that the National Council's task is to provide expert scrutiny of the legislative

process, rather than the pursuit of Government policy. Rejections of the National Council's veto are largely politically motivated and the Government majority usually re-approves the law after deciding on it for a second time.

As the National Council often approves a veto on a law due to the unconstitutionality of the law or a part thereof, the Constitutional Court Act gives the National Council the authority to request a ruling on the constitutionality and legality of legislation. More than half of the requests ever submitted for a ruling on the constitutionality and legality of a law have come after a veto has been rejected in the National Assembly. Of the 26 requests for rulings made by the National Council to the Constitutional Court in the ten years of its existence, 13 have been requests for rulings on the constitutionality of laws that have been adopted with an absolute majority in the National Assembly at a second vote, when the Assembly has had to decide again on a law. In seven cases the Constitutional Court has found that the provisions in the section of the law submitted to it for scrutiny by the National Council were unconstitutional. Totalling the suspensory vetoes and constitutional disputes over laws where the National Council has prevailed, shows that it has been very successful in asserting its function as a corrective factor within the legislative process and has significantly affected an improvement in legislation, as it has prevented the enactment of laws that would also have harmed Slovenia's reputation abroad.

Unfortunately there remain many problems due to inappropriate procedures for deliberating on suspensory vetoes in the National Assembly. The first problem is the period permitted for the examination of a law. Slovenia's National Council has the shortest period for the examination of law of any European nation. On top of the already abnormally short period of seven days, there is the additional and illogical rule that the period does not commence from the day the law is delivered to the National Council. Another peculiarity of Slovenia's Constitution is that the institution of the veto with a limited time period is stated in the article on the promulgation of laws.

A further shortcoming of the vetoing structure is that instead of the National Assembly deliberating again on both the law and the National Council's reasoning for the veto's submission, it simply repeats the vote on whether or not to pass the law. The rationality of the National Council's suspensory veto lies therefore in the fact that it contains the National Council's critical position on the adopted law, which should offer members of the National Assembly the opportunity to deliberate it and then decide whether or not they are persuaded. The National Council challenged this provision of the National Assembly's Rules of Procedure in the Constitutional Court, which ruled that it was constitutional. However, the Constitutional Court judges emphasised in their ruling that they had not entertained the question of whether it was the most appropriate solution for Slovenia's constitutional system, let alone whether it was the best possible.

A central problem with the National Council's veto is its rigid nature. The only options available to the National Council are to adopt a law in its entirety or to submit a veto and thus reject it its entirety. Yet the National Council is usually only opposed to one individual solution within a law rather than the law as a whole. When deciding again, the National Assembly can either adopt or reject a law – it cannot amend a law in accordance with the National Council's recommendations. Members of the Assembly are therefore left with two poor choices: adopting a law containing an obvious weakness or rejecting an entire law due to the inappropriateness of an individual solution within it – one contentious article can thus cause an entire law to fall. Of course, this puts members of the Assembly under great pressure, so they reject the suspensory veto much more often than they would if it were possible to amend just the contentious article of a law. According to the Constitutional Court, in the case of a veto there is no actual constitutional obstacle in the National Assembly's Rules of Procedure that would prevent the Assembly from changing the contentious provision that led to the veto being submitted. Granting the National Council the possibility of amending laws would reduce the number of suspensory vetoes, as the National Council would then be able to respond to its reservations to a law by means of amendments. Unfortunately the National Assembly is not in favour of this solution. The National Council is therefore almost always compelled, even when it disagrees with a smaller section of law, to use an instrument that rejects the entire act.

Despite the "anti-bicameral" nature of the veto's procedural regulations, in practice the use of the veto has been rationalised. Clear changes have come about in deliberations on vetoes since the earliest

days of the National Council's work. According to the regulations in force, a representative of the National Council explains a veto, the proposer and the relevant working bodies then give their opinions and members of the Assembly can explain their vote. According to theorists this procedure is a substitute debate. In the development of the decision-making process, which at the beginning was reminiscent of a second vote on a disputed law, we can expect the recognition to gradually increase within the National Assembly of the benefit of changing a law on the basis of a veto, if the amendment is proposed by the Government or the originating working body.

Despite the fact that the regulation of the National Council veto is not the most propitiously defined section of the Constitution and that it is not exhaustively defined within the Constitution, that is not the main reason for the problems in its practice. These largely arise from regulations at a lower level that are ill disposed towards the National Council, particularly within the National Assembly's Rules of Procedure. The National Council has already expended considerable energy on proposals that would, at the very least, correct the irrational solutions within the Rules of Procedure, yet the National Assembly remains unmoved. This demonstrates that there remains a principled opposition to the concept of bicameralism. If these weaknesses were to be removed from the National Assembly's Rules of Procedure it would have a very favourable effect on improving legislation.

One important National Council competence is the right to require the calling of a referendum. The National Council's influence on legislative decision-making via demands for legislative referenda is actually very indirect, although in practice this can have even greater weight than a suspensory veto, as it can function as a stern warning and place considerable pressure on the National Assembly, if it does not adequately take into account the National Council's positions. This competence gives the National Council the opportunity to indirectly assert its will against the National Assembly. The National Council has used this important instrument just once, during its first term. Recently, as wider ranging proposals to amend Slovenia's Constitution have arisen, it has been suggested that this competence be withdrawn from the National Council. This is one of a number of ideas aimed at curtailing the National Council's powers under the pretext that Slovenia has too wide a definition of the parties permitted to call a referendum. In the National Council's opinion, the legislative referendum is a last resort, to which it may turn in the case of latent breaches of the Constitution.

As with the calling of legislative referenda, the National Council very rarely uses its power to require an inquiry into matter of public importance. Over its ten years of operation it has executed this competence on just three occasions. An important characteristic of initiating a parliamentary inquiry is that it may entail the prime minister and cabinet members being called to account for their political responsibilities. The National Council can in this manner indirectly affect relations between the National Assembly and the Government. It can also influence the Assembly and the Government by exercising its authority to convey opinions on all matters within the competence of the National Assembly.

The National Council does not have any influence over the preparation and adoption of the national budget, as this falls within the competence of the Government and later the National Assembly. It also has no right of veto over the budget, as according to the Constitutional Court's interpretation, the budget is not a law, under the Slovenian Constitution. In the majority of states the budget is adopted in the form of a law, but it is regulated differently in Slovenia due to the National Assembly's fear of a National Council's veto. The National Council has the option of vetoing the Budget Implementation Act, the consequences of which are similar to vetoing the budget.

Furthermore, a direct relation between the National Council and the Government cannot be derived from the Constitution. Nevertheless, the National Council can influence the work of the Government through its authority to convey opinions to the National Assembly. The National Council can convey opinions on any matters within the National Assembly's competence, although the National Assembly decides whether or not to take the opinion into account; on the other hand, a National Council decision is very important to the Government. It is therefore in the Government's interest to attempt, in the formation of its opinions, to influence the National Council in addition to the National Assembly. The same holds for other National Council competences in the area of legislative functions. It is therefore clear that to it is probably impossible to avoid the National Council having some measure of influence on the Government's work.

OTHER NATIONAL COUNCIL ACTIVITIES

The National Council is recognised as an institution that works hard on its relations with civil society. It is an institutionalised form of representation for the different social interests that comprise the National Council, and as such is their legitimate representative. The institutionalised electoral base of the five interest groups encompasses most sectors of civil society. Additionally, numerous civil initiatives have entered the National Council, which were not covered or otherwise set out within the institutionalised mechanisms of the five interest groups. This was achieved through the National Council's supplementary activities, which include numerous consultations, lectures, various forms of public debate and other activities.

Over its ten year history, the National Council has organised over 120 consultations. The purpose of the consultations was to present a topic, invite top Slovenian and foreign experts to speak and finally to obtain as many varied and significant opinions as possible, which the National Council could then include within Slovenia's legal system via its own competences (through legislative initiatives). It can also present these findings to the Slovenian public in other ways, such as publishing articles and collections of documents. The topics of these expert consultations are very topical and of wider interest. They largely cover the spheres of the economy, the European Union and regionalisation.

Somewhat different in content are the National Council's consultations with its electoral base. In these the National Councillors – as representatives of individual interests on the National Council – return to the groups they represent to present their work and future policies and to exchange opinions with them. A characteristic feature of the National Council's work is the way its Councillors maintain contact with the electoral base throughout their term in office. It is a progressive manner of representing interests in a modern society.

Besides the consultations described above, the National Council organises lectures, public debates, forums, round tables and adversarial debates. Over its ten years of existence the National Council has organised over 50 lectures by foreign lecturers. In this manner it not only promotes its international role, but also presents foreign legal practice to the Slovenian public. Lectures by foreign experts are usually on subjects such as the European Union, the state, ecology and finances.

All interested members of the public are invited to these National Council activities. The National Council has cooperated with over 100 associations, professional societies, organisations, institutes and state organisations in arranging these consultations. The National Council attempts in this manner to invite a wide cross-section of civil society to debates on various social issues. The purpose of the consultations is not only to raise public awareness but also to obtain feedback and opinions from civil society.

The National Council receives many new ideas through these activities. It frequently incorporates the opinions presented at the consultations and lectures into its own positions and communicates them within the legislative process. The representatives of state institutions and authorities are also invited to the consultations, lectures and various public discussions and members of the executive branch of power who attend often directly incorporate these ideas into the Government's draft laws. The National Council directly influences governmental proposals in this manner, although it is impossible to quantify this aspect of its powers. Nevertheless it does exist and strengthens the role of the Council.

In this manner Slovenia's upper chamber endeavours to actively participate in monitoring and contributing to developing the economic, cultural, political, health and social spheres of our society. The National Council promotes the comprehensive organisation of individual legal fields. It also carries out additional activities, not assigned to it by law or the Constitution, that demonstrate its concern for areas of national interest. It responds quickly to current events and takes on the initiative in organising these activities. This work has earned it considerable interest, which is expressed in the number of people attending lectures and consultations and the large response in professional reviews and the daily press.

The National Council also carries out activities involving young people. The "Youth and the National Council" project involves young people getting to know the decision-making procedure in the National Council and the parliament in general. The young people can present their own issues at these

sessions. Due to problematic and demanding lifestyles, ever more young people are facing problems connected to drugs, alcohol, criminals, problems in schools and domestic conflict. Youth policy is related to people up to the age of 25 and also has to include the very young, aged 12 and below, and cover education, health, social status, housing and the environment. Cooperation develops in two stages. First young people are informed of the opportunities available to express their opinions, later they also have the opportunity to cooperation in the formation of different ideas and decisions. The goal of this project is to transfer young people's ideas into the legislative process and encourage the self-confidence young people need to play a constructive role in society.

Another project endorsed by the National Council is called "The Growing Book" (*Rastoča knjiga*). It is a project providing financial support for and promoting the role of Slovenian books. Books have been an essential part of Slovene culture for over a thousand years. The project is a tribute to all those Slovenes throughout history who have creatively contributed to Slovene culture. Through projects such as the Growing Book, the National Council shows its support for ideas relating to Slovenia's national consciousness. It is a step in the search for Slovene culture, identity and self-confidence which are ever more important in today's climate of globalisation and with Europe and the whole world being ever more integrated.

The Growing Book in Slovenia is the first project of its kind in the world. It is a way in which we can present ourselves to the world as a nation wanting to offer its culture to the world's heritage. This is a noble and well-intended idea that is open to all. The project is just one way in which Slovenes can make themselves known to the rest of the world.

THE NATIONAL COUNCIL AND THE EUROPEAN UNION

The National Council does not directly cooperate with European Union institutions. The Constitution and law do not give it any competences relating to the European Union, nor do they limit it in this regard. As mentioned above, it is very active in presenting the role and importance of the European Union, as it organises numerous consultations and lectures on this subject. The National Council only cooperates with the European Parliament in the training of Councillors and the National Council's expert collaborators.

The National Council supports the idea of introducing bicameralism to the European Union. Representatives of Slovenia's executive branch have also expressed this idea at the Convention on the Future of the European Union. As a candidate for EU accession, Slovenia is working towards the introduction of equal representation for EU members in any prospective upper chamber. This means that while the European Parliament represents member states proportionally, each state would be equally represented within a senate. The result would be to reduce conflicts between the larger and smaller member states and create ties between member state institutions and Europe's supranational bodies.

CONCLUSION

Over its ten year history, the National Council has demonstrated the many useful characteristics of its function as an upper chamber. By presiding over the Association of European Senates it also has justified its place alongside more powerful upper chambers. In this manner the National Council increases its significance. Over these ten years, its reputation has increased and constitutional experts confirm that it has the characteristics of a genuine upper house. Even political parties offer it their, relative, support. Analyses of press reports show that the Slovenian press are not well enough informed of the National Council's role and competences or the concept and importance of bicameralism.

Unfortunately in Slovenia, the idea of bicameralism's contribution to greater democracy and to a more effective system of checks and balances has not been widely received, although attested in theory and demonstrated in practice for some time in modern developed states. An upper chamber that contributes to the legislative process through a different composition and with different instruments to the lower chamber is a guarantor of higher quality legislation. The overall concept of the National Council, as the supervisor of the National Assembly's legislative work, is therefore rational,

appropriate, internationally comparable and worthy of further development towards a more effective bicameral parliament.