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DIRECT PARTICIPATION OF CITIZENS IN LOCAL LIFE IN SERBIA

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Direct participation of citizens in local public life in Serbia

1. Present situation and problems in Republic of Serbia

The **referendum** and the **citizens' initiative** represent two forms of direct participation of citizens in the decision-making process in Serbia. In addition to these two fundamental forms, Serbia, like some European countries also apply other forms of direct citizen participation, by setting up various bodies in which citizens can participate.

Within the existing system of local governance in Serbia, the only real form of direct decision at the local level is the municipal referendum. The citizens' initiative does not have the legal effect that it should have by its essence, and therefore is not a true form of direct decision.

The procedures of a decision-making through a referendum, as well as the procedure of submitting citizens' initiative, in Serbia are regulated by the Law on Referendum and Citizens' Initiative. This law applies not only at the national level, but also at the provincial and municipal level.

1.1 Municipal Referendum

Both the Constitution of the Republic of Serbia and the Law on Local Self-government underline that the citizens can participate in decision making process at local level directly (through referendum) and through elected representatives in the municipal assembly.

By putting the referendum in the first place, the Constitution and Law emphasized the principle according to which the direct decision-making is in the very foundation of local governance, the level at which the democracy can be realized more directly than on the level of the state.

Municipal referendum, despite the fact that it is the most important form of direct participation of citizens in decision making process at local level, is very poorly represented.

The definition of the issue of a municipal referendum as stipulated in the Law on Local Self-government is fairly general. The Law on Local Self-government recognizes only *one case of mandatory referendum*, and that is the specific form of direct expression of citizens by which they adopt a decision on the introduction of local self-contributions. In addition, there is also the *facultative referendum*, which, according to the Law on Local Self-government, can be called by municipal assembly on any issue within its competencies, either at its own initiative or at the initiative of the citizens. It is obvious, however, that its competencies include a number of issues that are not suitable for a referendum.

In case of referendum at the request of the citizens, the municipal assembly is obliged to call it, under the condition that the request is valid and that the pertaining issue falls within the competencies of the municipal assembly. A request is valid in case that 10% of the municipal electorate support it with their signatures.

The referendum can be called for the whole territory of municipality (*municipal referendum*), or for its part (*district referendum*).

According to the Law on Referendum and Citizens' Initiative, a referendum can be called in a municipality not only for adopting a decision, but also for getting preliminary opinions (*pre-legislative referendum*), as well as for approving an act already adopted by the municipal assembly (*post-legislative referendum*), and, in all cases, the decisions reached at the referendum are binding. However, neither the Law on Referendum and Citizens' Initiative, nor the Law on Local Self-government specifies a clear purpose of a post-legislative referendum called at the request of citizens.

Except for the provision that a decision is adopted on a referendum if the majority of voters have voted for it, and provided that more than one half of the electorate has voted, neither the Law on Local Self-government, nor the municipal statutes regulate any further issues of importance for the referendum procedure. For that reason, the municipal referendum procedure is subject to the solutions stipulated in the Law on Referendum and Citizens' Initiative. The basic rule is that the citizens with the right to vote and the residence on the territory of the municipality may vote at a municipal referendum. However, if the referendum would create rights and obligations for citizens residing outside of the municipality, those citizens should also be entitled to express their opinion on the referendum.

Referendum for a Part of Territory of Municipality, and Referendum on Self-contribution

The particularity of a referendum conducted for one part of the municipal territory

- coverage of a smaller region (part of municipality),
- the issue in question can be any issue within the competencies of the municipal governance, providing it relates to the needs and/or interests of the local population

None of municipal statutes regulate this matter and it remains unclear which issues could be "interests of the population in that part of the territory." Some statutes contain a provision that such a request should be signed by at least 20% of the electorate from the corresponding part of the territory.

The particular treatment of the referendum on local self-contribution within the Law on Local Self-Government can be explained by the fact that it establishes material obligations for the citizens on particular territory. This kind of referendum is still considered as very significant, although the figures show that the amount of funds collected through self-contributions over the last several years is about 1 percent of the total municipality funds.

1.2. Citizens' initiative

The citizens' initiative represents the second form of citizen participation in the decision-making process at local level. However, in Serbian legislation, the citizens' initiative has limited legal effects, and constitutes the citizens' right to propose the solution of a particular issue, or the adoption of a particular act. Being entitled to make proposals citizens are practically placed at the same level as the individual assembly members. The citizens' initiative is explicitly stipulated in the Constitution of the Republic of Serbia and further regulated by the Law on Referendum and Popular Initiative, the Law on Local Self-government, and the municipal statutes.

According to the Law on Local Self-government, there are three possible issues for a citizens' initiative: the adoption of acts regulating an issue from the primary competence of the municipality, changes to the statute or other acts, and calling a referendum. The initiative has to be supported by at least 10% of the electorate. The formal requirements and rules for starting an initiative, stipulated by the Law on Referendum and Popular Initiative, can be the subject of many objections, out of which three seem to be the most significant.

The first objection concerns the lack of verification, at the initial stage, before the collection of signatures, of the formal legality of the proposal. If a proposal is irregular (not according to the legal acts) there is no point to collect signatures, when it is clear from the beginning that it will be rejected? A problem in practice is the lack of coordination and passive attitude of municipal administration. Citizens, unfamiliar with the problems, start the procedure for collecting the signatures, while the municipal administration, even when aware of it, remains

“silent,” - does not indicate the procedural irregularities on time, or the citizens themselves fail to ask for the support.

The second major objection is that the initiative committee should have the obligation to report the start of the collection of signatures to the police. It raises questions about the real intention of the legislator who leaves room for speculations about police control over the implementation of a typical political right of citizens, which is an inappropriate measure in a democratic society.

The third objection is the most serious, and is related to the extremely short deadline (just 7 days) for the collection of signatures. Within such a deadline, the signatures can generally be collected by organizations with sufficient resources and staff, such as political parties, while it remains extremely difficult for ordinary citizens.

Even when a sufficient number of signatures are collected within such a short deadline, the proposal is put on the agenda of the municipal assembly in order to be discussed and decided upon. In case the proposal is rejected, the assembly is obliged to submit a response with the explication to the citizens within 60 days. The initiative committee can submit an appeal to the Supreme Court, which decides on the appeal within 15 days, and its decision is final.

From such a legislative framework, it can be said that the municipal assembly is obliged to accept only a citizens' initiative demanding a referendum, provided that it has been conducted in compliance with the law and the statute.

2. Proposals for the Improvement of the Existing Legal Framework and Practice in the Field of Direct Citizen Participation

2.1. Municipal Referendum

Serbian legal solutions for a referendum represent satisfactory solutions for the most part, but not the solutions that could not be improved.

In order to improve the direct participation of citizens in the decision-making process using municipal referendum, the following actions are necessary:

1. Law on LSG should stipulate that the decisions on changing the borders of the municipality cannot be adopted without an advisory referendum, in which the citizens of the municipalities the changes are related to would express their opinions. The fact that the European Charter on LSG also stipulates that the changes to the borders of the units of local governance cannot be performed without prior consultation of the local communities, and that it should be done with a referendum, provides another reason why this issue should be explicitly listed as one of the issues for an advisory referendum.

2. Law on LSG should define a lower percentage of the municipal electorate required to support a request for calling a referendum (e.g. at least 5% of voters), or provide the municipalities with the right to set various percentages, depending on their number of voters, (to have a lower percentage for a larger electorate). Although the current solution of 10 percent is a solution that exists in other European countries, it seems more appropriate to support the request for a lower percentage, especially bearing in mind the size of Serbian municipalities.

3. Changes to the LSG should introduce the obligation for the units of local governance that they cannot abolish, change or amend a decision reached at a referendum within 12 months of the date the referendum was held.

4. The seven days deadline for collection of signatures supporting the request to call a referendum and to submit an initiative should be extended to 30 days (in the Law on Referendum and Citizens' Initiative), because the current timeframe is too short, and suits only the organizations with large staff and financial resources, such as political parties.
5. Changes to the Law on Referendum and Citizens' Initiative should clearly stipulate the option of calling a post-legislative referendum at the request of the citizens. In that manner, the citizens would be motivated to participate in governance, which would probably contribute to the quality of management of municipality affairs.
6. Statutes should stipulate in detail the range of issues that can be decided on a referendum. Among other things, these can be: adoption and changes of the statute and other important legal acts, decisions on expenses exceeding a set amount, adoption of the city plans and the programs for development of specific industries, decisions on public loans, large capital investments, purchases or sales of large assets, decisions about the name of the municipality, coat of arms and symbols, decisions about the names of streets, squares, and settlements, and similar decisions.
7. Statutes should stipulate the range of issues that can be decided on a referendum organized on one part of the municipal territory.
8. Statutes should stipulate that, for a valid request for calling a referendum for one part of the territory, 10 percent of the electorate on that territory is required. This is emphasized as a necessity because individual statutes stipulate a requirement of at least 20 percent of voters from the corresponding part of the territory. This is twice the minimal number of required signatures for the comparative request for a municipal referendum (10 percent), which certainly seems excessive.

2.2. Citizens' initiative

For the improvement of the present situation related to the right of citizens to citizens' initiative, the following actions need to be performed:

1. Changes to the LSG should provide the citizens' initiative with wider legal effects at the local level, by stipulating that in case that the proposal of a citizens' initiative is rejected, the assembly of the unit of local governance is automatically obliged to call a referendum, in order for the citizens to voice their opinion about the submitted proposal. That would express the will of representative bodies, elected by the people, to share the authority of reaching decisions with their voters.
2. Changes to the Law on Local Self-government should stipulate a lower percentage of the electorate as the requirement for the minimal number of voters that should support an initiative (for instance, at least 5% of the electorate), or provide the municipalities with the right to set various percentages, depending on their number of voters, in order for that number to decrease from a smaller to a larger electorate.
3. Law on Referendum and Popular Initiative should abolish the obligation to report to the police intention of collecting signatures, and stipulate instead the obligation of reporting the same intention to the municipal assembly. This proposal is also in accordance with comparative experiences, as well as the need for further democratization.
4. The deadline of seven days for collection of signatures, stipulated in the Law on Referendum and Popular Initiative, should be extended to 30 days, because the current seven-day deadline is too short, and suits only the organizations with large staff and resources, such as political parties. The same law should comprehensively prescribe the procedure for the

protection of the rights of the submitters of initiative, which at the moment does not provide adequate protection.

5. Statutes should make clear the issues that can be covered by citizens' initiatives. In that manner, the issues that are not suitable for such form of citizen participation would be excluded, and the citizens themselves would be clearly instructed about the possible issues they could submit an initiative about. Otherwise it happens that a significant number of initiatives are rejected (for instance, because they refer to the issues stipulated by law). In that case the citizens are discouraged from participating in initiatives, and are subjected to unnecessary waste of time.

6. Statutes should particularly elaborate the procedures of deciding on initiatives containing general suggestions, and on those containing specific ones. Concerning the general suggestions, the obligation should be stipulated for the executive authorities to submit such suggestions to the assembly with their opinion about the suggestion, and, eventually, about possible directions for the development of future regulations. In additions, it should be clearly indicated that the decision-making process on general suggestions should have two phases, i.e. that after the adoption of the general suggestion, a deadline shall be stipulated for the executive authority to prepare the draft regulation. The initiators should have the right to present their opinion about the draft regulation to the assembly before the final decision.

7. Statutes should provide that, before the collection of any signatures for a citizens' initiative, it is required to verify the formal validity of the proposal to be submitted by the initiative. In case the proposal is irregular (unclear) or illegal due to a contradiction with the Constitution or any laws and statutes, or inconsistent with legal competencies of the municipal bodies, a procedure should be prescribed for the correction of such deficiencies of the proposal, as well as for its eventual rejection if it does not fulfill the formal requirements. This would prevent unnecessary waste of time and energy of the citizens.

