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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION ON THE DRAFT LAW ON REFERENDUM AND CIVIL INITIATIVE OF SERBIA

on the basis of comments by

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I. Introduction

1. On 16 December 2009 Mr Milan Marcovic, Minister of Public Administration and Local Self-Government, requested the opinion of the Venice Commission on the draft Law on Referendums and Civil Initiative of Serbia (hereafter, the draft law) dated 15 October 2009 (CDL-EL(2010)004).

2. Mr Sergio Bartole and Mr Ángel Sánchez Navarro were appointed as rapporteurs. On 8 March 2010, the Venice Commission took part in a conference on the draft law on referendums and citizens' initiatives in Belgrade.

3. The present Opinion was adopted by the Council for Democratic Elections at its … meeting (Venice, …) and by the Venice Commission at its … plenary session (Venice, …).

II. General remarks

4. The draft was prepared in view of implementing the constitutional provisions on referendums and is meant to be "practically and formally, in harmony with the Constitution".

5. The other aim of the draft Law is to "to enable a wider citizen participation in the governance through referendums and civil initiatives."[1] The proposed law will replace a 1994 text which according to the explanatory note to the new text "can be qualified as restrictive, obsolete" and that "does not allow citizens to efficiently exercise their right to participate in governance through civil initiatives and referendums".

6. The drafters of the examined text have also made an effort to fully respect the standards commonly accepted in European democratic countries for the holding of referendums. In this sense, it seems clear that the law has been drafted by taking into account the European electoral and referendum standards as listed, *inter alia*, in the *Code of good practice on Referendums* (hereafter, the Code), adopted by the Venice Commission in March 2007.[2] Moreover, the explanatory note to the draft law expressly mentions two recommendations of the Parliamentary Assembly of the Council of Europe, namely Recommendation 1704/2005 - "*Referendums: towards good practice in Europe"* - adopted on 29 April 2005 - and Recommendation 1821/2007 "*Code of good practice on referendums"* - adopted on 23 November 2007.

III. Referendums in the legal order of Serbia

1. Constitution of Serbia

7. Paragraph 1 of Article 2 of the Constitution of Serbia states that "Sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives."

8. Pursuant to the principle of sovereignty, Article 176 Paragraph 1 of the Constitution specifies that citizens have the right to provincial autonomy and local government which are exercised directly or through their freely elected representatives.

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[1] CDL-EL(2010)004 Draft Law on Referendums and Civil Initiative of Serbia, Explanatory note, par 2.

[2] CDL-AD(2007)008rev Code of good practice on Referendums adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007).

9. According to Article 108 the National Assembly shall call a referendum upon the request of the majority of all deputies or at least 100000 voters. The referendums have to fall within the competence of the Assembly, in accordance with the Constitution and Law. Moreover the subject of the referendum may not include obligations resulting from international treaties, laws pertaining to human and minority rights and freedoms, fiscal and other financial laws, the budget and financial statement, introduction of the state of emergency and amnesty, as well as issues pertaining to election competences of the National Assembly.

10. Article 203 of the Constitution provides that, after having been adopted by a two-third majority of the total number of deputies, a revision of the Constitution has to be endorsed by a Republican referendum if the amendment to the Constitution pertains to the preamble of the Constitution, principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation of the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution. In other cases, Parliament may decide to call a referendum. In the case of referendums dealing with amendments to the Constitution, citizens shall vote within no later than 60 days from the adoption of the amendments, which have to be adopted by the majority of the voters who participated in the referendum.

11. At provincial and local level referendums are provided (Articles 182.3-4 and 188.2):

a) for the establishment of new autonomous provinces or the revoking or merging of the existing ones: the relevant proposals are to be established by citizens in a referendum, in accordance with the law;
b) for the expression of the consent of the citizens about the alteration of the territory of autonomous provinces; and
c) for the establishment or dismantling of a local government unit and change of its territory.

12. Municipal Assemblies are also allowed to call municipal referendums (Article 191).

13. It can be concluded that the constitutional provisions (108, 182, 188, 203) therefore foresee different types (Articles 2 and 10-13) of referendums and the draft law describes them in more detail. They may be distinguished as follows:

- according to specific constitutional or legal provisions, they may be mandatory or optional;
- according to their initiators, (optional) referendums may be initiated by an assembly or by a group of voters;
- according to the moment when they are held, the draft distinguishes between preliminary or subsequent referendums;
- according to their effects, they may be legally binding or advisory (see however below par. 50).

14. The explanatory note places very clearly the draft within the framework of Serbian constitutional law. For example, in the first paragraph of the Explanation to the Law it is stated that “Constitutional basis for adoption of this Law is Article 97 paragraph 2 of the Constitution of the Republic of Serbia”. Furthermore, it is stated that provisions of the draft Law “clearly show that the Constitution has given a lot of significance to referendums and civil initiatives, as forms of direct democracy, or exercising civil sovereignty”, in a constitutional and political “commitment [which] is in accordance with constitutional principles and modern democratic processes in the majority of European and other countries” (par. 2 of the Explanatory note).

2. Relation between the draft law on referendums and the law on elections

15. One of the positive features of the law is the logical – although not always admitted – link between this draft law and the laws on elections. It is true that the two texts regulate two different procedures; however, they clearly share many common elements. This relationship is specifically established in the last part of the draft (IV. Transitional and Final Provisions, Article 64, on "Application of Election Regulations"): "In terms of polling stations, voting materials, the way electoral boards are operating, the manner of voting, calculating results, and other issues in regard to voting which have not been regulated by this Law appropriate provisions of the law which regulates the election of members of parliament shall apply".

16. It is however reminded whenever necessary, as it is the case in the following articles:

- Article 4 ("citizens who shall be entitled to vote shall be those who have the right to vote, in line with the election laws");
- Article 19 ("Polling stations shall be located and organised in accordance with the law which regulates polling station issues for elections of members of parliament");
- Article 20 ("Lists of citizens with the right to vote shall be updated for each next referendum issue in accordance with the law which regulates records on voters");
- Article 23 ("Voting in the referendum may be monitored by domestic and foreign observers, in accordance with regulations which regulate monitoring elections for members of parliament");
- Article 26 ("The rights of citizens who are not able to cast their vote at the polling station, or to vote by themselves shall be regulated by the regulations on the election of members of parliament which regulate the manner of voting of these citizens").

17. Article 64 mentions the way electoral boards are operating, but not the issue of composition of referendum commissions and electoral boards (cf. Article 15 ff. of the draft). This should be clarified, in conformity with the principles of the European electoral heritage (Code, II.3.1).

IV. Analysis of the draft law

18. With respect to the formal structure of the text, the draft is divided into four sections or chapters.

- Article 1 of Part I ("Basic Provisions") includes defining the scope of the Law; Articles 2 to 9, regarding basic concepts (referendum and its different types, Article 2; civil initiative, Article 3), entitlement (Article 4), freedom to participate in both procedures, way of participating, protection of rights and suspension of time limits in certain cases (Articles 5 to 9).
- Part II ("Referendum") includes Articles 10 to 48, thus covering more than half of the text (39 out of 66 Articles). The size of this chapter explains its internal division in 3 different parts:
    1. Joint provisions (Articles 10 to 34): procedures for calling the different types of referendums, effects, administration organs, information and campaign, question, etc.;
    2. Republican referendum (Articles 35 to 43); and
    3. Provincial Referendum and Local Government Referendum (Articles 44 to 48).
- Part III ("Civil Initiative") goes from Articles 49 to 63.
- Part IV ("Transitional and Final Provisions"): Articles 64 to 66.

1. General comments on the structure of the text

19. The text tries to establish comprehensive rules for organising referendums. However, the draft law is sometimes confusing If the protection of voters' rights is at the centre of his/her attention, the user has to look not only at many different sources (cf., for instance, Articles 3, 12, 34, 41, 52, 59 and 63).

20. The main issue is however the difference between a referendum initiated "at the will of the voters" (Article 12 and 41) and a civil initiative (chapter III). *The Commission interprets the chapter on civil initiative as applying to proposals which Parliament is free to follow or not; unless Parliament decides so, they will not be submitted to a referendum.* This should however be made clear in the law.

21. Moreover, specific provisions concerning constitutional referendum are missing in the draft, while in the opening articles the text is paying too much attention to the doctrinal problem of the definition of the different types of referendums (mandatory, optional, advisory, preliminary and subsequent): the solution of this problem is certainly important, but more attention to the systematic arrangements of the text would be more interesting, as a lot of citizens' rights are at stake. In its Opinion on the Constitution of Serbia,[3] the Venice Commission stated that "in order to apply Article 203 of the Constitution, the Serbian legislator will have to adopt legislation on the organisation of the constitutional referendum which should be in compliance with the principles set out in the "Code of good practice on Referendums"".

22. The text could perhaps be improved by clearly distinguishing between rules applying to referendums initiated by an autonomous decision of the National Assembly, referendums initiated by the people, as well as provincial and local government referendums. The text should provide specific rules for all these different procedures taking into account the necessary protection of the concerned citizens' rights.

23. The overlapping of provisions dealing with different activities should be avoided, if the drafters want to offer a clear basis for the implementation of the constitutional rules on referendums. For example, Article 40 ("Petition for [holding a Republican] Referendum"), Article 42 ("Opinion and Counter-Proposal of the National Assembly") and Article 43 ("The Republican Referendum Commission") are placed in the part referred to "Republican Referendum". However, at the end of the following part, which is specifically related to Provincial and Local Government Referendums, Article 48 ("Application of Provisions on Republican Referendum") provides that "Articles 40, 42 and 43… shall also apply to implementation of a provincial and a local government referendum". Therefore, these rules seem to have a general scope and, for the sake of clarity, they might be included among the "joint provisions".

24. In a similar sense, but with an even wider reach, the provisions related to the "Judicial Protection" of citizens in the exercise of these rights seem to show an absolute parallelism.

25. Provisions on financing referendums could also be improved - Article 7 ("Funding") should not be included within the "Basic Provisions", since it refers specifically to republican referendum, and therefore foresees a basically public funding; while the rules about (almost exclusively private) funding of Civil Initiatives have to be found in Article 56. Consequently, Article 7 would better be included among the "joint provisions" about referendums.

[3] CDL-AD(2007)004 Opinion on the Constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 17-18 March 2007).

2. Conformity with the principles of the European electoral heritage

26. The Commission welcomes the effort of the drafters to follow international documents in the field of referendums, notably, a number of specific recommendations which are part of the Venice Commission's *Code of good practice on Referendums* (*the Code*, CDL-AD(2007)008rev). *The specific comments below refer to the text of the Code.*

a. Universal suffrage

27. With respect to "universal suffrage" (I.1. of the *Code*), Article 4 of the draft quite rightly departs from the general "right to vote" as provided in the laws on elections, adding some clarifications which are particularly important in the case of referendums, whose scope may differ: "Those citizens who shall be entitled to vote shall be those who have the right to vote [and "the right to participate in a civil initiative", paragraph 4], in line with the election laws, and who reside in the territory for which a referendum is held. Citizens who reside abroad, or who find themselves abroad during the referendum, shall have the right to vote in a Republican referendum. If a referendum puts to the vote the rights and obligations of citizens who reside outside of the territory for which the referendum is to be held, those citizens shall also have the right to vote". However, the reach of the last sentence is not clear at first sight. It should be defined in a clearer way in order to avoid any arbitrary interpretation and/or political controversy.

b. Equal suffrage

28. In the sphere of "equal suffrage" (I.2 of the Code), and especially the respect for the principle of "equality of opportunity" the draft law is quite exhaustive, including elements such as the obligation of "Media funded by public sources… to allow equal access to all supporters of the referendum and those who are against it, and to keep records about it, to enable equal time on the air and correct reports on the reasons for and against the decision which is being voted on" (Article 22, par. 2). With respect to "Civil Initiative", the principles set up in Articles 55 and 56 imply that the campaign has to be based on "the principles of volunteerism and freedom of thought", so that "funds… shall be secured from the donations provided by citizens and legal entities" and "no material means from the private or public sources may be promised or given" (Articles 55 and 56). It is not clear whether payment from private sources for the collection of signatures is prohibited (cf. III.4.e. of the Code).

29. However, the quoted provisions do not cover in the same way referendum campaigns, so that the only rule in this respect is the already mentioned Article 7, according to which "The financial means for holding a Republican referendum shall be provided from the Republic [or the Provincial, or the local government unit] Budget". There is not an express mention of "the use of public funds… for campaigning purposes", which the *Code recommends to avoid* (I.3.1.b and II.3.4.b). This could be problematic.

30. Article 22 provides that "an authorised proponent shall be obliged to provide citizens with objective information on the issue, or the act which is subject to referendum, in the form of a brief report published in the media or distributed to citizens by mail at their home addresses". This is in conformity with the Code (I.3.1.d), except that such a task should belong to the authorities in all cases.

c. Free suffrage

31. The principle of "free suffrage" (I.3) is also guaranteed in a detailed way. First, the "freedom of voters to form an opinion" (I.3.1) is expressly affirmed, with a general scope, in Article 5 ("Freedom of Voting"), including the two following aspects: "Citizens shall be free to express their opinion in the referendum and… to decide whether or not they will participate in the civil initiative"; and "No one may hold a citizen liable because of his/her expressed opinion in a referendum or failure to do so, or for his/her participation in a civil initiative".

32. However, distance (mobile) voting is not at all mentioned in the draft. In its Opinion on electoral legislation in Serbia the Venice Commission and OSCE/ODIHR recommended to include specific safeguards on the provision of mobile voting in the electoral legislation as, according to the Commission, "such amendments should (1) require that all requests for mobile voting be based on the fact of physical incapacity, infirmity, or some other valid reason that prevents a voter from physically travelling to the polling station, and (2) state that all procedures for identifying a voter, issuing and marking a ballot, and for observation are applicable to the mobile voting procedure."[4] The Venice Commission would recommend to include the same provisions in the draft.

33. Article 21 provides for the possibility to hold the referendum on two days. Proper measures for ensuring the security of the ballots overnight have to be taken in this case.

3. Specific issues

a. The cases for referendums

34. According to Article 2 of the draft, "a referendum shall be a way for citizens to directly decide on issues anticipated by the Constitution, law and the Autonomous Province Statute and statutes of local governments (mandatory referendum) and on issues under the authority of the National Assembly, Autonomous Province Assembly and local government assemblies". It is however dubious that referendum is possible in cases not provided for in the Constitution, at least at national level. The same comment is valid for Article 10 concerning the cases of mandatory referendum as well as for Article 35 1) on republican referendum.

35. Article 12.4, on "referendums initiated at the will of the voters", makes a distinction between referendums (1) on an issue which yet needs to be regulated by the Assembly (preliminary referendum), (2) on an act proposed at the will of votes (constitutive referendum), or (3) on full or partial annulment of an act adopted by the Assembly (referendum for act annulment). Whereas categories (2) and (3) are clear, category (1) should be made more explicit.

b. The problem of quorums

36. The Constitution of Serbia does not provide for quorums. Article 203.8 provides that an "amendment to the Constitution shall be adopted if the majority of voters who participated in the referendum voted in favour of the amendment". Instead, Article 2 of the draft states the principle that a referendum's decision "shall be considered effective and binding if more than half of the total number of voters voted and if the majority of them voted in favour of the decision": the principle is expressly stated to be applied when the Constitution, the law, the Autonomous Province Statute or statutes of local government "have not defined the majority of voters that are needed for passing a decision by …. referendum" concerning issues anticipated by the

[4] CDL-AD(2009)039 Joint Opinion on draft Laws on Electoral Legislation of Serbia by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009), par. 46; Venice Commission Code of Good Practice in Election Matters, Explanatory Report, I.3.2.2.1, par. 40.

Constitution, the law, the Autonomous Province Statute and the statutes of local governments or issues under authority of the National Assembly, Autonomous Province Assembly and local government assemblies chosen "by these assemblies or by an initiative of voters". This means that a quorum of voters taking part in the vote is requested for all referendums except constitutional ones under Article 203 of the Constitution.

37. The issue may raised whether, when the Constitution does not provide for any threshold (and makes it explicit for constitutional revisions) such a threshold could be introduced by ordinary legislation.

38. At any rate, a threshold is not suitable, as expressed in the Code of good practice on Referendums (cf. Code III.7, Explanatory note 50-53):

a) the setting of a quorum for the vote to be valid gives the majority of voters the impression that if that minimum is not achieved, their opinion is not taken into account;
b) the requirement of a quorum of participants to the vote can block the whole process;
c) when such a quorum is provided for, the result of the referendum can be arranged in advance by controlling a great deal of abstentions and, therefore, by avoiding an explicit choice of the voters, a move which is against the constitutional purpose of the referendum;
d) it should be advisable preventing the opponents to call for a boycott in the hope of defeating a proposal by abstention despite being in a minority; and
e) it is better dispense with the quorum requirement, because it is difficult to make voting compulsory.

c. The questions submitted to the voters

39. Article 24 requires that "a question which is subject to voting in the referendum must be clearly expressed so that it can be answered with the words *For* or *Against* or the words *Yes* or *No*; it must be formulated in such way to suggest only one of the possible answers". These statements are correct but could be made more precise.

40. According to the relevant principles elaborated by the Venice Commission in its Code, *any question submitted to the electorate must be clear* (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; voters must answer the questions asked by yes, no or a blank vote (Code, III.1.C).

41. The second paragraph of Article 24 of the draft requires that "if two or more questions are subject to voting in the referendum, there shall be different ballots for each question". the principle of *unity of content*, according to which "there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link" (Code, III.2), is however not expressed explicitly in the law. This would be suitable.

42. Article 42 allows the National Assembly to draft a counter-proposal to a referendum asked at the initiative of at least 100000 voters (civil initiative). The procedure for voting simultaneously on the initiative and the counter-proposal should be detailed, in particular by defining whether it is allowed to vote "yes" on both proposals and what happens if both are accepted.

d. Effects of referendums

43. Most referendums are legally-binding (Article 2.3-4). Articles 2.5 and 13 provide for advisory (consultative) referendums on issues of wider importance under the authority of an Assembly. However, the Assembly "which announced an advisory referendum shall be obliged to take into consideration the opinion of citizens expressed in that referendum before

passing any decisions" (Article 13.2). The way in which the Assembly has to take into consideration the people's vote should be defined: does it just mean that the Assembly has to decide whether it wants to follow it, and if yes, to what extent? Or is the Assembly actually bound? In that case, the referendum would be a *legally-binding* referendum on *a question of principle*.

e. Protection of voters' rights, complaints and appeals

44. After the calling of the referendum, a Referendum Commission has to be established according to Article 17 of the draft: its task has an administrative nature as far as it regards the organisation and the procedure of the referendum, but it also deals with the protection of the rights of the citizens concerned, who, if they deem that a decision or an act or oversight in the referendum procedure are not regular, have the right to file a complaint to the Commission within 24 hours (Article 32). As a matter of fact the deadline is too short, the rule does not provide for a hearing of the people concerned and it is not clear what "regularity" means. The drafters should take into account the possibility of taking care of the interests of the citizens as well as of the authorised proponents and their representatives in a better way.

45. Moreover the protection of the rights is guaranteed by Article 34, which allows the interested citizens to file a complaint to the Administrative Court when they are not satisfied by the decision of the Referendum Commission. Therefore a citizen can complain before a judge only after having asked a decision of the Referendum Commission and against this decision.

46. According to Article 43, the State Electoral Commission is directly concerned by the rules on the Republican Referendum since it "shall be responsible for organising Republican Referendums". It follows that the State Electoral Commission will take care of the protection of the rights of the people concerned and that its decision shall be the possible object of the complaints submitted to the Administrative Court by citizens. Because the State Electoral Commission is a body which exists independently of the calling of a referendum and has its own regulations, it should be advisable coordinating these regulations with the rules of the draft. In any case the rules of the draft law should be considered special rules and, therefore, they should be applied instead of the general rules concerning the activity of the State Electoral Commission.

47.

- Article 34 ("Joint Provisions" on "Referendum"), paragraphs 2 to 4[5] provides that: "The *Administrative Court* shall render the judgment on the complaint referred to *in paragraph 1* of this Article within *48 hours* from the moment of its arrival and this judgment shall be final. The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes. Until the Administrative Court becomes operational, complaints referred to in *Paragraph 1* of this Article against decisions of the provincial *referendum commission* and local government *referendum commission* shall be decided upon by district courts, and complaints against decisions of the *Republican referendum commission* shall be addressed by the Supreme Court of Serbia".

- Article 52 ("Proposal Verification" of "Civil Initiative"), paragraphs 5 to 7: "The Administrative Court shall decide on the complaint referred to in *Paragraph 4* of this Article within *15 days* form the date of receipt and its decision on the matter shall be final. The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes. Until the Administrative

[5] *Italic characters* emphasise the differences among the wording of the Articles considered here, essentially referred to time limits and institutions which have adopted the acts under discussion.

Court becomes operational complaints referred to in *Paragraph 4* of this Article against decisions of the provincial and local government *assemblies* shall be decided upon by district courts, and complaints against decisions of the *National Assembly* shall be addressed by the Supreme Court of Serbia".

- Article 59 ("Verification of Compliance to Requirements" of "Civil Initiative"), paragraphs 4 to 6: "The Administrative Court reviews the complaint referred to in *Paragraph 3* of this Article *within 15 days* from the date of receipt of the complaint and its decision shall be final. The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes. Until the Administrative Court becomes operational complaints referred to in *Paragraph 3* of this Article against decisions of the provincial and local government *assemblies* shall be decided upon by district courts, and complaints against decisions of the *National Assembly* shall be addressed by the Supreme Court of Serbia".

- Article 63 ("Protection of Rights" in the "Civil Initiative"), paragraphs 2 to 4: "The complaint referred to in *Paragraph 2* of this Article shall be *filed within eight days* from the date of receipt of the *Assembly's notice*, the Administrative Court shall review the complaint within *15 days* from the date of receipt of the complaint and its decision shall be final. The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes. Until the Administrative Court becomes operational, complaints referred to in *Paragraph 2* of this Article against decisions of the provincial and local government *assemblies* shall be decided upon by district courts, and complaints against decisions of the *National Assembly* shall be addressed by the Supreme Court of Serbia".

48. The similarities between these provisions are evident, up to the point that it could be suggested to include most of their content (related to the final character of the Administrative Court decision, the composition of this body and the transitional competence of the district courts and the Supreme Court of Serbia) into the first block or chapter of the draft ("I. Basic Provisions"), possibly at the end of the current Article 8 ("Protection of Rights").

49. Another procedure seems to apply if the Government or competent working bodies deem that an issue which is subject to the referendum request pertains to one of the issues referred to in Article 38 of the Law (on which a referendum is not possible): according to Article 41, the National Assembly has to ask the Constitutional Court to rule on it.

50. However, the draft does not provide for the participation of the voters in the procedure before the Constitutional Court. This solution is questionable, because it does not allow the interested voters to defend their rights, at the very moment when a decision is taken about the future of the referendum. The concerned people do not have any possibility both of explaining their position and of reacting to a negative decision of the Assembly about the calling of a referendum. The draft should therefore be amended on this point.

51. Article 59 deals with verification of the lists of signatures by the Assembly. The acts of the Assembly can touch not only the calling of the referendum in general but also the personal position of those voters, whose signatures are judged invalid. Therefore Article 59 is not satisfying as far as it allows only the Petition Board to complain before the Administrative Court about the Assembly's decision and excludes the possibility of individual complaints of the interested voters. The draft should be amended to take this point into consideration.

f. Specific rules applying to the civil initiative

52. With respect to the Civil Initiative (Part III), the draft seems to clarify most of the necessary elements. Civil Initiatives are divided into different types (forms) (specifically-worded or generally-worded: Article 49);[6] the different steps in the procedure are regulated, including the formation of a petition board (Article 50). The draft also includes: the rules for collecting signatures (Articles 53 and ff.); the basic requirements on information to citizens, on funding and on judiciary protection of citizens' rights. Civil initiatives are submitted to the Assemblies, which can decide to approve them of not, without submitting the question to a referendum.

53. The law also provides for the intervention of the Assemblies responsible for the adoption of the act or for addressing the issue. *First*, before the beginning of the collection of signatures, they have to check whether the principle of unity of form has been respected and that the question belongs to questions under the authority of the Assembly (Articles 52, 51.1); this last question should include the examination of conformity with superior law (substantive validity) (Code, III.3, cf. Article 38 and 46 of the draft).

54. *Second,* the Assembly has to take a second decision about the initiative after the collection of signatures (Article 61). This is understood as a decision whether to follow or not the proposal made in the initiative. Article 61 refers however to other pieces of legislation concerning the cases when an initiative can be rejected. This is neither clear nor appropriate.

55. The number of necessary signatures (cf. Article 53.2) is not defined in the law; this should be the case.

56. Article 58 provides the possibility for a voter to withdraw his or her signature in favour of a civil initiative. Such a rule is inappropriate. It could open the way to pressures on voters; it makes the procedure heavier without any justification; it forgets what should be the meaning of a civil initiative: asking Parliament to decide on a question, and not expressing one's opinion on such a question – which is expressed when voting.

V. Conclusions

57. The Commission welcomes the effort of the drafters to follow international recommendations. The draft law is generally in conformity with the European standards. The text also follows a number of specific recommendations which are part of the Venice Commission *Code of good practice on Referendums.*

58. Revising the structure of the draft is necessary, in order to make clearer and more coherent. The draft could be improved by clearly distinguishing between the rules about the procedure for the referendums initiated by an autonomous decision of the National Assembly and those concerning the referendums initiated by the people, the provincial and local government referendums, and the civil initiative of the legislation. The text should define clearly the various types of referendums (such as preliminary *v.* constitutive) and provide specific rules for all these different procedures.

59. The Commission notes that in the draft specific provisions concerning the constitutional referendum are missing and suggests revising the relevant provisions in order to fully guarantee citizens' rights.

60. Full protection of citizens' rights should be ensured, in particular by opening *locus standi* more broadly.

[6] Cf. CDL-AD(2007)008rev, III.2.

61. The Venice Commission recommends revising a number of provisions, for example:

- Article 2 paragraph 2 of the draft should be revised in order to avoid any quorum;
- specific safeguards against abuse of mobile voting should be introduced;
- the provision allowing for the withdrawal of a signature in favour of a civil initiative should be deleted;
- the procedure for voting on an initiative and a counter-proposal should be defined in detail;
- the effects of an "advisory" referendum should be made clear;
- the composition of referendum commissions and electoral boards should be defined in the law;
- the principle of unity of content should be stated in an explicit way.

62. The Venice Commission remains at the disposal of the Serbian authorities for pursuing co-operation in the drafting of the new law on referendums.