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## **The Possibilities of Post-Legislative Scrutiny in Post-Soviet Transformation States: The Cases of Moldova and Armenia**

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*The article analyzes the possibilities of applying the system of post-legislative scrutiny in the post-Soviet states, which is successfully used in the Western European countries for the improvement of legislation. In the post-Soviet states, the status of the parliament and the particular features of the states are important for the successful functioning of the system. It is shown that the failure of this system in Moldova is due to the fact that these features have been sidelined. The article also studies the prerequisites and possibilities of the application of this system in Armenia.*

### **Keywords**

Post-legislative scrutiny, laws' application scrutiny, parliament, Western Europe, Armenia, Moldova

### **Introduction**

After the collapse of the USSR, post-Soviet transformation countries had to find solutions to a number of dilemmas: democracy or authoritarianism, free, competitive or planned economy under strict state control, international relations oriented to a complete integration or isolation?<sup>1</sup>. The first of them, the choice of the regime, is of crucial importance to those states. It is a long-lasting process and can ensure the effectiveness of the state's functioning in case it leads to the establishment of consolidated democracy. Linz J. and Stepan A. distinguish three dimensions of the process: behavioral, attitudinal and

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<sup>1</sup> **Torosyan T.**, Post-Soviet Transformation of Social System, Yerevan, 2006, p. 21. (in Armenian)

constitutional (legislative)<sup>2</sup>. The existence of a consolidated democracy in this or that country can be ensured only by simultaneous provision of the conditions set for those three dimensions. The article studies the possibilities of increasing the effectiveness of the third dimension, i.e. the legislation, the experience in this field, the intermediate results of the suggested solutions, as well as the perspectives of this mechanism in Armenia. The effectiveness of the legislation obviously depends not only on its legal content and problems of application but also on its conformity with the behavioral and attitudinal dimensions within the society. The possibilities of the improvement of legislation and its application, regardless the reason for their incompleteness (technical shortcomings during the law drafting, the problems arising from the change of the situation or the inconsistency connected with the behavioral and attitudinal dimensions) will be observed below. *Post-legislative scrutiny* is being suggested as an opportunity to have *better laws* within which the law is considered either good or bad depending on the extent the law meets the defined purpose. Such an assessment is objective, and does not depend on the political assessments of the purpose of the law.

At the end of the 20th century, the main means to solve the problem of the improvement of the legislation was modeling. It implied that in drafting phase the regulating activities and the legislation should be formally and accurately described, deviations from the defined purposes should be found by the model's use and eliminating or preventing provisions should be included in the draft legislation<sup>3</sup>. In reality, this methodology does not often justify itself due to the complexity and resourcefulness of creating an accurate model<sup>4</sup>. Since the first decade of the 21<sup>st</sup> century, more countries are considering post-legislative scrutiny as an important means of solving

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<sup>2</sup> **Linz J., Stepan A.**, Problems of Democratic Transitions and Consolidation: Southern Europe, South America, and Post-Communist Europe, Johns Hopkins University Press, 1996, pp. 20-21.

<sup>3</sup> **Pintea I., Vanhoutte P.**, Post-legislative scrutiny. Practices, experiences and recommendations. IPP and CESS, January 2017, pp. 9-10.

<sup>4</sup> Ibid.

the problem<sup>5</sup>. This implies that a while after the legislation's application the regulatory activity is being examined, the deviations from the defined purpose are detected and corrective formulations are added in the legislation. This approach requires less resources, is more practical, and more countries adopt it as a means of having better laws over time<sup>6</sup>. In many countries, post-legislative scrutiny is one of the most important functions of a state<sup>7</sup>. For instance, in France, Sweden and Switzerland, the responsibility of its implementation is fixed by the Constitution<sup>8</sup>. The scrutiny is a constitutional requirement for Armenia as well, and constitute one of the three functions of the Parliament<sup>9</sup>. According to the Constitutional Law of RA on the "Rules of Procedure of the National Assembly", the scrutiny of the implementation process of the laws is the component of this function exercised by the parliament which is vested on standing committees<sup>10</sup>. Still, as in several post-Soviet transformation countries, this function is not yet formalized in Armenia. Due to the limited experience and imperfect culture of the elaboration and application of the legislation, there is a strong need of formalization and improvement of legislative scrutiny in these countries with the consideration of their peculiarities. The purpose of this article is to reveal and formulate those peculiarities, find out the manifestations they can have during post-legislative scrutiny, analyze the results of its application and perspectives of improvement in Moldova, as well as the possibilities for its implementation in Armenia. In professional literature, the general definition of post-legislative scrutiny is the following: "*Post-legislative scrutiny is a systematic program of a legal framework*

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> **De Vrieze F., Hasson V.**, Post-Legislative Scrutiny. Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for its Place in Democracy Assistance. WFD, 2017, pp. 14-40.

<sup>8</sup> **De Vrieze F.**, Ex-Post Evaluation of Legislation. How is ExPEL conducted in different European countries? WFD, Armenia Parliament - UK Study visit. September 2018, pp. 14-16.

<sup>9</sup> Constitution of RA, article 88.

<sup>10</sup> Constitutional Law of RA. "Rules of Procedure of the National Assembly", article 122.

*review against clearly defined political objectives, taking into consideration the costs and benefits, in order to ensure that the legal acts remain up to date, are cost-justified, cost-effective and match the needs. The evaluation includes analysis of economic, social and environmental impacts. It is based on both quantitative and qualitative analyses, including assessments, analyses and research, studies, reports and statistical data”<sup>11</sup>.*

Post-legislative scrutiny, the implementation of which often reveals the necessity of establishment or revision of the legislation, is now considered to be one of the following five components of the legislative process:

1. necessity of the establishment or revision of legislation,
2. legislative proposal,
3. discussion and adoption in the parliament,
4. application by the government,
5. post-legislative scrutiny.<sup>12</sup>

The expressions “*post-legislative scrutiny*” and “*ex-post evaluation of legislation*”, accepted in English-language literature, have their Armenian translations, while in the Armenian legislation *oversight over the process of implementation of laws* is already a fixed wording for these functions (hereinafter, LIO)<sup>13</sup>. It should be noted that the LIO includes both post-legislative scrutiny and oversight over the unconditional application of laws and the fulfillment of law's requirements by state bodies and their officials. Still, staying close to the Armenian legislation, instead of the expressions “post-legislative scrutiny” and “ex-post evaluation of legislation”, the wording LIO will be used.

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<sup>11</sup> **Pîntea I., Vanhoutte P.**, Op. cit., p. 24.

<sup>12</sup> **De Vrieze F.**, Ex-Post ..., Op. cit., p. 4

<sup>13</sup> Constitutional Law of RA. “Rules of...”.

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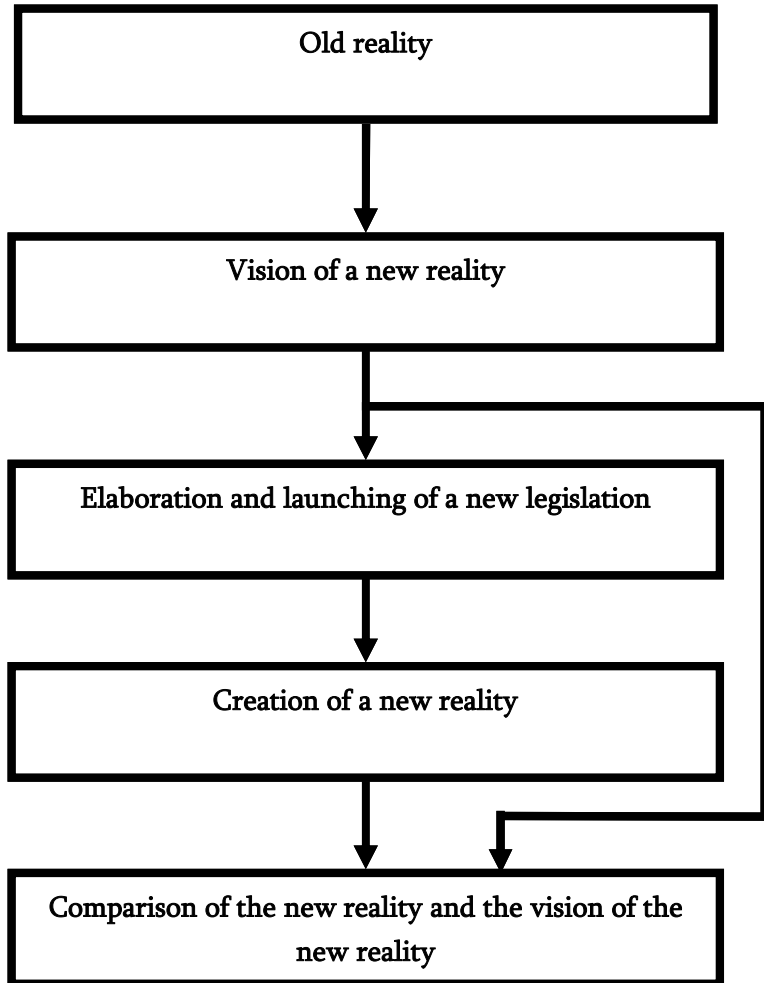
**Monitoring of the law application and the evaluation of results, the parliament's role in their realization, the perspectives of the law improvement through the LIO**

*Monitoring of the law application and the evaluation of results.* The elaboration process of legislative initiative starts with defining the purpose. That is the vision of new reality which is expected to replace the regulated old reality through such an initiative. A new reality must be formed as a result of the application of laws, stemmed from the vision of a new reality, and, if necessary, sub-legislative acts towards the old reality. The comparison of a new reality and the vision of it are realized through the LIO (Figure 1). If there are contradictions, the LIO should enable to disclose their reasons and to formulate the proposals on their elimination.

By nature, the reasons for the discrepancy between the new reality and the vision of the new reality are divided into two groups:

1. the law and the sub-legislative acts are not appropriately applied,
2. the law and the sub-legislative acts do not provide the correspondence of a new reality to its vision.

Figure 1



The discrepancy between the vision of a new reality and the new reality itself is revealed successively by the LIO toolkit. First, the reasons for the inconsistency of the first group are disclosed and eliminated. If the inconsistency is still kept, the reasons for the discrepancy of the second group are disclosed and eliminated. The solution of the problems related to the disclosure and elimination of

the causes in the first and second groups, is carried out accordingly by means of monitoring the application of the law and evaluating the results of the law.

By means of **monitoring the application of the law**, the legal and technical problems related to the application of it are observed, detected and regulated<sup>14</sup>, the answers to the following questions are provided:

- Is the legislation working out as intended?
- Are the provisions of the law valid?
- Has all the necessary sub-legislation been provided?
- Is the legislation in line with the Constitution, other laws, and international commitments?
- Are there any court decisions or judicial procedure concerning the legislation?
- Is there a body authorized to apply the legislation?
- Have the relevant target groups been informed about the legislation?<sup>15</sup>

By means of **evaluating the results of the law**, the economic, social, environmental and other issues, connected with the application of the law, are detected, the unexpected consequences are revealed as a result of the law application<sup>16</sup>, the answers to the following questions are provided:

- Have the economic, social and environmental policy expectations been realized?

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<sup>14</sup> **De Vrieze F., Hasson V.**, Op. cit., p. 12.; UK Law Commission. Post legislative scrutiny (LAW COM No 303). UK Law Commission, September 2006, p. 7; **De Vrieze F.**, Principles of Post-Legislative Scrutiny by Parliaments. WFD, January 2018, p. 6.

<sup>15</sup> **De Vrieze F.**, Ex-Post Evaluation of Legislation. Principles and Practical Steps for Parliament. WFD, Armenia Parliament - UK Study visit, September 2018. p. 2., **De Vrieze F.**, Post-Legislative Scrutiny. Guide for Parliaments. WFD, November 2017, pp. 11-12

<sup>16</sup> **Pîntea I., Vanhoutte P.**, Op. cit., p. 9-10; UK Law Commission. Post legislative scrutiny. A consultation paper (Consultation Paper No 178). UK Law Commission, December 2005, p. 31.

- Have the expenses, conditioned with law, been made effectively?
- Is it possible to improve the application of law and the outcomes arising from it?
- Is it possible to draw lessons and point out the best experience?<sup>17</sup>

*The role of the parliament in the LIO process.* Parliaments generally implement both the monitoring of the application of law and the evaluation of the results of law. During the monitoring of the law application, the fulfillment of the basic requirements, presented to the legislation, is studied for which relatively small capacities and resources are required as contrary to the evaluation of the results of law.

Three statuses of the parliament within the LIO implementation process are generally distinguished:

1. **Passive supervisor:** there is no parliamentary strong governance in the process, there is no monitoring of the application of the law or evaluation of the results of the law by the parliament, the conclusions of the oversight are based on the reports of the government or independent agencies. In Germany, Belgium, Estonia and Moldova, in particular, parliaments have such a status in the process of the LIO implementation.
2. **Non-formal supervisor:** the parliament plays a more active role in the process, there are special structures, research and assessment departments, but there is no systematic linkage of the process with the formal parliamentary procedures. Particularly, in Italy and Montenegro parliaments have such a status in the LIO implementation process.
3. **Formal supervisor:** the process is carried out by the parliamentary bodies in a formal and highly institutionalized

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<sup>17</sup> **De Vrieze F.**, Post-Legislative..., Op. cit., pp. 11-12; **De Vrieze F.**, Ex-Post Evaluation of Legislation. Principles, Op. cit., p. 2; Pîntea I., **Vanhoutte P.**, Op. cit., pp. 9-10.



manner, is based on legal regulations, is supported by specific procedures and includes both the monitoring of the application of the law and the evaluation of the results of the law. Particularly in France, Sweden and Switzerland, parliaments have such a status in the LIO process<sup>18</sup>.

As contrary to the status of passive and non-formal supervisors, that of formal supervisor provides greater opportunities for the parliament to implement the LIO effectively. Meanwhile, this status supposes active participation of political bodies throughout the whole process of the LIO implementation<sup>19</sup>. This is a serious challenge, in the case of not overcoming which, discussions of political nature can distract the LIO from the realization of its objectives, and seriously undermine the entire process of oversight. In the light of this challenge, the inclusion of relevant regulations in the LIO methodology gains particular importance. However, it is obvious that the political culture of the country implementing the LIO is of crucial importance, which the choice of the parliament's status in that process should be guided by. It is remarkable that the professional community has adopted an approach of the LIO process not serving the political goals and ignoring party interests in the LIO implementation<sup>20</sup>.

The LIO implementation is a complex process dealing with the functions and departmental interests of many state bodies. In that sense, it is obvious that the parliament should have a necessary status and responsibilities in the LIO process. It should be noted that while implementing the LIO, good results can be expected only in case there is coordinated and active participation of both the parliament and the other parties involved in the process, such as the government, independent commissions, experts, professional and civil society organizations, beneficiaries and citizens<sup>21</sup>. The more clearly and by the

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<sup>18</sup> **De Vrieze F.**, Ex-Post ..., Op. cit., pp. 7-17.

<sup>19</sup> **De Vrieze F.**, Ex-Post ..., Op. cit., p. 17.

<sup>20</sup> **De Vrieze F.**, Principles ..., Op. cit., p. 10; **De Vrieze F.**, Ex-Post ..., Op. cit., p. 6; **De Vrieze F.**, **Hasson V.**, Op. cit., pp. 14-15.

<sup>21</sup> **De Vrieze F.**, Principles ..., Op. cit., pp. 10-11; **De Vrieze F.**, Ex-Post ..., Op. cit., p. 8.

higher legal act is fixed the responsibility of the parliament to implement the LIO and the role of other state bodies in that process, the more realistic is the full-fledged implementation of the LIO. A clear establishment of the responsibilities of state bodies is particularly important in cases the law of the LIO process has sub-legislative acts. To effectively implement the LIO, they should also be included in the process, and therefore the parliament should have legal bases either to oversight over the application of sub-legislative acts on its own or to delegate it to the relevant body of the executive power<sup>22</sup>.

In terms of the LIO implementation, it is also important for the bases of the oversight to be described clearly in legal terms. In this respect, it is effective to fix the requirement for the oversight of the law in its text. Technically, this is usually done in one of the following two ways:

1. In the section of the transitional provisions of the law, it is fixed that the body, responsible for the application of the law, is obliged to submit to the parliament a reference on the application of the law or some of its provisions after the application of the law (three to five year-term is usually defined<sup>23</sup>). Such a reference becomes a basis for the parliament to implement the LIO in respect of that law. In case of a short timetable for submitting the reference, the information it provides may be insufficient to formulate a right conclusion on the application of the law<sup>24</sup>.
2. A certain deadline is set for the law or some of its provisions (sunset law<sup>25</sup>) after which they cease to function unless the parliament makes another decision<sup>26</sup>. In order to avoid the undesirable consequences, arisen from the cessation of these provisions' action, the government usually submits to the

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<sup>22</sup> **De Vrieze F.**, Principles..., Op. cit., pp. 6-7.

<sup>23</sup> **De Vrieze F.**, Post-Legislative ..., Op. cit., p. 8

<sup>24</sup> **De Vrieze F.**, Principles ..., Op. cit., p. 12.

<sup>25</sup> **Sharma R.**, et al. Expert report on the implementation of ex-post evaluations.

Good practice and experience in other countries. Progons, December 2013, p. 40

<sup>26</sup> **De Vrieze F.**, Principles ..., Op. cit., p. 4.

parliament a legislative initiative either on maintaining the existing regulations of the law (sunset delay) or on changing of the specified provisions of the law. The discussion process of this legislative initiative allows the parliament to request and receive data on the application of the law or the corresponding provisions of the law from the government, on the basis of which to implement the LIO<sup>27</sup> and to make a decision about the further action of the law<sup>28</sup>.

The LIO process can also start with the responsibility to monitor the application of the law and to evaluate the results of the law. This possibility may also be useful when there is not any above-mentioned mechanism for the launch of the LIO.

Another possibility of a launch is the scrutiny implementation as a result of the study of the received impulses from the law beneficiaries, deputies, professional and civil society organizations, citizens<sup>29</sup>.

For the LIO implementation, the parliaments either create special committees empowering them to exercise the monitoring of the application of laws and to evaluate the results<sup>30</sup>, or the relevant leading committees, that elaborated the given legislation, are vested with this responsibility<sup>31</sup>. The latter option has an obvious advantage: law scrutiny is implemented by a committee which is well aware of the course of action of the law and has made changes in that law<sup>32</sup>.

The monitoring of the application of law and the evaluation of its results require a substantial strengthening of the institutional and organizational capacities of the parliament. In particular, the requirements on the knowledge and skills of the parliamentary staff are considerably increasing to provide effective support to deputies. Therefore, the parliament should have an opportunity to involve the

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<sup>27</sup> UK Government. *Sunsetting Regulations: Guidance*. UK Government, March 2011, p. 9.

<sup>28</sup> **De Vrieze F.**, *Post-Legislative ...*, Op. cit., p.15.

<sup>29</sup> **De Vrieze F.**, *Principles...*, Op. cit., p. 5.

<sup>30</sup> **De Vrieze F.**, *Post-Legislative ...*, Op. cit., p. 18.

<sup>31</sup> **Pîntea I., Vanhoutte P.**, Op. cit., pp. 5-8.

<sup>32</sup> **Pîntea I., Vanhoutte P.**, Op. cit., pp. 12-15.

extra-parliamentarian professional capacities in the LIO implementation<sup>33</sup>. In some countries, a specialized subdivision is being established in the staff of the parliament to assist in the effective implementation of the functions related to the LIO<sup>34</sup>. It ensures the effective utilization of resources, as those, required for the standard functions of the LIO implementation, are not provided to each committee but are centralized in a specialized subdivision providing relevant services to all committees and substantially empowers their capacities<sup>35</sup>.

Such a specialized subdivision may have, among others, the following responsibilities in the LIO process:

- to support the committees during the LIO planning and implementation,
- to choose external experts and sign contracts,
- to implement preliminary analysis based on the commissions' applications,
- to conduct researches within the LIO framework,
- to ensure the contact with the bodies applying legal acts,
- to evaluate the quality assurance,
- to process evaluation criteria of research and analysis, as well as scrutiny methodology.<sup>36</sup>

***The possibilities of law improvement through the LIO.*** The LIO makes sure that the legislation functions out as intended, the beneficiaries are properly informed, the changes, envisaged by the legislation, have been made, the strategy objectives have been implemented. If any of these problems is not addressed, the causes are detected by the LIO and an opportunity is created for their elimination. Furthermore, the LIO has one more important mission - the improvement of the legislation under scrutiny by the use of the

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<sup>33</sup> De Vrieze F., Post-Legislative ..., Op. cit., 8; Pîntea I., Vanhoutte P., Op. cit., pp. 12-15.

<sup>34</sup> OECD, Evaluating Laws and Regulations. The Case of the Chilean Chamber of Deputies. OECD, May 2012, p. 26.

<sup>35</sup> OECD, ..., Op. cit., p. 27.

<sup>36</sup> Pîntea I., Vanhoutte P., Op. cit., pp. 12-15.

obtained information in the result of the implementation of scrutiny functions<sup>37</sup>. The main question concerning the monitoring of the application of law is whether legislation is working out as it was intended. The other six questions, describing the monitoring of the application of law, aim to discover the reason or the reasons as a result of which the law does not function the way it was intended to. The analysis of these questions may reveal that the problem is in the incorrect formulations that have been crept into the text of the law during its drafting process. In such instances, the LIO should regulate the problems of the law improvement.

However, even if the answers to the above-mentioned six questions of the monitoring of the law application are positive and there are no inaccuracies crept into the text of the law, the law may act not the way it was intended to. Moreover, in the field of the given law regulation, the monitoring of the application of law, held several years ago, may register, that the law acted as intended, while after some years it may register that it does not act as such. This can have both objective and subjective reasons. An objective reason can be the change of the realities in the field of the law regulation in the course of time, as a result of which the legal act may lose its modernity and may not ensure the regulatory role, with all the negative effects deriving from it. Obviously, after the loss of its modernity, even the most meticulous implementation of that legal act may not ensure the rise of the regulation effectiveness in the field of the legal act's function. In such instances, the effectiveness of public, including financial capacities will also be low. It is impossible to expect that the mentioned problem will be revealed and solved by implementing the LIO towards the changed laws, as the loss of the modernity of a legal act due to a change of reality, may also occur in the areas where the regulating laws have not been changed for a long time. In a course of time, the changing reality and the requirement for the legislation to comply with the reality, oblige a regular disclosure of the legal acts, which have lost their modernity, and elaboration and application of

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<sup>37</sup> **De Vrieze F., Hasson V.**, *Op. cit.*, p. 13.

moderate legal acts instead of them. An effective way to solve this problem may be the regular monitoring of the application of law and, if necessary, the improvement of law.

A subjective reason for the law not to operate the way it was intended may be the problems with those who apply the law. Their control is beyond the scope of the LIO field; the parliament deals with them using other instruments of control. However, it should be noted that the oversight by the parliament over the activities of those who apply the law, such as state bodies, officials, being beyond the scope of the LIO, often creates signals for the LIO implementation. The opposite is true as well: the LIO implementation may provide grounds for the scrutiny of activities of those who apply the law. It is also necessary to state that meeting the LIO requirements is a necessary but insufficient condition for the law to function as intended.

### **The Peculiarities of LIO in Post-Soviet Transformation Countries**

The experience of different countries proves that there is no universal approach to the LIO implementation<sup>38</sup>. This is not only due to the LIO's 20-year history but also the peculiarities of the countries applying this system. As it is presented in the observation of the status of parliaments in the LIO process, the approaches vary among different European countries. Apparently, in a series of post-Soviet transformation countries, the LIO implementation policy can not automatically repeat the experience of Western European countries.

*The differences between the state of legislations in Western European and post-Soviet transformation countries.* The legislation in Western European countries, which has consistently been formulated for decades and has periodically been adjusted by the imposing imperatives stemmed from reality, has been consistent with the existing realities, with some reservations. The strong democratic traditions in those countries have also played an important role in such

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<sup>38</sup> De Vrieze F., Victoria Hasson V., Op. cit., pp. 14-40; De Vrieze F., Post-Legislative..., Op. cit., pp. 7-11.

a harmony of reality and legislation. That is why no radical changes are made in the laws in force in those countries while implementing the LIO. The results of the studies devoted to the suggestions on the improvement of legislation by the UK House of Commons and House of Lords are remarkable. The researchers noted that the realization of suggestions by both houses does not require major legislative amendments and that most of them concern the review of sub-legislative acts<sup>39</sup>. Given the experience of post-Soviet transformation countries in lawmaking, which differs significantly from that of the Western European countries, it can be assumed that there will be a large number of suggestions on the improvement of legislation in these countries, most of which of significant importance. In this sense, it is obvious that the post-Soviet transformation countries have more and valid reasons to implement the LIO than the Western European countries.

***The status of parliament in the LIO process and the legal regulations.*** The choice of the legal regulation of the LIO implementation and one of the three formats of parliament's role (the status of passive, informal, or formal supervisor) in that process is largely conditioned by the culture of relationships between state bodies, as well as the tradition of parliamentary oversight in a given country. Given the fact that those traditions are not yet fully formed in post-Soviet transformation countries, it is evident that in order to have an effective LIO system, it is necessary for all the bodies to be involved in the LIO process, to have legally defined responsibilities, and for the parliament to have the status of formal supervisor in the LIO process. The choice of the other options may be problematic from the standpoint of the LIO's effective implementation.

***The issue of the capacities required for the LIO implementation.*** The proper implementation of LIO requires time, organizational and financial strong capacities, harmonious and

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<sup>39</sup> **De Vrieze F.**, Ex-Post Evaluation of Legislation. Introduction to Ex-Post Evaluation of Legislation (ExPEL) in a national parliament. How is Post-Legislative Scrutiny conducted in the UK? WFD, Armenia Parliament - UK Study visit, September 2018, p. 22.

professional work of state bodies involved in the process, as well as conscious public demand for the process. The solution to these problems is not easy even for some Western European countries with strong capacities, developed legislation, established cooperation between state bodies and traditions of a consolidated democracy<sup>40</sup>. In post-Soviet transformation countries, the introduction of LIO system is obviously related to the complex problem of stronger capacities and efforts involvement.

***Should the limited resources be used for the monitoring of the application of law or the evaluation of the results of law?*** The amount of the resources required for the LIO implementation depends on what the research covers. In case of limited resources, it is more effective to implement LIO for a small number of important laws (even only for a single code) rather than to oversight over a large number of laws<sup>41</sup>. This approach is quite justified for the countries with consolidated legislations, while it is problematic for post-Soviet transformation countries for the reasons below:

- the problem of attracting necessary capacities and resources for the LIO implementation is more difficult in those countries;
- there can be no guarantee in a country with consolidating legislation, that the only code, which has passed the LIO, will not undergo significant changes within a few years interrupting the work already done;
- the monitoring of the application of a large number of laws will meet the expectations of more beneficiaries.

To summarize, it can be noted, that in post- Soviet transformation countries:

- the effective implementation of the LIO over the legislation is a necessity;
- the processes connected with the LIO implementation becomes essentially complicated due to the peculiarities of the formation of legislation and political culture;

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<sup>40</sup> De Vrieze F., p. 12; De Vrieze F., Principles..., Op. cit., p. 6.

<sup>41</sup> De Vrieze F., Principles..., Op. cit., p. 6.



- the responsibilities of all the bodies involved in the LIO process must be clearly defined in legal terms, and the parliament should have the status of formal supervisor;
- Given the capacities of state bodies and their supporting structures involved in the process, the peculiarities of the methodology regulating the process and that of the formation of legislation as well as the untested situation, it would be effective to carry out the implementation of LIO in two stages, exercising only the monitoring of the implementation of law at the first stage,
- the goal of the first stage should be not only the monitoring of the application of the law but also the capacity building for the evaluation of the results of the law, the formation of conscious demand of the beneficiaries for the LIO investment,
- It would be effective to start the large-scale implementation of the evaluation of the results of law with the solutions of the problems in the first stage, at least once after the monitoring of the law application over all the legislation (with reasonable exceptions) and the reduction of elemental changes of legislation.

### **The Experience of Moldova in the Elaboration and Launching of the LIO System**

As already mentioned, the LIO system has been developed and applied in countries with consolidated democratic traditions. Consequently, this practice may not be sufficient for the introduction of this system in post-Soviet transformation countries having certain peculiarities. That is why the experience of states sharing more common features, is much more useful. In this sense, the experience of Moldova is more useful for post-Soviet transformation countries and, particularly, for Armenia, as there are a series of generalities of key importance with that country. Similar to Armenia, it has a parliamentary system of government, is a member of the Council of

Europe, is not a member of the EU but is involved in the Eastern Partnership program, is in the "third group" of post-Soviet transformation<sup>42</sup>, has equatable indicators in terms of political and economic reforms, etc. Meanwhile, there are also some differences the most obvious of which is the level of relations with the European Union. Armenia has signed the EU-Armenia Comprehensive and Enhanced Partnership Agreement with the EU in 2017<sup>43</sup>, whereas Moldova has signed Association Agreement in 2014<sup>44</sup>, which, among the other goals, envisages an adoption of a large number of legislative acts and their LIO implementation. Though, it should be noted that the comparative analysis with Georgia and Ukraine having signed such agreements in 2015 shows that Armenia does not concede in any essential question; in some cases it is even a step forward<sup>45</sup>.

Since 2016, the preparations for the introduction of the LIO system have started and the first results of its operation are already visible. According to the rules of procedure of the parliament, a special commission has been set up, which, with the support of the secretariat of the parliament and other standing committees, implements monitoring of the application of legal acts, determines its effectiveness, offers recommendations to the executive, and, if necessary, introduces a report to the parliament six months after the entry of the legal act into force<sup>46</sup>. In the process of the LIO implementation in Moldova, the parliament has the weakest status out

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<sup>42</sup> **Torosyan T., Sukiasyan H.**, Three Stages, Three Groups and Three Paradigms of Post-Soviet Transformation, *Armenian Journal of Political Science*, 2014, 1, 51-61.

<sup>43</sup> Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (not yet in force), OJ L 23, 26.01.2018, pp. 4–466, [https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:22018A0126\(01\)&qid=1523193570030](https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:22018A0126(01)&qid=1523193570030) (15.02.2018).

<sup>44</sup> EU-Moldova Association Agreement, [www.eeas.europa.eu/archives/docs/moldova/pdf/quick\\_guide\\_eu\\_md\\_aa\\_en.pdf](http://www.eeas.europa.eu/archives/docs/moldova/pdf/quick_guide_eu_md_aa_en.pdf).

<sup>45</sup> **Delcour L., Wolchuk K.**, The EU's Unexpected 'Ideal Neighbour'? The Perplexing Case of Armenia's Europeanisation, *Journal of European Integration*, 2015, 37 (4), 1-17.

<sup>46</sup> **Pîntea I., Vanhoutte P.**, Op. cit., p. 16.

of the three possible ones, i.e. the status of passive supervisor. The choice of the weaker status of the parliament is due to the most serious problem, specific to the post-Soviet transformation countries and preventing their development, namely the limited parliamentary capacity as a result of non-consolidated multiparty system. The study of the experience of Moldova in the implementation of LIO system proves the ineffectiveness of this status of the parliament. In particular, the following reasons preventing the effectiveness of the LIO are mentioned in the study<sup>47</sup>:

1. The Rules of Procedure do not envisage a mandatory assessment of the results of law. The six-month period is too short to evaluate the application effect of the law.
2. The standing committees of the parliament do not have a clear division of legislative and oversight activities. There is not any provision on the responsibility of the standing committees in the LIO process.
3. The provisions on the parliamentary oversight of the regulation are interpreted as voluntary but not mandatory authorization. The Rules of Procedure contain a number of provisions which extend the possibilities of the LIO implementation by the parliament, but are not used.
4. The practice in the legislative body keeps the parliamentarians back from the evaluation and revision processes of the adopted laws. After the adoption of the legislation, it does not return to the parliament's attention, the sectorial legal framework and implementation of legislation are not considered to be important.
5. The insufficient quality of the commissions' specialists do not promote an effective LIO implementation.
6. Problems conditioned by the relationship between the parliament and the executive:
  - The existing laws, with some exceptions, do not contain special norms about submitting reports on the application of

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<sup>47</sup> Pîntea I., Vanhoutte P., Op. cit., pp. 21-22.

the law to the parliament by the government or other bodies. It leads to the factual absence of parliamentary oversight.

- The parliamentary oversight is limited by the discussions of annual reports submitted by different authorities in line with the law's requirement. The reports, submitted by the executive, are not related to the application of the sectoral legislation and its consequences and are not discussed in details in standing committees of the parliament or plenary sessions.
- The executive is not obliged to and is not interested in applying to the legislative with any issue other than the adoption of laws or budget.
- This distorted situation does not contribute to the formation of mutual trust and favorable conditions of effective cooperation between the legislative and executive. Such relationships cannot contribute to the formation of the law supremacy system based on the actual application of the principles of democratic government.

In order to solve these problems, the authors of the study offer to:

- replenish the Rules of Procedure and the Law on drafting the legislation with specific procedures on mandatory and periodic implementation of both the monitoring of the application of law and the evaluation of its results, as well as regularly evaluate the compliance of the sub-legislative acts with the legislation adopted by the parliament,
- determine the assessment functions of the quality of legislative framework, concerning corresponding areas, as well as of the monitoring of the law application and the evaluation of results in the competence of the standing committees,
- draft and approve a Parliamentary Action Plan on the parliamentary oversight which should include specific actions related to planning and making assessments on the effectiveness of the implementation of legislation, as well as

draft an annual report on the oversight by each standing committee,

- set mandatory requirement for the rules of results' assessment of the adopted laws,
- elaborate and approve LIO methodology for the study and assessment of the impact of the legislation, the requirements on the assessment reports, as well as for the actions followed by the assessment,
- include the organization and coordination of the LIO in the functions of the secretariat.<sup>48</sup>

Though the realization of these suggestions may improve the situation to some extent, the study reveals that the authors did not fully consider the peculiarities of Moldova. The suggestions should stem from the approach that the transplantation of the LIO system should be carried out taking into consideration the existing realities. In that sense, it would be right to complete the above-mentioned suggestions with the following ones:

1. The Association Agreement between Moldova and the EU conditioned the LIO introduction<sup>49</sup>, however, it was necessary to create a conscious demand on the application of the LIO system among the parliament, government, professional community and civil society before the drafting of the LIO system. The existence of such a demand would essentially promote the LIO introduction, elaboration, and launching.
2. Change the status of the parliament in the LIO process from the passive to the formal supervisor which will give the parliament additional legal bases for the efficient implementation of LIO. Such a change is also justified with the fact that Moldova is a country with a parliamentary system of government.
3. Within the framework of parliament-government relations, considering especially the difficulties of attracting the

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<sup>48</sup> **Pîntea I., Vanhoutte P.**, *Op. cit.*, pp. 22-23.

<sup>49</sup> **Pîntea I., Vanhoutte P.**, *Op. cit.*, pp. 5-8.

capacities and resources necessary for the evaluation of the results of laws, it is not realistic to expect the effectiveness of the assessment of the law application results in the first stage of the LIO system transplantation. It will be effective to carry out the monitoring of the application of laws shortly after the introduction of the system. Under necessary conditions, the evaluation of the results of the law can be carried out as well.

### **The Possibilities of LIO Implementation in Armenia**

The legislation of Armenia has been shaped over the past three decades in accordance with the general patterns of the formation of legislation in post-Soviet transformation countries. Therefore, the creation of preconditions for the introduction, elaboration and operation of LIO system in Armenia is imperative. There is an important legislative background for the introduction of this system in Armenia. The article 122 of the “Rules of Procedure of the National Assembly” RA Constitutional Law states: "Standing committees implement parliamentary oversight over the process of implementation of laws". This formulation addresses two principal questions for the LIO implementation: first, LIO implementation in Armenia is a responsibility envisaged by the law; second, parliament is the subject implementing LIO through its standing committees.

Nine standing committees in the National Assembly of the sixth convocation of the Republic of Armenia operated up to 2018. There were 334 operating laws in Armenia at that time, not counting the laws which were not considered in the LIO implementation process (laws having limited significance in terms of time and effect<sup>50</sup>). Each of the laws has its own parliamentary head committee, which, in particular, is responsible for making amendments to the law. From the point of view of being the head, the laws were distributed between the standing committees according to Table 1.

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<sup>50</sup> De Vrieze F., *Post-Legislative ...*, Op. cit., p. 12.

**Table 1**

<b>The Committee on</b>	<b>Law</b>
Economic Affairs	89
State and Legal Affairs and Protection of Human Rights.	84
Territorial Administration, Local Self-Government, Agriculture and Environment	53
Defense and Security	30
Financial-Credit and Budgetary Affairs	29
Science, Education, Culture, Youth and Sport	23
Health Care and Social Affairs	22
Foreign Relations	4
European Integration	0
<b>Total</b>	<b>334</b>

The Assembly of the seventh convocation, which has started its activity since January 2019, increased the number of standing committees with two additional ones: the Standing Committee on Regional and Eurasian Integration was separated from the Standing Committee on Economic Affairs, and the Standing Committee on

Protection of Human Rights and Public Affairs was separated from the Standing Committee on State and Legal Affairs and Protection of Human Rights. These changes, along with the solution of other problems, will somewhat mitigate the difference between the standing committees depending on how many laws the following committee is the head.

Before the large-scale implementation of the LIO in Armenia, a few preparatory issues need to be resolved:

- organizing events in the parliament and government which will form a conscious demand for the LIO. Its formation is also important among the professional community and civil society;
- forming the vision of the LIO system, elaborating and adopting the legislation stemming from this vision based on formal supervisor's status of the parliament in the LIO process and clearly fixing the responsibilities all the bodies involved in the process;
- creating the LIO support subdivision in the staff of the parliament;
- elaborating and adopting a methodology for the implementation of the LIO;
- elaborating and adopting a guide for the LIO implementation;
- implementing LIO pilot project, analyzing the project results, making appropriate corrections, promulgating the positive experience, developing a conscious demand towards the system among different levels of society<sup>51</sup>.

Taking into consideration the above-mentioned justifications, it /

***The main provisions of the LIO implementation methodology:*** The introduction, elaboration, and application of the LIO system is coordinated by the National Assembly Council, which:

- creates conditions for solving the preparatory issues of the LIO introduction;

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<sup>51</sup> De Vrieze F., Post-Legislative ..., Op. cit., p. 8.



- 
- determines the allotted time for the monitoring of the law application;
  - discusses the issues related to the LIO at least once in each session;
  - declares about the launch of the law application monitoring program, assesses the results of its implementation after the project is completed, creates conditions for the development of the LIO system.

The head standing committee of the National Assembly which implements the monitoring of the law application

- establishes the timetable of the monitoring of the application of laws by sessions;
- at the beginning of each session publishes the list of the laws subject to monitoring in the next session, expecting suggestions about the improvement of the application of those laws from the parliamentarians, law beneficiaries, executive power, professional and civil society representatives, citizens during that session;
- discusses the suggestions, made in the previous session, about the monitoring of the application of laws during parliamentary hearings and summarizes their results in its session;
- can apply to the body responsible for the law application, suggesting to ensure the necessary conditions for application of law;
- if the received suggestion on the monitoring of the application of the laws concerns the issue of the compliance of sub-legislative act with the legislation, the suggestion is either passed to the executive or the representative of the executive is invited to the committee meeting when discussing the question;
- establishes a working group if the monitoring of the application of a law reveals the necessity of making changes in the law;

- at the end of each session submits a report to the NA Council about the work in the field of the laws application monitoring implemented during that session.

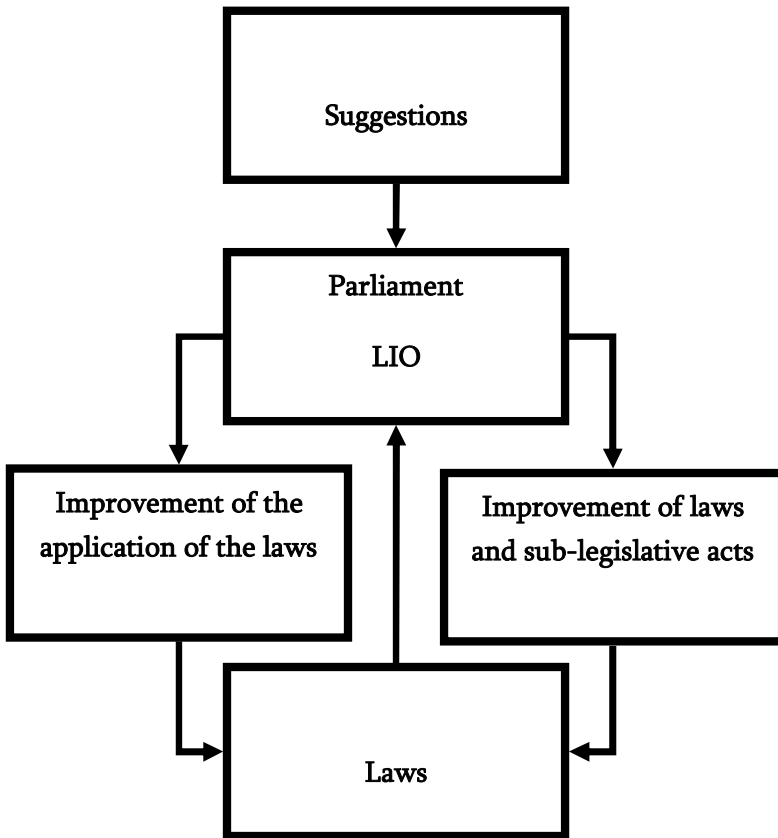
The LIO subdivision of the staff supporting organizes the work.

**The expected outcomes of the LIO system launching in Armenia are:**

- advanced detection and elimination of the imperfections of laws and sub-legislative acts,
- advanced detection and elimination of the problems connected with the application of laws and sub-legislative acts,
- increasing the effectiveness of the use of public resources, including financial ones,
- strengthening the role of the parliament as the author of draft laws,
- creation of a new culture and a new platform of decision making,
- formation of an inclusive system of the legislative activity.

The chart of the law application monitoring by the parliament is shown in Figure 2.

Figure 2



## **Conclusion**

1. The issue of increasing the effectiveness of legislation in post-Soviet transformation countries is of special importance as the difficulties of its implementation are due to the essential characteristics of those countries and are the main obstacles on the way of those states consolidation;
2. Like the solution of the other problems, the elaboration and implementation of the legislation and the system of its improvement (LIO system) requires taking into account the peculiarities of a given country, i.e. the formal distribution of the powers between the institutions of state government and the real experience, the existence of a conscious demand for the LIO implementation, knowledge and experience of drafting and application of legislation and so on;
3. As the case of Moldova shows, the peculiarities of post-Soviet transformation countries need not the mechanical replication of the western experience but special approaches while introducing the LIO system, since their absence may condemn the process to failure;
4. There are legal bases for the LIO system application in Armenia: the constitution defines the oversight as one of the functions of the parliament, and the “Rules of Procedure of the National Assembly” constitutional law provides the oversight over the law implementation to the relevant parliamentary head committee;
5. The application of the LIO system in Armenia may succeed in case of using the approaches and suggestions presented in the article, as they take into account the Western European practice, as well as the problems in Moldova and peculiarities of Armenia.