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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW**  
**ON THE ELECTION OF COUNCILLORS**  
**OF SERBIA**

## **1. Basic provisions**

### **Article 1**

This Law shall govern election and termination of mandate of councillors of assemblies of local self-government units (hereinafter: councillors).

### **Article 2**

Councillors shall be elected for the period of four years.

Mandate of councillors from the previous composition shall cease on the day on which the mandate of councillors from the new composition is confirmed.

Mandate of councillors from the previous composition shall also cease in case not all mandates of councillors from the new composition have been confirmed at the constitutive session, if mandate was confirmed to not fewer than the number of councillors which enables decision-making of the local assembly in the manner prescribed by law and the Articles of association of the local self-government unit.

### **Article 3**

The right to elect councillors belongs to citizens of the Republic of Serbia who have turned 18, have legal competence and a place of residence on the territory of the electoral unit within the local self-government unit in which they exercise their electoral right.

The right to be elected as councillors belongs to any citizen of the Republic of Serbia who has turned 18, has legal competence and a place of residence on the territory on which they were nominated for councillors.

### **Article 4**

Citizens shall elect councillors on the basis of their free, universal, and equal electoral right. Citizens shall exercise their electoral right personally and through secret ballot.

No one shall have the right, on any grounds whatsoever, to prevent or force a citizen to vote, hold him/her accountable for voting or demand he/she reveal his/her vote or state the reason why they failed to vote.

### **Article 5**

In local self-government units with a mixed ethnic composition, national minorities shall be proportionally represented in assemblies of local self-government units, in accordance with the Constitution and this Law.

### **Article 6**

Councillors shall be elected in electoral units based on the lists of political parties, political coalitions and lists proposed by groups of citizens (hereinafter: electoral lists).

Electoral units shall be determined by the local government unit's assembly in its decision.

The decision from paragraph 2 of this Article shall be passed by the assembly by majority vote of the total number of councillors.

The number of electoral units in the local self-government units shall correspond to the number of councillors to be elected in the assembly of the local self-government unit.

In case the number of councillors constituting the assembly of the self-local government unit has changed, the decision from paragraph 2 of this Article shall be passed by the assembly on the same session on which the decision on the amendments of the provisions of the Articles of association governing the number of councillors was passed.

Changes in the number of councillors and electoral units shall not be instituted in the period between calling the elections for councillors and constituting of the newly-elected local self-government unit assemblies.

Electoral units shall be established in such a way that every electoral unit should have approximately the same number of voters.

Notwithstanding paragraph 7 of this Article, electoral units may be established in mountainous areas where there are fewer voters to elect a councillors that in other electoral units.

Every councillor may file an appeal with the competent Administrative court against the decision of the local self-government unit assembly from paragraph 2 of this Article.

The appeal shall be filed within 8 days as of the day on which the decision was passed.

Provisions of the Law governing the procedure in administrative proceedings shall be implemented accordingly in the procedure upon filing an appeal.

#### **Article 7**

Elections for councillors shall be called by the President of the National Parliament.

The elections from paragraph 1 of this Article shall be called by the President of the National Parliament in such a way that the elections are completed not later than 30 days before the end of the mandate of the councillors whose mandate is to expire.

The period between the day of calling the elections and the day of the elections shall not be shorter than 45 days and longer than 90 days.

The decision on calling the elections shall determine the day of the elections, as well as the day on which periods within which electoral procedures are to be performed begin.

The decision on calling of the elections shall be published in the "Official Gazette" of the Republic of Serbia.

#### **Article 8**

Citizens have the right to be informed via mass media about the election campaign of the candidate nominators and candidates for councillors, as well as all other events relevant for elections, in an equal, timely, truthful, impartial, and complete manner.

The media shall provide equality, timeliness, truthfulness, impartiality, and entirety in information on all candidate nominators and candidates for councillors, as well as on all other events relevant for elections.

For the purpose of this law, an election campaign shall entail all public, political, promotional, and other activities of candidate nominators and candidates for councillors.

### **2. Electoral bodies**

#### **Article 9**

Electoral bodies are the electoral commission of the local self-government unit and polling boards.

The electoral bodies shall be autonomous and independent in their work and shall act in accordance with the law and regulations passed in accordance with the law.

The electoral bodies shall be accountable to the body which appointed them.

All bodies and organisations shall provide assistance to electoral bodies and supply them with the data necessary for their work.

### **Article 10**

Only the citizens with the electoral right and the place of residence on the territory of the local self-government unit may be members of electoral bodies and their deputies.

The functions of members of electoral bodies shall cease once they have accepted candidacy for councillors.

### **Article 11**

The electoral commission of the local self-government unit works in its permanent composition (the appointed members) and expanded composition (proxies).

The electoral commission of the local self-government units shall work in its expanded composition from the date of the establishment of such composition to the end of the elections.

The electoral commission of the local self-government unit shall pass its decisions by majority vote of its permanent, i.e. expanded composition.

In case the electoral commission of the local self-government unit has an even number of members, the decision shall be considered as passed even in case it has been voted for by not less than one half of the members, provided the President of the commission has also voted for it.

In its work, the electoral commission shall implement the law which governs the general administrative proceedings accordingly.

### **Article 12**

The permanent composition of the electoral commission of the local self-government unit comprises a President and not fewer than four members as appointed by the assembly of the local self-government unit, upon the motion of groups of councillors in the assembly of the local self-government unit proportionally to the number of councillors, whereas in the expanded composition it also comprises a proxy of each candidate nominator who has nominated candidates for councillors for not less than one third of electoral units in the local self-government unit.

Political parties and coalitions of political parties of national minorities which nominate not less than one third of candidates for councillors out of the total number to be appointed shall have the right to have their representative in the expanded composition of the municipal electoral commission.

No political party or coalition shall have more than one half of the members in the permanent composition of the local self-government unit electoral commission.

Apart from the name of the president, i.e. members, the decision on appointment of the president and members of the electoral commission of the local self-government unit shall also contain their political affiliation or the name of his/her political party, i.e. political coalition which motioned for his/her appointment.

The electoral commission of the local self-government unit shall have a secretary appointed by the municipal assembly. The secretary shall participate in the work of the Commission without the right to vote.

The president, other members of the electoral commission of the local self-government unit, and its secretary shall have their deputies.

The president, deputy president, secretary and deputy secretary of the local self-government unit electorate commission shall be persons with a degree in law.

The president, members of the permanent composition of the electoral commission, the secretary of the electoral commission and their deputies shall continue professional development in line with the curricula and syllabi as established by the State Electoral Commission.

### **Article 13**

On the day on which the electoral lists are published, the electoral commission shall pass a decision to establish which nominators of electoral lists fulfill the conditions for appointing their proxies for the expanded composition of this body.

The decision establishing whether the conditions for appointing proxies for the expanded composition have been met shall be filed by the electoral commission to the nominator of an electoral list within the period of 24 hours as of the day on which the decision was passed.

Protection against the decision from paragraph 2 of this Article is provided in accordance with the procedure for protection of the electoral right as established by this Law.

The nominator of an electoral list shall appoint his/her proxy in the electoral commission and shall notify the electoral commission thereof.

The electoral commission shall determine its expanded composition within 24 hours as of the receipt of the notification on the persons included in its expanded composition.

In case the nominator of an electoral list fails to appoint his/her proxy in the electoral commission within the period of not later than five days before the day scheduled for elections, he/she shall lose this right, and the electoral commission shall continue its work and take binding decisions without a proxy of the nominator of the electoral list.

### **Article 14**

An appeal against the decision of the assembly of the local self-government unit on appointment of proxies and members of the electorate commission may be filed to the Administrative court within 24 hours as of the moment of passing the decision.

Every councillor shall have the right to an appeal from paragraph 1 of this Article.

### **Article 15**

The local self-government unit electoral commission shall:

- 1) Ensure lawful election of councillors;
- 2) Determine polling stations, especially taking into account that voters are equally distributed among polling stations and that polling stations are accessible to voters;
- 3) Establish polling boards and appoint their members;
- 4) Issue instructions to polling boards in terms of implementation of the procedure of election of councillors;
- 5) Prescribe forms in accordance with the instructions of the State Electoral Commission and organise technical preparations for elections of councillors;
- 6) Establish whether lists of candidates have been composed and filed in accordance with regulations on election of councillors;
- 7) Proclaim lists of candidates;

8) Determine the number of ballots for polling stations and submit them to polling boards with a record of the hand-over;

9) Establish voting results in polling stations as well as the number of votes for each candidate;

10) Establish and publish the overall results of elections for councillors;

11) File the report on the election of councillors to the assembly of the local self-government unit;

12) File data on the course and results of the elections for councillors to the ministry in charge of local self-government operations, the Republic body in charge of statistical operations and the State Electoral Commission; in case of local self-governments on the Autonomous Province of Vojvodina, these data shall also be passed to the territorial autonomy body in charge of local self-government operations, within the period of 15 days as of the day on which elections were ended;

13) Perform other operations as established by this law and regulations on elections of councillors.

The local self-government unit electoral commission shall pass a Rulebook on its work.

### **Article 16**

In its work, the local self-government unit electoral commission shall apply instructions and other acts of the State Electoral Commission relating to the election of councillors accordingly.

Upon request of the local self-government unit electoral commission, the State Electoral Commission shall provide explanations on the implementation of laws and other general acts regulating election of councillors, within the period of eight days.

Explanations from paragraph 2 of this Article are not binding.

In case the local self-government unit electoral commission fails to perform operations from its competence within the legally prescribed deadline, the State Electoral Commission shall be authorized to assume these operations and perform them in accordance with provisions of this Law.

An appeal against the decision passed by the State Electoral Commission in accordance with the authorization from paragraph 2 of this Article may be filed to the Administrative court.

### **Article 17**

The polling board shall work in its permanent and expanded composition.

The permanent composition of a polling board shall comprise the president and not fewer than four members.

In determining the expanded composition of a polling board, the provisions of this Law referring to the local self-government unit electoral commission in its expanded composition shall apply.

The president and members of a polling board shall have their deputies.

A polling board shall be appointed not less than ten days before the day of the elections.

The decision on appointing polling boards shall be filed to all nominators of confirmed lists of candidates within 48 hours as of the day of issuance of the decision.

### **Article 18**

A polling board shall conduct voting directly, ensure regularity and secrecy of voting, determine results of voting at the polling station, and perform other duties as stipulated by law.

A polling board shall ensure order at the polling station during voting.

More specific rules on the work of a polling board shall be determined by the electoral commission of the local self-government unit, in accordance with the instructions of the State Electoral Commission.

### **3. Nomination of candidates and lists of candidates**

#### **Article 19**

Candidates for councillors may be nominated by registered political parties and coalitions of registered political parties.

Candidates for councillors may also be nominated by groups of citizens supported by signatures of not less than 30% of voters in an electoral unit.

In local self-government units with fewer than 20,000 voters, lists of candidates of groups of citizens shall be admitted even in case they are supported by not fewer than 10 voters per electoral unit, or not fewer than 20 voters per electoral unit in municipalities which have between 20,000 and 30,000 voters.

Nominators of lists of candidates shall have candidates in not less than one third of the total number of electoral units within the local self-government unit.

Nominators of lists of candidates shall determine names of candidates in the established electoral units.

One person may be a candidate on one electoral list and in one electoral unit only.

#### **Article 20**

On behalf of a political party or a group of citizens, the nomination from Article 19 of this Law may be submitted only by a person authorized by the political party or group of citizens.

On behalf of a coalition of a political party, the nomination from paragraph 1 of this Article may be submitted by no more than two authorized persons.

For the purpose of this law, a coalition of political parties comprises registered political parties which joined forces for the purpose of joint participation in elections.

Political parties forming a coalition shall regulate their mutual relations by a coalition contract which must be verified in accordance with the law regulating signature verification.

A group of citizens may be established by not fewer than ten voters, who shall sign a written agreement, which must be verified in accordance with the law regulating signature verification.

#### **Article 21**

Political parties of national minorities and coalitions of political parties of national minorities submitting lists of candidates shall have candidates in not less than one tenth of the total number of electoral units in the local self-government unit.

The position of a political party of a national minority shall be corroborated by a certificate issued by the body competent for keeping registers of political parties, in accordance with law.

The nominator of the electoral list shall file the certificate from paragraph 2 of this Article to the electoral commission on filing the electoral list.

For the purpose of paragraph 1 of this Article, a coalition of political parties of national minorities may comprise only organisations which have been entered in the register of political parties as political parties of national minorities.

## Article 22

The electoral list shall include all candidates of a nominator of an electoral list as per established electoral units.

The electoral list shall include not less than 30% candidates of the gender less represented on the list.

In case the electoral list is not in accordance with the conditions from paragraph 2 of this Article, it shall be deemed deficient to be proclaimed, and the nominator shall be asked to eliminate such deficiencies of the list.

In case the nominator fails to eliminate the deficiencies from paragraph 3 of this Article, the electoral commission shall deny proclamation of the electoral list, in accordance with this Law.

## Article 23

The title of a electoral list shall be established in accordance with the name of the political party, i.e. coalition of political parties submitting the electoral list; the title may also include the full name the person designated by the political party or coalition of political parties as the first candidate on the list.

The person designated as the first candidate on the list may be the candidate for a councillor.

In addition to the title of the electoral list of a group of citizens, its nominator shall closely specify its designation, and the title may also include the full name of the candidate designated by the group of citizens as the first candidate on the list.

The full name of the first candidate on the list from paragraphs 1 and 3 of this Article may be complemented with his/her nickname, as well as the acronym relating to his/her acquired professional, academic, and scientific title.

## Article 24

An electoral list shall be filed to the electoral commission of the local self-government unit not later than 15 days prior to the day of elections.

An electoral list shall be filed to the electoral commission of the local self-government unit on a separate form, containing:

- 1) The name of the nominator;
- 2) The designation of the electoral unit the candidate is nominated for;
- 3) Full name of the candidate;

The electoral list shall be filed to the electoral commission of the local self-government unit together with the following documents:

- 1) Certificate of the electoral right for each candidate stating his/her full name, date of birth, occupation and the personal identification number;
- 2) Written statement of a candidate expressing his/her acceptance of candidacy;
- 3) Certificate of the place of residence for each candidate;
- 4) Certificate of citizenship for each candidate;
- 5) Signatures of the required number of voters, which is established by this Law as a condition for nominating candidates, on a form whose content is prescribed by the electoral commission of the local self-government unit;
- 6) Certificate on entry in the register of political parties, in case the nominator of the electoral list is a political party or a coalition of political parties;
- 7) The coalition contract, i.e. the agreement on the establishment of a group of citizens, in case the nominator of an electoral list is a coalition of political parties, i.e. a group of citizens;



8) Certificate on the position of the political party of a national minority in case the nominator of the electoral list is a political party of a national minority, i.e. a coalition of political parties of national minorities.

The documents from paragraph 2, item 1), 3), 6), and 8 of this Article shall be exempt from taxation.

#### **Article 25**

The electoral commission shall stipulate the format and contents of the form for signatures of voters supporting the candidates for councillors and shall make such a form available to interested groups of citizens not later than within three days as of the announcement of the elections.

The signature of a voter supporting a candidate for a councillor must be certified in accordance with the law governing signature certification.

The amount of fee for certification of signatures shall be established in a separate act of the Ministry in charge of justice.

#### **Article 26**

The electoral commission of the local self-government unit shall determine immediately, and not later than within 24 hours as of the receipt of an electoral list, whether the electoral list with all necessary documents has been composed in accordance with the provisions of this Law.

In case the electoral commission of the local self-government unit establishes that there the electoral list contains deficiencies, it shall immediately, and not later than within the period of 24 hours, pass a conclusion instructing thereby the nominator of the electoral list to rectify the deficiencies stated in the conclusion within the period of not later than 48 hours as of the delivery of the conclusion.

In case the nominator of the electoral list fails to act in accordance with the provisions from paragraph 2 of this Article, or in case the electoral list has not been submitted in a timely manner, the electoral commission of the local self-government unit shall pass a decision in the following 24 hours to reject it.

#### **Article 27**

When the electoral commission of a local self-government unit has determined that the electoral list has been submitted in a timely manner and that it is composed correctly, i.e. that all possible deficiencies have been eliminated within the prescribed deadline, it shall issue a decision to confirm it not later than within 24 hours upon its receipt, i.e. elimination of deficiencies.

The decision on proclamation of the electoral list issued by the electoral commission of the local self-government unit shall contain the title of the electoral list, name of the nominator of the electoral list, and full names of all candidates from the list whose nomination has been confirmed with the designation of the electoral unit the candidates are nominated for.

The electoral commission of the local self-government unit shall file the decision on proclamation of the electoral list to the nominator without delay.

#### **Article 28**

The electoral commission of the local self-government unit shall, not later than five days upon expiration of the deadline for submitting lists of candidates, form an electoral list for each electoral unit, including all candidates nominated in accordance with the provisions of this Law.

The sequence of candidates on the electoral list for electoral units shall be determined in Cyrillic alphabetical order.

The electoral list shall contain the title of the electoral list along with the personal name of the candidate.

#### **Article 29**

The electoral commission of the local self-government unit shall publish lists of candidates not later than on the day following the day of their confirmation.

Each nominator of an electoral list may, within 48 hours as of the day of publishing the general list of candidates, perform inspection of all lists of candidates and pertaining documents.

#### **Article 30**

In case upon issuing the decision confirming the nomination of a candidate, a candidate is declared incompetent by a valid court decision, loses citizenship of the Republic of Serbia, changes the place of residence, withdraws from candidacy, or dies, the nominator shall not have the right to nominate another candidate.

The nominator of an electoral list may withdraw his/her nomination not later than 15 days before the day of elections.

#### **Article 31**

Citizens have the right to be informed about the candidates.

### **4. Conducting elections**

#### **Article 32**

The electoral commission of the local self-government unit shall be required to prepare voting material for each polling board in a timely manner, especially the required number of ballots, excerpt from the electoral register, certificates of electoral right, special official envelopes for voting, as well as the polling board record form.

The ballots shall be prepared and certified by the electoral commission.

The electoral commission shall determine the total number of ballots, which must be equal to the number of voters registered in the electoral register of the local self-government unit.

The electoral commission shall control preparation and certification of ballots and determine the number of spare ballots, which may not exceed 0.3% of the total number of ballots.

Ballots shall be printed in one place.

A nominator of an electoral list shall submit to the electoral commission names of persons with the right to attend printing, counting, and packing of ballots, and their delivery to the bodies in charge of conducting elections.

In municipalities where languages of national minorities are in official use, ballots shall also be printed in these languages.

The electoral commission shall establish the contents, form and appearance of ballots, determine a printing company, the manner and control of printing, as well as delivery and handling of ballots.

#### **Article 33**

Hand-over of the electoral materials shall be performed not later than 24 hours prior to the day of elections.

Municipal administration shall organise polling stations and prepare the required number of ballot boxes for each polling board, with sealing material, polling booths, and writing material.

On the election day, prior to voting, the polling board shall determine whether polling material prepared for the specific polling station is complete and correct, whether the polling station has been organised so as to ensure secrecy of ballot, and whether voting may commence, which shall be entered in the record.

#### **Article 34**

A ballot shall contain:

- 1) Indication of voting for election of councillors;
- 2) Name of the local self-government unit and designation of the electoral unit;
- 3) Ordinal number placed in front of names of candidates;
- 4) Full names of candidates, in accordance with the schedule on the electoral list, with the designation of the nominator. In addition to the full name of the candidate, the designations of the candidate may include his/her nickname, abbreviation of his/her acquired professional, academic, and scientific title, as well other designations of the candidate, which is decided upon by the electoral commission of the local self-government unit;
- 5) Notice that only one candidate may be voted for, by circling the ordinal number in front of the name of the candidate.

#### **Article 35**

A voter shall vote at the polling station where he/she is registered in the electoral register.

A voter may also vote outside the polling station where he/she is registered in the electoral register except, in accordance with conditions and in the manner as established by law.

The manner of voting outside polling stations, as well as the number of voters who have voted in this manner shall be entered in the polling board record.

#### **Article 36**

A voter shall vote personally.

A voter shall vote for one candidate only.

Voting is performed by circling the ordinal number in front of the name of the candidate, or in such a way so that it may be unambiguously determined which electoral list the voter voted for.

The voter shall personally fold his/her ballot so that it may not be seen who he/she has voted for, and shall put it into the ballot box and leave the polling station without any delay.

### **5. Establishing and announcing election results**

#### **Article 37**

When voting has finished, the polling board shall begin determining the election results at the polling station.

The polling board shall determine the number of unused ballots and put them in a separate envelope, which is then sealed, and with a note that it contains unused ballots.

Based on the excerpt from the electoral register, the polling board shall establish the total number of voters who have voted.

Once the ballot box is opened and the control ballot is checked, valid ballot papers shall be separated from invalid ones.

The polling board shall determine the number of invalid ballots, enter such number into the record and seal the invalid ballots in a separate envelope, with a note that it contains invalid ballots, and shall then determine the number of valid ballots and the number of votes won by each candidate individually, which shall also be entered into the record.

Valid ballots shall be placed in a separate envelope with the note that it contains valid ballots.

An invalid ballot is an empty ballot, a ballot filled in so that it may not be established which candidate the voter voted for, and a ballot with names of more than one candidate circled.

In case it is determined that the number of ballots in the ballot box exceeds the number of voters who have voted, or in case the control ballot may not be found in the ballot box, the polling board shall be dissolved and a new one shall be appointed, and voting shall be repeated at such a polling station.

### **Article 38**

Upon establishing the election results, the polling board shall enter into the record of its work: the number of received ballots, the number of unused ballots, the number of invalid ballots, the number of valid ballots, the number of votes won by each of the candidates, the number of voters according to the electoral register excerpt, and the number of voters who have voted.

The polling board record shall also contain: comments and opinions of polling board members, as well as all other facts relevant for the voting.

The record on work of the polling board shall be signed by all members of the polling board.

In case the record is not signed by all members of the polling board, this statement shall also be entered in the record, as well as possible reasons for the failure to sign it.

### **Article 39**

The record of work of the polling board shall be composed on a separate form printed in six copies.

In municipalities where languages of national minorities are in official use, the polling board record shall be printed in these languages as well.

The first copy of the record shall be delivered to the electoral commission together with the designated electoral material.

The second copy of the record shall be displayed at the polling station for public inspection.

The four remaining copies of the record shall be handed over to proxies of nominators of the candidates who have won the largest number of votes at that particular polling station without any delay, in case the nominator has a proxy in the polling board; in case the nominator does not have a proxy, he/she may receive a copy of the record from the electoral commission within 24 hours.

The remaining nominators shall have the right to receive a certified copy of the polling board record from the electoral committee within 24 hours as of the delivery of the materials from the polling station to the electoral committee.

#### **Article 40**

Once the voting results have been determined, the polling board shall, without any delay and not later than within 8 hours upon closing of polling stations, supply the electoral commission of the local self-government unit with the record on determining the voting results at the polling station, the excerpt from the polling register, valid ballots in a separate sealed envelope, unused ballots in a separate sealed envelope, invalid ballots in a separate sealed envelope, as well as all remaining electoral documents.

#### **Article 41**

Within 24 hours upon closing of polling stations, the electoral commission of the local self-government unit shall establish the results of the elections for councillors, and shall compose a separate record thereof.

Upon receipt of the electoral documents from polling stations, the electoral commission of the local self-government unit shall determine:

- 1) The number of voters registered in the electoral register;
- 2) The number of voters who have voted at polling stations;
- 3) The number of voters who have voted outside the polling station;
- 4) Total number of ballots received at polling stations;
- 5) Total number of unused ballots;
- 6) Total number of invalid ballots;
- 7) Total number of valid ballots;
- 8) Total number of votes won by each of the candidates;
- 9) Percentage of votes won by each of the candidates relative to the total number of voters registered in the electoral unit where he/she was nominated;
- 10) Total number of votes won by each electoral list;
- 11) Percentage of votes won by the electoral list in the local self-government unit;
- 12) Total number of mandates won by individual electoral lists;
- 13) Names of candidates from respective lists who won the mandate of councillors in accordance with the provisions of this Law.

Total number of votes won by the electoral list is calculated by adding up the votes won by the candidates on such an electoral list.

#### **Article 42**

Each electoral list shall receive the number of mandates proportional to the total number of votes won.

Electoral lists which won not less than 5% votes of the total number of votes cast in the local self-government unit shall participate in distribution of mandates.

Lists of national minorities shall participate in distribution of mandates even if they have received less than 5% of the total number of votes cast in the local self-government unit.

#### **Article 43**

The electoral commission shall distribute the mandates by applying the system of the largest quotient.

Mandates shall be distributed by dividing the number of votes won by each individual electoral list by numbers from 1 to the number corresponding to the number of councillors elected into the assembly of the local self-government unit. The quotients obtained in such a way shall be sorted by size, taking into account the number of the largest quotients corresponding to the number of councillors elected in the

assembly of the local self-government unit. Each electoral list shall be allocated the number of mandates corresponding to the number of quotients for the given list.

In case two or more electoral lists obtain the same quotient based on which a mandate is to be assigned and there are no more unassigned mandates, the mandate shall be assigned to the list which has won the largest total number of votes.

#### **Article 44**

Mandates belonging to a particular electoral list shall be assigned to the candidates from that list in accordance with the percentage of voted the candidates have won relative to the total number of voters registered in the electoral units they were nominated at.

The electoral commission shall issue a decision allocating the first mandate out of the total number of number of mandates won by a particular electoral list to the candidate from the list who has won the largest number of votes in an electoral unit. The procedure of allocation of mandates shall be repeated until all mandates won by a particular electoral list have been distributed.

In case two or more candidates from the same electoral list win the same percentage of votes in their electoral units, and in case there is only one remaining unassigned mandate left, it shall be allocated to the candidate with the largest number of votes won.

#### **Article 45**

Election results shall be final when the procedure for the protection of the electoral right as established by this Law has been exhausted.

The electoral commission shall announce the election results within 24 hours as of the determination of final results and shall issue certificates of election to councillors.

Election results shall be published in the official gazette of the local self-government unit.

In case the electoral commission of the local self-government unit fails to announce the election results or issue certificates within the prescribed deadline, the State Electoral Commission shall do so within the following 48 hours. The electoral commission of the local self-government unit shall provide the State Electoral Commission with all electoral materials required for issuance of certificates of election without any delay.

### **6. Repeated Elections and Termination of Mandates of Councillors**

#### **Article 46**

Repeated elections shall be held in case the electoral commission of the local self-government unit or the competent higher court annuls the elections due to irregularities in the conducting of the elections.

In case elections are annulled at an individual polling station, voting shall be repeated at that polling station only.

The electoral commission shall issue the decision on repeating voting.

The election results shall be established upon completion of the repeated voting.

Repeated elections shall be conducted not later than 15 days as of the annulment of the elections in the electoral unit, i.e. seven days as of annulment of the elections at the polling station, in the manner and according to the procedure established for conducting elections.

Repeated elections shall be called by the electoral commission of the local self-government unit.

Repeated elections shall be conducted according to the electoral list established for the elections that were annulled, unless in case the elections were annulled due to irregularities in the candidate nomination procedure.

#### **Article 47**

A councillor's mandate shall cease prior to the end of the term for which he/she has been elected:

- 1) By resigning;
- 2) By passing a decision on dissolving the assembly of the local self-government unit;
- 3) In case he/she has been validly convicted to unconditional imprisonment for the period of six months minimum;
- 4) In case he/she was declared incompetent by a valid court decision;
- 5) By undertaking a job, i.e. function, which are, in accordance with law, incompatible with the function of a councillor;
- 6) In case of termination of his/her permanent resident status on the territory of the local self-government unit;
- 7) By losing citizenship;
- 8) In case of death of a councillors.

The councillors whose mandate has expired because he/she has been elected mayor or deputy mayor shall remain on the electoral list and may obtain a mandate for a councillors again in accordance with this Law in case has/she has been released from the duty of the mayor or deputy mayor and in case there is a vacant seat belonging to the electoral list he/she has been elected from.

The assembly of the local self-government unit shall pass a decision to establish whether the mandate of a councillor has ceased on the day of the events specified in paragraph 1 of this Article, except in case of resignation.

In case of resignation, the councillor's mandate shall cease on the day the assembly has issued the decision.

A councillors may resign verbally only at the session of the assembly of the local self-government unit; between two session, resignations shall be submitted in officially verified written form.

Upon verbal resignation of a councillor, the assembly shall, without any delay and at the same session establish that the councillor's mandate has ceased.

Decisions on resignations submitted by councillors between two sessions shall be passed at the first following session.

A councillor may revoke his/her resignation until the assembly ascertains termination of his/her mandate.

In case the assembly receives a notification on an event referred to in paragraph 1, items 2) to 8) of this Article at its session, it shall determine that this councillor's mandate has ceased at the same session, without any delay; in case this notification has been received in the period between two sessions, the assembly shall establish termination of the councillor's mandate at the first following session.

#### **Article 48**

When a mandate of a councillor is terminated prior to expiry of the period he/she was elected for, the mandate shall be assigned to the electoral list the councillor was elected from. The electoral commission shall pass a decision to assign the mandate to the next candidate on the electoral list who won the largest number of votes among the remaining candidates.

When a mandate of a councillors ceases before expiration of the period of time he/she was elected for, and in case there are no other candidates the nominator of the electoral list did not win a mandate for on the electoral list, the electoral commission shall pass a decision to assign the mandate to the appropriate candidate from the electoral list who has the next largest quotient.

In case two or more electoral lists have the same next largest quotient, the mandate shall be assigned to the electoral list which won the larger number of mandates.

The mandate of the new councillors shall last until expiry of the mandate of the councillors whose mandate was terminated.

A written confirmation of acceptance of the mandate shall be obtained from the councillors whose mandate ended.

The candidate for a councillors who has been assigned a mandate in accordance with the provisions of this Article shall be issued a certificate by the electoral commission of the local self-government unit that he/she has been elected, within 24 hours as of receipt of the valid decision of the assembly of the local self-government unit on termination of the mandate of the councillor.

In case the electoral commission of the local self-government unit fails to issue the decision on election of a councillors from paragraph 6 of this Article within the prescribed period of time, such a decision shall be issued by the State Electoral Commission within the period of the following 48 hours. The electoral commission of the local self-government unit shall, without any delay, provide all electoral materials requested to issue a certificate to the State Electoral Commission for its disposal.

The decision of the assembly of the local self-government unit shall become valid in the sense of the provision from paragraph 6 of this Article by expiration of the period to appeal in case no appeal was lodged against it, i.e. by issuing a court's decision to dismiss the appeal as untimely or unlawful or without any grounds.

#### **Article 49**

The agenda for the session of the assembly of the local self-government unit at which the decision relating to councillors' mandates is to be passed shall be established by the assembly so that the decision on the councillors' mandates is taken prior to all other items on the agenda.

In case the competent working body of the assembly of the local self-government unit fails to submit a report on deliberation of reasons for termination, i.e. confirmation of a councillor's mandate in a timely manner, the assembly of the local self-government unit shall pass a decision relating to the mandate of the councillors without the report, in case the determined state of affairs provides sufficient grounds for decision-making.

An appeal may be lodged to the administrative court against the decisions passed by the assembly of the local self-government unit in relation to termination, i.e. confirmation of councillors' mandates.

An appeal is also allowed in case the assembly fails to pass the decisions from paragraph 3 of this Article.

In case the appeal from paragraph 4 of this Article is well-grounded, the court shall pass a decision establishing the end of the mandate, i.e. confirming the councillor's mandate.

All councillors, nominators of the electoral lists which participated in the distribution of mandates, as well as the candidates from the electoral list which participated in the distribution of mandates shall have the right to appeal from paragraphs 3 and 4 of this Article.

The appeal from paragraph 3 of this Article shall be lodged within the period of 24 hours as of the day on which the decision of the assembly of the local self-government unit has been passed; the appeal from paragraph 4 of this Article shall be lodged within the period of 24 hours as of the day on which the session at which the



assembly failed to pass a decision on councillors' mandates was held, i.e. within the period of 24 hours as of the day on which the session was scheduled, in case the assembly session has not been held.

The decision upon the appeal shall be passed not later than within the period of 48 hours as of the receipt of the appeal with all accompanying documents.

## **7. Protection of the Electoral Right**

### **Article 50**

Every voter, candidate for a councillor, and nominator of an electoral list is entitled to the protection of the electoral right, according to the procedure as established by this Law.

### **Article 51**

Every voter, candidate for a councillor, and a candidate nominator shall have the right to file an objection to the electoral commission of the local self-government unit due to irregularities in the procedure of nominating, conducting, establishing, or publishing the election results.

The objection shall be filed within 24 hours as of the day on which the decision has been passed, i.e. the action executed or the omission made.

### **Article 52**

The electoral commission shall pass a decision within the period of 48 hours as of the receipt of the objection and file it to the objector.

In case the electoral unit of the local self-government unit adopts the objection, it shall thus annul the decision or action.

### **Article 53**

An appeal may be filed to the administrative court against the decision of the electoral commission of the local self-government unit.

The appeal shall be filed via the electoral commission of the local self-government unit within 24 hours as of the delivery of the decision.

The appeal shall postpone execution of the contested decision.

The electoral commission of the local self-government unit shall deliver to the court all data and documents necessary for decision-making immediately, and not later than within the period of 12 hours.

In the procedure aimed at protection of electoral rights, the court shall implement provisions of the law governing the procedure in administrative proceedings accordingly.

A decision upon appeal shall be passed not later than within 48 hours as of the day of receiving the appeal with accompanying documents.

A decision issued in the proceedings upon appeal is legally valid and may not be either subject to request for extraordinary challenging of the decision or request to repeat the proceedings, as envisaged by the Law on administrative proceedings.

### **Article 54**

In case the court adopts the appeal, it shall annul the decision or action in the procedure of candidate nomination or councillor election, i.e. it shall invalidate the election or the councillor.

In case the court rules that the contested decision is to be invalidated, provided this is appropriate and the facts provide sufficient grounds for this, the court may pass a meritorious decision to solve the election dispute. The court decision shall fully replace the invalidated enactment.

If upon objection or appeal and action in the election procedure or the election of councillors has been invalidated, the municipal electoral commission shall repeat the respective election action, i.e. elections, within the period of time as established by this Law. The terms shall be calculated as of the day of passing the decision on annulment.

### **Article 55**

The mandate of a councillor shall commence on the day on confirmation of the mandate.

The assembly shall pass the decision on confirmation of the mandates at its constitutive session.

The constitutive session of the assembly shall be scheduled by the president of the assembly from the previous composition within the period from paragraph 3 of this Article so that the session is held not later than 30 days as of the day of publishing of the election results.

In case the president of the assembly from the previous composition fails to schedule the constitutive session within the period of time as prescribed in paragraph 3 of this Article, the constitutive session may be scheduled by one third of councillors from the new composition.

The constitutive session shall be chaired by the oldest councillors present.

In case the councillors from paragraph 5 of this Article refuses to chair the constitutive session, the oldest councillor present who accepts to chair the session shall be entitled to do so.

The assembly shall pass a decision on the mandate of a councillor on the basis of the verification committee report by public vote. All candidates for councillors whose mandates were assigned in accordance with Article 44 of this Law and all those who believe to have been elected may participate in establishment of quorum as well as in work and voting of the constitutive session.

Candidates whose mandates were allocated in accordance with Article 49 of this Law and who believe to have been elected may participate at the assembly session together with the councillors with confirmed mandates when the assembly, having been constituted, decides on confirmation of the new mandates, as well as on work and voting at that particular session.

An appeal against the decision on confirmation of the councillors' mandates may be lodged to the administrative court within the period of 24 hours as of the day of passing the decision of the assembly of the local self-government unit.

Nominators of all electoral lists which participated in the distribution of the mandates, candidates for councillors on these electoral lists, as well as the councillors whose mandates have been confirmed in case the decision on the confirmation of the mandates has violated some of their rights or legally grounded interests shall have the right to the appeal from paragraph 9 of this Article.

The decision upon the appeal shall be passed not later than within 48 hours as of the day of receipt of the appeal with accompanying documents.

## **8. Election Expenses**

### **Article 56**

The funds for the conduct of elections and financing of electoral activities for elections of councillors of the municipal assembly shall be provided by the budget of the local self-government unit.

No fees shall be paid for filings and activities in the electoral procedure.

## **9. Application of Regulations on Election of Deputies**

### **Article 57**

Provisions of the Law on Election of Members of Deputies ("Official Gazette of RS", No. 35/00, 69/02, 57/03-decision of CCRS, 72/03- oth. law, 75/03-amendments of the oth. law, 18/04, 85/05-oth. law, 101/05-oth. law and 109/06) on voting materials, appointment to electoral commissions and polling boards, polling stations, public information on the candidates, prohibition to conduct the pre-election campaign and publish preliminary results, exemption from payment of taxes and contributions fro funds paid as remuneration for the work performed in electoral bodies and fines shall be applied accordingly to the election of councillors, unless otherwise is prescribed by this Law.

## **10. Transitional and final provisions**

### **Article 58**

On the day this Law comes into force, validity of the Law on Local Elections ("Official Gazette of RS", No. 129/07) shall cease, except for provisions from Articles.11-15, 45-49 and 51-56, paragraph 7, which will be enforced until the elections for councillors for assemblies of local self-government units in accordance with the provisions of this Law, which will be held in some or all local self-government units.

Competences of district courts as envisaged by provisions of Article 14, paragraph 11, Articles 49, 54-46, paragraph 7 of the Law on local elections ("Official Gazette of RS" No. 129/07) shall be taken over by administrative courts on the day of enforcement of the Law on organisation of courts and public prosecutors' offices ("Official Gazette of RS", NO. 116/08).

### **Article 59**

Provisions of this Law on election of councillors of assemblies of local self-government units shall be enforced as of the first following elections for councillors in assemblies of the local self-government units in individual or all local self-government units.

Before enforcement of the law which regulates the single register of voters, election of councillors shall be subject to application of Law on election of Deputies ("Official Gazette of RS" No. 35/00, 69/02, 57/03-Decision of CCRS (Constitutional Court of the Republic of Serbia), 72/03-oth. law, 75/03-amendments of the oth. law, 18/04, 85/05-oth. law, 101/05-oth. law and 109/06) on election registers.

Before the commencement of work of the Administrative court, its competences as established by this Law shall be performed by district courts, except for the competence from Article 16, paragraph 5, which will, prior to commencement of work of the Administrative court, performed by Supreme Court of the Republic of Serbia.

Before the commencement of the work of the State Electoral Commission, its competences, as established by this Law, shall be performed by the Republic Electoral Commission.

In accordance with law, assemblies of local self-government units shall establish electoral units not later than within 60 days as of the day of enforcement of this Law.

The assembly of the local self-government unit which fails to establish electoral units in accordance with law may be dissolved in accordance with the provisions of Article 86 of Law on local self-government ("Official Gazette of RS", No. 129/07).

#### **Article 60**

This Law shall enter into force on the eight day following the day of its publication in the "Official Gazette of the Republic of Serbia".

## JUSTIFICATION

### I. CONSTITUTIONAL GROUNDS FOR PASSING THE LAW

The constitutional framework for passing the drafted Law is contained in the provision of Article 97, item 3 of the Constitution of the Republic of Serbia which, among other things, stipulates that the Republic of Serbia shall regulate and ensure the system of local self-government, and in the provision of Article 180, paragraph 3 of the Constitution, which establishes that councillors shall be elected for the period of four years, through direct secret voting, in accordance with law.

### II. REASONS FOR PASSING THE LAW

The Constitution of the Republic of Serbia establishes citizens' right to local self-government, which is achieved either directly or through freely appointed proxies (Article 180, paragraphs 1 and 2 of the Constitution). Councillors are elected for the period of four years at direct elections through secret voting, in accordance with law (Article 180. paragraph 3 of the Constitution).

From the aforementioned it can be concluded that the Constitution left it to the legislators to regulate the electoral system in the manner which would ensure, to the greatest possible extent, that citizens are represented in their local self-government units in the manner which would contribute to meeting their needs and interests and better and quality life in local communities.

The valid Law on local elections, which was passed in 2007, maintained the proportional system which was the base of the law on local elections from 2002. The main characteristics of this system, implemented in the two latest electoral cycles, are the existence of one electoral unit, voting for electoral lists and the 3% (the Law from 2002) i.e. 5% (the 2007 Law) electoral threshold.

Implementation of certain solutions from this Law in practice indicated to severe shortcomings. First of all, citizens were not able to exert crucial influence to election of their representatives in the assembly, as, once elections were finished, councillors were determined by the nominator of the electoral list, according to his/her own free will and without any consultations with the constituency. Thus, a characteristic of this system is that citizens within it are free to vote, but not to elect. This considerably jeopardizes the constitutional principle of directness of elections. Also, practice has shown that on allocating mandates, nominators of electoral lists did not take equal representation of candidates from different settlements from the territory of the local self-government unit into consideration. This is why a large number of settlements did not have councillors which could, or would, represents interest of citizens residing in these territories in due manner. Another important shortcoming of the existing electoral system is the fact that it does not allow for evaluation of electoral results of candidates on electoral lists, nor does it reflect the attitude of voters towards individual candidates. This, in turn, resulted in assemblies with councillors who, in real terms, did not have significant support of the constituency.

Due to all of the aforementioned, the solution proposed at the moment is a combination of the proportional system of elections (applied on transforming the total number of votes won by one electoral list into the number of mandates assigned to the list on these grounds) and the majority system (applied on assigning mandates to councillors from the particular electoral list). In this way, will of voters is respected considerably more, which simultaneously strengthens representative quality of the assembly of local self-government units.

The 2007 Law on local elections introduced an important novelty by stipulating competence of district courts in settling of electoral disputes and enabling judiciary protection of councillors' mandates in post-election proceedings. The judiciary practice in implementation of this law so far has indicated that the introduction of competence of higher courts contributed to higher quality of court rulings. More importantly, the former legal gap in the area of the right to protect a mandate has finally been bridged as a legal mechanism to resolve this type of disputes has been established. However, the fact is that legal practice in this area is still unequal, even though less so than it used to be, thus a certain level of legal uncertainty. In some cases, some district courts took legal positions which did not correspond to the general judiciary practice. This is why it was proposed that after the Administrative court commences its work all electoral disputes be in its jurisdiction. This solution is logical in legal sense as well, as provisions of the law regulating proceedings in administrative disputes are applied accordingly to electoral disputes.

### **III. EXPLANATION FOR INDIVIDUAL SOLUTIONS**

#### **Basic provisions**

Basic provisions determine the object regulated by the law, the period of time councillors are elected for, the day on which the mandate of councillors from the previous composition ceases, defines active and passive electoral right, determine the procedure of establishing electoral units within local self-government units (within a local self-government unit, the number of electoral units established corresponds to the number of councillors elected for the assembly of the local self-government unit), determine the competent body and procedure for calling elections for councillors, and provide that in local self-government units populated by inhabitants of mixed ethnic origin there is proportional number of representatives of national minorities in assemblies.

#### **Elections for councillors in assemblies of local self-government units**

In terms of bodies which conduct elections, the previous solutions were basically maintained, however, activities of the electoral system were adapted to the specificities of the proposed combined electoral system (Article 15 of the Draft law). Jurisdiction of Administrative court was determined in the dispute on legality of the solution on appointment of a permanent composition of the electoral commission, as well as in other electoral disputes. The relationship established between the electoral commission of the local self-government unit and the State Electoral Commission is yet another novelty. Thus, according to the proposed solution, the State Electoral Commission is obliged to provide explanations on implementation of electoral provisions upon request of the local electoral commission, and it is also authorized to take over and perform activities from the scope of activities of the local electoral commission if the local electoral commission failed to perform them within the prescribed deadline (Article 16 of the Draft law). Thus, possibilities for obstructions and blockades of the electoral procedure are eliminated, with adequate judiciary control of work of the State Electoral Commission introduced.

Also, one of novelties in the drafted law relates to the procedure of nomination. First of all, it is envisaged that registered political parties, as well as coalitions of registered political parties do not collect signatures of their voters to support candidates nominated for electoral units anymore. Such a solution is in line with the new procedure of registration of political parties which are now, while in this procedure already, obliged to collect the number of signatures as stipulated by law, which gives them legitimacy to participate in the electoral procedure. Groups of citizens also have the right to nominate their candidates for councillors, but they must be supported with certified signature of at least 30 voters with a permanent place of residence in the given electoral unit. Electoral lists of registered political parties, coalitions of registered political parties, and groups of citizens must have candidates in at least one third of

electoral units of the municipality, i.e. town (Article 19 paragraph 4 of the Draft law). The electoral list of a nominator comprises all the candidates per established electoral units. In municipalities with fewer voters, the number of signatures requested to support candidates of groups of citizens is proportionally smaller (Article 19, paragraph 3 of the Draft law). The proposed solution defines a coalition of political parties as a certified nominator of an electoral list, who is included in it, as well as how mutual relations of its members are regulated. The manner of establishing a group of citizens as participants in the elections for councillors is also defined (Article 20 of the Draft law). Electoral lists of parties of national minorities may be confirmed if they have candidates in at least one tenth of electoral units. The manner in which the position of a party of a national minority is established and who can form their coalition is also regulated (Article 21 of the Draft law).

Elections are conducted so that a voter votes for one candidate of all the candidates nominated in a particular electoral unit only (Article 36 of the Draft law). The total number of votes won by an electoral list is obtained by adding up the votes won by candidates from a particular electoral list in all electoral units (Article 41 paragraph 3) of the Draft law). As well as in the valid Law, every electoral unit shall be assigned the number of mandates proportional to the total number of votes, and the electoral commission distributes them using the system of the largest quotient. Electoral lists which won at least 5% of votes out of the total number of votes which voted in the local self-government unit participate in distribution of mandates. This electoral threshold does not relate to the lists of national minorities (Articles 42 and 43 of the Draft law).

Another novelty in the Draft law is that once elections are over nominators of electoral lists do not decide on allocation of mandates anymore, but mandates belong to the candidates who won the largest percentage of votes. Namely, the mandates belonging to a certain electoral lists are allocated to the candidates from that particular list according to the percentage of votes the candidates won relative to the total number of voters in electoral units they were nominated for. The electoral commission passes a decision to allocate the first mandate within the number belonging to a certain electoral list to the candidate from that list who has won the largest percentage of votes in some electoral unit. The procedure of mandate allocation is repeated until all mandates belonging to a certain electoral list have been distributed (Article 44 of the Draft law).

Apart from the new solutions relating to the electoral procedure, the Draft law also contains a number of provisions aimed at eliminating certain dilemmas in implementation of the valid law so far. This is why deadlines and procedures according to which the assembly and courts act on deciding on confirmation and termination of a councillor's mandate are regulated into more detail (Articles 47-49 and Article 55 of the Draft law). Even though certain legal solutions relating to the procedure of scheduling sessions of the assembly, establishment of the agenda and decision-making on councillors' mandates by their nature rather fall within the scope of procedural matter, experiences in implementation of the valid law have indicated that it is necessary to develop this procedure into detail and secure it with a judiciary control procedure. This is as parliamentary practice on local level was fraught with examples of violations of usual democratic procedures, as well as various forms of obstructions aimed at blocking work of local authorities and foul play with electoral will of voters.

Passing Law on election of councillors is an integral part of the reform of electoral legislation and, in order to fully implement it, it is necessary to start with implementation of other laws from the area, as well as the area of court organisation. This is why transitional and final provisions of the Draft law envisage postponed implementation of provisions relating to the State Electoral Commission and Administrative court until the moment they start operating. Before this, their legally envisaged operations will be performed by the Republic electoral commission, i.e. district courts with local jurisdiction. It was also envisaged that prior to implementation of the law which regulates the single register of voters provisions of the Law on election of deputies relating to registers of voters (Article 50 of the Draft law) be accordingly applies on election of councillors.

#### **IV. ANALYSIS OF THE EFFECTS OF THE LAW**

A Draft law does not call for an analysis of effects of the law, having in mind that it does not create new obligations for legal and other entities.

#### **V. FUNDS NEEDED FOR IMPLEMENTATION OF THE LAW**

Implementation of this Law does not call for providing additional funds in the budget of the Republic of Serbia.