



STANDING CONFERENCE
OF TOWNS AND MUNICIPALITIES

DIRECT PARTICIPATION OF CITIZENS IN LOCAL PUBLIC LIFE

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Starting from the European Charter on Local self-government, the Recommendation no. 19 (2001) “Participation of Citizens in Local Public Life” by the Committee of Ministers of the Council of Europe and the document of the Working Group of the SCTM for Strengthening of citizen participation and according to the article 27 paragraph 5 of the Statute of the Standing Conference of Towns and Municipalities, the Presidency of the SCTM at its V session held on September 13th, 2006 adopted:

R E C O M M E N D A T I O N

REGARDING DIRECT PARTICIPATION OF CITIZENS IN LOCAL PUBLIC LIFE

Starting from the European Charter on Local self-government and the Recommendation no. 19 (2001) “Participation of Citizens in Local Public Life” by the Committee of Ministers of the Council of Europe;

Adopting the document regarding the direct participation of citizens in local public life, developed by the SCTM Working group for Strengthening of citizen participation;

Recognizing that the direct participation of citizens in the process of governing is the basic citizen right in a democratic society;

Recognizing that the key quality of a democratic society is freedom of every member to participate in public life and to contribute to achievement of better life and general progress;

Recognizing that only well informed, adequately and timely consulted citizens can take part in the direct decision-making and can fully contribute to sharing of responsibilities with their representatives within the local self-government bodies;

Recognizing that the direct citizen participation can not and is not a replacement for the representative democracy, but complementary with it and its natural supplement which can enable the strengthening of democratic legitimacy of political decisions, increasing of transparency of the decision-making process, as well as to more noticeable participation of voters in the political process;

Recognizing that direct participation of citizens in local public life is not sufficiently developed and that the improvement of the legal framework and practice is needed;

The Presidency of the Standing Conference of Towns and Municipalities invites The Government of the Republic of Serbia to adopt the national policy regarding direct citizen participation in local public life, which would comprise:

- raising awareness of necessity of broader participation of citizens in local public life, especially of necessity and benefit of cooperation of municipal authorities and public services with non-governmental organizations;

- improvement of practice, especially of broader affirmation of direct citizen participation in the decision-making by means of referendum and citizens' initiative and by using new forms of information and consultation of citizens;
- improvement of legal and political framework of direct citizen participation in local public life, especially of the Law on referendum and popular initiative;
- further decentralization and strengthening of the position of local self-government units, especially of their right to property;
- change of existing local electoral systems and implementation of the system of election of members of municipal assemblies which shall enhance more equal representation of geographic regions and particular groups of citizens in municipal assemblies;
- improvement of a local community government, especially the position of a local community as of a community of great importance for citizens;

The Presidency of the Standing Conference of Towns and Municipalities invites authorities of local self-government units, in order to improve direct participation of citizens in local public life, to adopt pertinent acts and to develop both policy and practice which would comprise:

- openness-improvement of transparency of work and better information of citizens;
- dialogue-development of adequate and timely consultation of citizens on the issues concerning the local society;
- share of responsibilities-improvement of direct decision-making of citizens on the most important issues of local public life.

The Presidency of the SCTM recommends to citizens, the Republic of Serbia authorities, local self-government authorities and to all other interested institutions and organizations, to be better acquainted with the document issued from the SCTM regarding direct citizen participation in local public life which is the integral part of these recommendations and invite them to contribute to the improvement of direct citizen participation in local public life.

Željko Ožegović
President of the
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TOWARDS A NATIONAL POLICY

At the beginning of the new millennium, the roles and functions of the local governance are in a constant, dynamic process of development, so that solutions considered as good and progressive today, may become the object of re-evaluation tomorrow, in light of changes in the society and in citizens' needs and expectations. For that reason, the issue of the position and role of local governance is on the agenda of many countries, and particularly of member states of the Council of Europe. Among such issues, growing significance is given to the issue of quality of relations between the citizens and local authorities, and to the level of citizen participation in the decision-making political process at the local level.

The governing principle in the approach to civil rights pertaining to participation in local governance is that it has nothing to do with any rights awarded to citizens by their local government or state authorities, nor with the rights resulting from international documents, but is the fundamental right of the citizens and a basic principle of the structure of democracy. Therefore, with the act of election of their representatives in local or central representative bodies (assemblies), citizens are not delegating their sovereign rights to manage their local community and their state in their entirety. By completely waving these rights, the citizens would relieve themselves of a part of their work and responsibilities they have in local community and state governance, but would have to face an irresponsible government, whose actions could be sanctioned only at the next elections.

On account of that, there has lately been a tendency toward the development of institutes of direct democracy in many countries, as a supplement to institutions of representative democracy, thereby creating a pattern of so-called semi-direct democracy. This was attributed to more and more obvious disadvantages of the representative democracy and the rule of political parties, which had led to a worrisome apathy of the electorate, but also to the growing complexity of the governmental processes in modern societies. Current situation indicates that the representative democracy should be supported with the participative democracy.

It is becoming more and more evident that the “promise of democracy” demands much more than a merely voting in elections.

In addition, even the traditional methods of direct participation of citizens, such as the referendum, citizens’ initiative, or public meetings and congregations, are being more and more often complemented by innovative methods such as citizens’ panels, focus groups or electronic debates. There is a growing need to include all social groups and other players into the governmental process, as well as a majority of individuals irrespective of their gender, race, religion, political and other orientations, and particularly the members of sensitive groups, such as youth and poor members of the population.

The issue of promotion of the position of citizens in the Serbian society, and particularly their larger influence in the processes that have been taking place in recent years, is gaining momentum. Although a new Law on Local Self-government was enacted in 2002, thereby providing for the implementation of a number of reform solutions, the fact remains that there is still no adopted political framework for the participation of citizens in local governance. Saying that, we are referring to some kind of national strategy or instructive documents that would be adopted by central bodies, which would contain an indication of the duties of central and local authorities to improve and facilitate the development of direct citizen participation.

Some of the causes for such a situation can certainly be traced to the fact that the Government and the National Assembly have on their agenda a large number of extremely important issues, as well as that the new Constitution of the Republic of Serbia is about to be enacted, which, at least according to the local authorities’ expectations, should present positive directions towards further decentralization and the improvement of the forms of direct democracy.

In the current situation, a number of municipalities in Serbia made their first steps towards developing relations with citizens and towards their active involvement in the decision-making process. More or less successful, these steps are, as it is also the case at the level of the Republic, primarily directed towards better information of the citizens, and in some places, conditions have also been provided for citizen consultation. On the other hand, it is evident that in the local communities, both among the local governmental bodies and among the citizens, there is no clear dedication of that issue. Among the causes for insufficient direct citizen participation, the most prominent ones are:

- Domination of a political culture that is not affirmative towards the citizen participation, and a low level of knowledge and awareness among citizens as to their rights and freedoms, and of the competencies of particular levels of government,
- Lack of citizen interest in public life caused by poor living conditions, lack of time, information and knowledge,
- Undeveloped and ineffective practice of direct citizen participation,
- Insufficiently developed legal and political framework for a larger citizen participation, and, in particular, the lack of a clear national strategy regarding the participation of citizens at the local level, and concrete obligations of local authorities towards citizens,
- Insufficient decentralization of power, and low financial capacity of local governments, and their large dependence on the bodies of the Republic,
- Inadequate local electoral system, having adverse effects on the representation of the whole population in the local assemblies,
- The size of a significant number of municipalities (in geographical terms and by the number of their citizens), which are, on average, amongst the largest in Europe.

The promotion of direct participation of citizens in local public life in Serbia demands the creation of a strategy for overcoming the causes and problems hindering the participation of citizens, improvement of existing forms, and introduction of new forms of citizen participation.

Overcoming the causes and problems, first of all, requires raising awareness and creating conviction in the citizens that their participation is necessary and desirable. **Raising awareness should be the foundation of the national policy**, and it demands a wider formal education (civic education), the creation of a program for education of older population through seminars, educational campaigns, and other forms of communication with citizens, as well as closer cooperation with organized forms of civic activity, such as non-governmental organizations.

In improving the culture of political participation, and raising awareness of civic activism, the **cooperation of local authorities with non-governmental organizations** has a very significant role. Local authorities should understand the value of the existing non-governmental sector, and should do whatever is necessary to support it. Associations of citizens and non-governmental organizations have a great influence on the development of a society as a whole, and especially

on direct participation of citizens in local public life and the decision-making process. Non-governmental organizations support the prevention of the passivity of citizens, and offer to citizens the opportunity to voice what they deem important for the development of the local environment. In addition, non-governmental organizations are also significant for broader education of citizens, and for raising awareness of the necessity of their participation in the public life, as well as for their information about the issues important for their local community. Moreover, with active participation in non-governmental organizations, citizens can overcome the barriers related to inaccessibility of public institutions. Therefore, the recognition of the needs and interests of the citizens, the articulation of these needs and interests and their subsequent public representation through associations of citizens is significant for raising awareness, and useful for harvesting the energy existent in every community.

Joint interests should make room for the resolution of the acute problems of the non-governmental sector, such as sustainable financing or lack of available work premises. The issue of financial stability, especially for small, local organizations, can be resolved with the stipulation of clear criteria of representation and capacities of non-governmental organizations, through establishment of budgetary funds of the local governance for the financing of non-governmental organizations, by organizing a special commission and transparent procedures for distribution of funds, and by signing a protocol on cooperation. Such cooperation could allow the participation of non-governmental organizations on advisory bodies and commissions, joint organization of various events, partnership in the realization of forms of citizen consultation, or the engagement of NGOs to provide specific, individual services to the local community. With this approach, the local governance would prompt the local non-governmental organizations to utilize their capacities to the fullest, and to return the investment to the community.

Realization of joint activities, giving a larger role to non-governmental organizations, and establishing of a process of mutual consultations, should strengthen broader activism and awareness of citizens, and thus give the citizens a larger and more direct role in local public life. Finally, the cooperation between the local authorities and non-governmental organizations should not jeopardize the quality and independence of associations of citizens, and should allow the associations of citizens to give a positive contribution to the democratic practice at the local level.

Also, one of the central items of a new national policy should be **the development of practical solutions, especially broader affirmation of direct citizen participation in the decision-making process, through referendums and citizens' initiatives.**

That is another method for building assurance and raising awareness of citizens about the significance of their involvement. However, larger participation does not always signify more democracy. It does not always provide that all groups and communities have found their place and have been given an opportunity to take part in the governmental processes. In order for **more direct citizen participation to signify more democracy, developed and extensive practice is required, as well as various methods,** the implementation of which will make it possible to reach the positions and opinions of the majority of citizens, as well as of most groups and communities.

The next component of the national strategy would be the improvement of the legal and political framework. The realization of civil rights to participation in local-level governance should acquire a fuller meaning and be more directly supported in the new Constitution of the Republic of Serbia. The Law on Local Self-government should, in addition to the three existing forms of direct citizen participation in the decision-making of local governance (referendum, citizens' initiative and citizens' meeting), establish and **more clearly define other forms of direct citizen participation in public life, some of which are further discussed in this document. The municipal statutes and regulations should contain a significantly better developed legal framework for citizen participation on the local level.** They should include unambiguously defined obligations of municipal authorities regarding their establishing of partnership relations with citizens and other subjects in the local community, as well as sufficiently broad citizens' rights, which would encourage them to get involved in the proposing, preparing and adopting process for various developmental and other municipal documents, and give active contribution to the resolution of common problems. The current statutory solutions are most often in the form of general laws, and thus fully insufficient for efficient implementation of citizen participation. A separate segment of the new national policy should be the

Legal framework for citizen participation:

- Constitution of the Republic of Serbia
- Law on Local Self-government
- Law on Referendum and Popular Initiative
- Law on Free Access to Information of Public Importance
- Statutes of towns and municipalities

improvement of the legal framework covering the existence and activities of organized forms of civic activism, such as associations of citizens. The adoption of a legal framework regulating their position, and specific issues such as their tax status and work of volunteers, is a natural segment in the development of the legal and political framework for direct citizen participation in the local public life.

An inseparable segment of the national policy should be to make room for further **decentralization and broader rights of the units of local governance, including their right to ownership over assets.** Administrative and financial decentralization, restoring of property, and a larger role of municipal authorities, are the foundation for positive development of all processes in a local community. Decentralization and broadening of municipal competencies, as well as their stronger financial capacity, should bring about more activity and interest of citizens for the public life and the decision-making process.

The issue of the adequacy of the local electoral system is very important for the direct participation of citizens. Current situation in municipalities implies that local assembly members most often come from limited, central areas of municipalities, thus leaving many local communities unrepresented in the local assembly. An assembly member, as a representative of a local community, has a great influence on the activism and interest of citizens for the public life in the local community. He/she is very often the motivator, organizer, or the source of information for the local community councils and citizens. For that very reason, a significant part of the new national policy should also be **the reform of the existing electoral system, and the implementation of a majority or combined electoral system should be considered. Changes to the electoral system for assembly members in town and municipal assemblies should be directed towards providing the opportunity for better representation of both individual geographic areas and special communities (for instance, minorities) in towns and municipalities.**

Finally, in the creation of a national policy, **the issue of the size of individual municipalities** indicates the need for possible consideration of **establishing territorially smaller municipalities, or strengthening various forms of local community governance.** Bearing in mind the significance of the issue and the tradition, the strengthening and greater engagement of local community governance, and especially of the local community as a unit, may be one of the answers to the problems of direct participation and representation of opinions and positions of all citizens in larger municipalities.

INTRODUCTION

In all former socialist countries such as Serbia, the citizens have significant reservations towards informal, but also towards formal methods of their participation in the management of public affairs, because the inherited political culture in these countries does not affirm this form of civic involvement in public life.

Ideas such as partnership between the local authorities and citizens, transparency in the work of local authorities, or direct participation of citizens, have no real resonance among the citizens. Most of them are also not encouraged by the structures of their local authorities to think in that manner, or to take action in order to resolve problems jointly with these authorities, and enable the local community to use all of its capacities in the best manner, and improve the living conditions. In order for the local authorities to do that, they must understand that, without relying on the citizens, they cannot fulfill their justified expectations. On account of such situation, the adoption of a consistent political framework for strengthening the participation of citizens at the local level proves to be a large step, which must be taken in order to provide motivation and support to the citizens, as well as to the local authorities, to start planning and working together.

Citizens' participation is of great significance for the promotion democracy in every country, particularly in countries that are in the process of creating a modern, political and economic system. Increased participation of citizens in public life, and particularly in the decision-making process, leads to more equality and provides more legitimacy for the decisions of the local authorities. Participation of citizens in the process of creation, adoption and implementation of decisions produces an active civil society of responsible and involved citizens.

The main objective of this document is to provide the political decision-makers with a basis for establishing a strategy for increasing direct participation of citizens in local public life. The Standing Conference of Towns and Municipalities (SCTM) as an association with all units of local governance in Serbia, with

the financial and professional support of the Swiss Agency for Development and Cooperation (SDC), within project “Support to Increased Citizen Participation on the Local Level”, has assumed the task of proposing the initial steps that may be the basis for a comprehensive strategy, and which are based on the analysis of current citizen participation in Serbia, the experiences of domestic and foreign experts, and representatives of non-governmental organizations and units of local self governance, and best comparative practice.

For the purpose of this document, the Standing Conference of Towns and Municipalities has formed the **Working Group for Strengthening Citizen Participation**, which has used the results and recommendations from the study performed as a support for the creation of this document. The Standing Conference of Towns and Municipalities, in cooperation with its partners, conducted the research of the current situation in the preparation period, and performed a comparative analysis of the legal and political framework. The research and the legal analysis are published in the study “**Citizen Participation on the Local Level - The Analysis of the Legal Framework and Policies in Serbia and Other European Countries; Research on Current Situation.**” In addition, in creation of this document, the Working Group was guided by the standards and principles established by international organizations, especially by the Council of Europe, as the best comparative practice from the European systems.

In the following text, the direct participation of citizens is presented with three basic processes, by means of which citizens take part in the local public life – information, consultation, and direct decision-making. Each of these three sections briefly describes the present situation, emphasizing the key shortcomings and problems in the legal and political frameworks and the existing practice.

The first section refers to **the citizen’s right to information**, and includes the methods for, and problems in realizing citizens right to information regarding the work, plans and intentions of representative bodies, situation in the local community, and other information of public importance. The problems in the realization of that right are viewed from the angle of passive and active information.

The citizen’s right to be consulted, and to present proposals, objections, and criticisms, and thus participate in a dialogue with the authorities, is covered in the next section. It presents a general review of the problems occurring in practice with the implementation of methods of citizen participation in the proposal of decisions and the presentation of criticisms on the work of representative bodies (such as citizens’ meetings, petitions, as well as individual

proposals, complaints, and submissions), and with setting local community priorities through public discussions, and the participation in the work of advisory bodies.

The third section covers **the citizen's right to direct participation in the decision-making process**, covering the problems in achieving direct democracy - the direct participation of citizens in the decision-making process through the forms such as: referendum, popular or citizens' initiative¹ and local governance - and the local community as a unit in particular.

The proposals presented in this document, which should initiate a process of strategic reforms, indicate the changes with highest priority, and provide the foundation for **the creation of a long-term national policy**, are based on the recommendations presented in the Recommendation no. 19 (2001) by the Committee of Ministers of the Council of Europe (*Participation of Citizens in Local Public Life*), and are presented next to each of the three basic segments. Thereby, all three segments have symbolic headings, establishing and emphasizing the key principles of a national policy for direct citizen participation in local public life – **openness of local authorities, dialogue, and sharing responsibilities with citizens**.

Finally, since the towns have the same structure of governance as the municipalities, this document, in the same manner as the Law on Local Self-government does, shall refer only to the municipalities for brevity, except when presenting town-specific issues. All word forms used in this text are intended to cover both genders.

¹ The Law on referendum and popular initiative uses one term (popular initiative), while the Law on Local Self-government uses another (citizens' initiative). Bearing in mind that the Law on Local Self-government is more recent, the term "citizens' initiative" shall be used hereinafter.

I OPENNESS

Information is a prerequisite for any participation of citizens in the decision-making process. The obligation of the local authorities to secure transparency of their activities, and to provide information about their work, are just the basic and initial steps in the realization of, in terms of volume and meaning, far broader rights of citizens to direct participation in the process of local governance. In order for the citizens to be able to take part in the democratic process of performing public affairs, and be truly active subjects in the control of the governmental bodies, they must have access to information available to these bodies. This principle is emphasized in the Recommendation No. 19 (2001) “Participation of Citizens in Local Public Life,” by the Committee of Ministers of the Council of Europe, as one of the basic principles of the policy that encourages citizens to participate in the political decision-making process. Nowadays, that right is one of the standards of democracy, and one of the requirements that the Council of Europe demands to be fulfilled by its members.

Information of citizens is the first pillar of direct citizen participation in the process of creating and adopting decisions in a local environment. Information, viewed from the angle of local governmental bodies, is a process that covers **passive information** (resulting from the initiative of the citizens) and **active information** (which covers the measures taken by the local authorities to inform the citizens).

1. The Current Situation and Problems

1.1. Passive Information

Passive information is closely related to the existence of right to free access to information, as well as to the legal regulations covering that area. It is most frequently based on the need of citizens to have the insight into an act or activity

of the authorities. The accessibility of such information is usually regulated by the law on the accessibility of information held by public authorities.

When drafting these laws, governments face a double challenge. The first is to provide the fulfillment of the right to access to information, and the second to respect the right to privacy of an individual and to protection of certain information of great importance for a country. It has caused the enactment of numerous legal acts on data and privacy protection, as well as acts specifically regulating the rights of citizens to obtain information on particular issues, such as, for example, the issue of endangerment and protection of the environment. Providing the citizens with access to data and documents of interest for them is one of the two basic channels through which passive information is provided (by sending, or personally issuing the requested document). The other channel is direct communication with the citizens, in which the officials or employees of the administration give answers to citizens regarding the issues related to a particular subject or required information, and thereby inform the citizens.

The right of citizens to information held by the public authorities is regulated in Serbia with the **Law on Free Access to Information of Public Importance**. According to that law, information of public importance is any piece of information held by a public authority, obtained through work or in connection to the work of that authority, contained in a particular document, and referring to anything that the public has a rightful interest to know.

In practice, the citizens, the media, and the non-governmental organizations display the greatest interest for the data on the disposal of budget and donated funds, salaries, public procurement, etc.

The greatest interest of citizens, media and non-governmental organizations is provoked by data on available budget and donor funds, salaries and public acquisitions.

However, there is still not enough willingness among the state authorities to provide access to all information on their work, which must be available to the public. There is concern about the still present “silence” of the administration - ignoring the requests for free access to information, which is a situation considered as illegal behavior according to the law.

In addition, it is worrisome that governmental bodies themselves also have problems in realizing the right to free access to information, because they are also deprived of the access to information in some cases.

There are also significant problems regarding the preparation of information bulletins, as well as with the implementation of the legal obligation of submitting the annual report on the activities of the public authorities taken for the implementation of this law, which should be submitted to the Commissioner for Information of Public Importance. The obligation of governmental bodies and other public authorities, and thus of the bodies of local governance as well, to publish **an information bulletin about their work** in electronic form (on their website), was inadequately fulfilled in the previous period (only 9.8% municipalities published an information bulletin about their work in 2005). In addition, the obligation of reporting the activities of the authorities related to the implementation of this Law to the Commissioner for Information of Public Importance was fulfilled by just one half of the units of local governance in Serbia.¹

All this indicates great problems with the implementation of this law, hopefully only due to its novelty, and negatively influences the information of citizens in local communities, and therefore also their active and proper direct participation in the local public life.

1.2. Active Information

Contrary to passive information, **active information** includes **an initiative of the local authorities to inform the citizens about their activities and plans for the future**. The tendency is to make it easier for the citizens to realize their rights and provide them with timely, clear and high-quality information about the activities and life of the local governance. Various methods and channels are used for this form of information, depending on the material and financial capabilities, creativity and the needs of a particular unit of local governance. Numerous problems and disadvantages are however present in practical work. In practice, however, numerous problems and shortcomings present themselves.

First of all, the regulation of the transparency of work and the manner of information about the work of municipal bodies is not detailed enough, nor can it be said that the pertaining provisions are at the level of the actual needs in terms of full transparency. Furthermore, there are a considerable number of municipalities that do not make sufficient efforts to improve the forms of citizen

¹ Details on problems in the implementation of the law in the *Report on the Implementation of the Law on Free Access to Information of Public Importance*, Republic of Serbia, Commissioner for Information of Public Importance, March 2006, www.poverenik.org.yu (electronic form).

information. This is usually related to the lack of resources and staff, but also due to the lack of comprehension of the new needs, supported by old bad habits. In these municipalities, information is reduced to modest forms of the classic understanding of transparency, to publishing of regulations and forms of information of financially dependent local media, which would have to assume the entire role of municipal bodies in providing information to citizens.

Another type of improper approach to citizen information is reflected in the tendency to reduce information to “good news” about the performance of the bodies of local governance, carefully selected with the clear intention of serving the purpose of gaining popularity for the bearers of functions and the political parties they belong to.

Regarding the publishing of municipal regulations, such form of information seems as if it should be the least controversial. However, there are two serious problems with it, too. The first is the failure to fulfill the obligation of publishing all municipal regulations in the manner prescribed by the statute, and naturally before it enters into force, which can still be considered as an exception. Somewhat more often, the practice is to publish the official gazette with a delay, i.e. under an obviously passed date, and several days after the publishing of the gazette. The second problem seems to be more serious, and is related to the impossibility for citizens to gain access to the content of municipal regulations in a relatively easy and simple manner. Municipal official gazettes are printed and distributed with a small circulation, since their publishing is financed from the budget.

Apart from that, the communal authorities interpret their constitutional and legal obligation of informing the citizens of their work too narrowly. Namely, the obligation does not only cover the publishing of the basic data on the sessions held, publishing of regulations and operational reports, and occasional contacts with local media, but also the obligation to inform the citizens on all issues of importance for the situation in the municipality and its future development. Such information is, as a rule, available to the municipal authorities, but is too often withheld and not made available to the citizens. Citizens are thus deprived of the (real) opportunities to participate in the management of the municipal affairs.

Even the citizens themselves emphasize that they are insufficiently informed about the activities of importance for the local community.² The primary reason

² Details in *Citizen Participation on the Local Level – The Analysis of the Legal Framework and Policies in Serbia and other European Countries; Research on Current Situation*, Prepared by the Standing Conference of Towns and Municipalities, February 2006.

for that is the unavailability of information, but also the lack of interest and time that the citizens would spend in order to get informed.

The lack of broad interest of the units of local governance to inform their citizens is also illustrated by the fact that the information is usually reduced to reporting and that there is no readiness to initiate and address the issues of citizen education about their rights, or direct participation. In addition, there is no developed readiness to consult the citizens, through polls or other forms of public consultation, about the level of information or knowledge and the use of their rights.

2. Proposal for the Improvement of the Existing Legal Framework and Practice of Citizen Information

2.1. Passive Information

The analysis of the state of affairs shows that there is plenty of room for further improvement of transparency and information. If we accept the fact that the responsibility for establishing a system that will promote transparency, availability of information and the information of citizens lies both with the authorities of the Republic, as well as with the local governments, it remains to be concluded that promotion of information requires the partnership of both levels of authority.

The authorities of the Republic have the responsibility regulating, implementing, monitoring, and protecting the constitutional and legal framework. After passing the Law on Free Access to Information of Public Importance, it is necessary to further promote this framework and its implementation in practice.

There is a particular need for adopting a legal framework that would more precisely define and protect the information and data that should not be accessible to the public. This is of particular importance, as the lack of definition of such information leaves room for manipulation and excuses for denying access to requested information.

In addition, the promotion of this law and the right of citizens to information should be further insisted upon. There is a pronounced need for the authorities of the Republic to promote a policy that will point out, to all responsible entities in the society, the need and obligation to provide access to information of public importance.

Concerning the activities of the units of local governance, several important recommendations and priorities for the improvement of the present situation should be mentioned. If they wish to improve the situation, **the local authorities are obliged to:**

- Provide timely information at the request of citizens,
- Provide and regularly update the information bulletin about their activities,
- Appoint authorized persons to decide on requests for free access to information,
- Consistently abide to other obligations prescribed by the Law on Free Access to Information of Public Importance.

By implementing these measures, the towns and municipalities of Serbia would improve the fulfillment of the right of citizens to information of public importance.

2.2. Active Information

The experiences of other countries show that many countries invest efforts to provide their citizens with information as good, clear and complete as possible, not only at the local level, but also at other levels of government. In the majority of countries in Europe, the authorities notify citizens about the local assembly sessions. The sessions themselves are open to the public, as well as the majority of their decisions or minutes. In some European countries, citizens may also take an active part in the work of the assembly, and present their opinions.

Apart from that, the material for the sessions of local assemblies or local executive bodies is available to the public in many cases, except when it refers to private matters of a third party, or when the availability thereof is restricted by law. The publishing of the decisions of executive bodies most often also depends solely on whether they concern some private matters, or whether their availability is restricted by clear legal rules.

When there are some justified reasons for restricting public access to particular decisions of local bodies, a positive example would be the rule that the restriction is in force only for the duration of the particular reasons on account of which it had been introduced. Apart from that, any restriction of public access to particular documents in the majority of countries must be performed clearly and in accordance with the law and justified reasons. There are very limited possibilities for any arbitrary interpretation of the restriction of public access to documents of local

authorities. Access to all information is often very simple, and is in a process of continuous improvement, with a goal to make the information available to all citizens, and especially the ones belonging to vulnerable social groups. Most frequently, the states provide for public disclosure of a score of materials and documents of importance for the work of local authorities. Publishing of local assembly session agendas on notice boards, in official gazettes, through local media, or on the Internet, is a common practice. Some countries also provide that citizens can obtain,

with financial compensation, the materials prepared for individual sessions of the local assembly. Concerning the right of citizens to have insight into the minutes or decisions of local assemblies, it is fulfilled done by publishing them, or making them available on the premises of local authorities, or on their websites.

The main tendency is to provide wide access of the public into the work of the authorities and into their decisions. The channels through which local authorities actively provide access to information about their work are open for wide use.

While the information through electronic, or printed media handed on the premises of the units of local governance and distributed to home addresses of the citizens were the dominant forms in the last decade of the 20th century, over the last several years, the use of information centers/offices, the Internet, public meetings and debates has been gaining greater priority. “Live“ communication with the citizens, through organization of public debates and other similar forms of consultation, is gaining more and more momentum, and this form of communication has acquired a somewhat obligatory status for the local authorities. However, the degree of use of these channels for the information of citizens depends on the financial and material resources, and the size of the units of local governance.

Some of the methods of active information

- Publishing official documents in official gazettes or similar official editions.
- Publishing special editions, presenting general or particular policy-making plans. Those are most frequently Green Papers and White Papers.
- Publishing drafts of particular acts in order to sample the opinions of the public.
- Publishing regular reports of general or more specific character, in connection with specific issues or general subjects.
- Publishing various manuals, brochures, fliers, leaflets, posters, banners, and similar.
- Public attendance at the sessions of the parliaments, local assemblies, or meetings of other bodies.
- Communication through the television, radio, printed media and the Internet.
- Public meetings with citizens.

Advantages of the Internet compared to other media

Low costs. In order to place information on the Internet, all we need is a PC, specific software, and a phone line.

Availability. The access to information on a web domain is practically fully open, and there are essentially no restrictions.

Speed. The communication and exchange of information over the Internet is performed in fairly short timeframes.

Opportunity for wide distribution of information. Internet provides a simple method to transfer a large amount of information to virtually all Internet users.

No geographic limitations. The technology allows for easy communication with people at great distances.

Wide usability. Internet provides both active and passive information, as well as various forms of citizen consultation, and increasingly also the opportunity for the citizens to decide directly at the local level over the Internet.

Active information of the citizens should be realized using all available channels, from the Internet, information centers, regional offices, to public meetings and cooperation with associations of citizens. Comparative experiences particularly indicate the benefits of the distribution of municipal information bulletins to the addresses of all citizens.

A significant role in the implementation of these initiatives should also be played by the **public relations departments** (PR departments), which should work on establishing concrete conditions for the participation of citizens. A large number of

municipalities in Serbia has made the first step in this direction: the PR departments have been formed, with the basic task to work on the improvement of information and communication with the public. In the field of **active information** of citizens, local governments should also support the non-governmental organizations in their activities related to bringing the local governance closer to the citizens (the competencies of the local governance, financial possibilities of the local governance, local governance and the European integration, etc). The non-governmental organizations should have a special role in the promotion of reform projects. When presenting significant new policies, plans and decisions, the cooperation and capacities of non-governmental organizations should be more relied upon, since they can inform the citizens in a professional, and at the same time for the citizens, understandable manner about many important issues. It is essential that the non-governmental organizations, by performing the activities in this sector, should not become the services of local governments.

Using the good practices from other municipalities could also be one of the manners for improving the existing situation. Over the last several years, a certain number of municipalities have made notable progress in informing their citizens of their new services, such as Internet presentations, information centers, publishing of various publications, manuals and guides, and are functioning very well. On the other side, the direct communication with citizens, through the systems of open doors or organization of public meetings with citizens in local communities, also provides very positive results.

5. Introduce more transparency into the manner in which the local institutions and authorities operate, and in particular in the fields of:

- i. Public access to the local decision-making process (publications of the agendas of the sessions of local government councils and local executive councils; sessions of the local government and its committees should be open to public; time should be provided for questions and answers at sessions; publishing of decisions and minutes from sessions, etc.)
- ii. Availability of information about the affairs of the local government, to provide each citizen with access to information (by setting up information centers, public databases, using the information technology, simplifying the administrative procedures, and reducing the costs of acquiring the copies of documents, etc.)
- iii. Adequate information of the public about the administrative bodies and their organizational structure, as well as informing the citizens directly affected by any ongoing proceedings of the progress or these proceedings, and disclosing the identity of the person in charge.

Excerpt from Appendix 2, Measures and Steps to Encourage and Reinforce the Participation of Citizens in the Public Life of the Local Community, of the Recommendation (2001) 19 “Participation of Citizens in Local Public Life” by the Committee of Ministers of the Council of Europe.

Starting from the Recommendation No.19 (2001) “Participation of Citizens in Local Public Life” by the Committee of Ministers of the Council of Europe (see frame), for the purpose of improvement of active information of citizens, it is necessary to create, realize and develop the mechanisms that would ensure **the best information of citizens, openness and transparency of the work of the bodies of local governance, and information easily and timely available to all citizens, especially the important municipality acts (in written or electronic form).**

In order to achieve that, the following is recommended:

1. In the statute of the municipality, assembly rules of procedure, and corresponding acts on the operation of other municipal bodies, it is necessary to precisely define and regulate the forms of achieving transparency of work, and the manner of providing information on the work of municipal bodies,
2. The obligation of publishing municipal regulations should be fulfilled consistently, both in terms of the requirement to publish all municipal regulations in the manner prescribed by the statute and naturally before they enter into force, as well as in terms of the requirement that the regulations should be timely published and timely distributed to interested parties,
3. The obligation of publishing the agendas of assembly sessions and municipal council meetings should be introduced,
4. Introduce the practice of publishing the minutes from sessions of local bodies, in order to allow the citizens to perceive how the bodies they elected function,
5. For the purpose of improving the information of citizens, but also to consult their opinions, publish also the drafts of particular acts, plans and programs, in order to sample the public opinions,
6. A separate room should be provided on the premises of the municipal authorities, where concerned citizens can gain insight into published and unpublished municipal acts, as well as obtain the copies of those acts solely by compensating the minimal copying costs,
7. The assembly rules of procedure should permit the attendance of a certain number of citizens at the sessions of the municipal assembly, and regulate the manner of obtaining that right, thereby establishing the opportunity for the citizens in some instances to participate in the work of the assembly by posing questions to the members of the assembly.

Unfortunately, the use of these and other forms of citizen information greatly depends on the financial and human resources of the units of local governance. However, the lack of funding and other resources must not be an excuse for insufficient information of citizens. Lack of money should be compensated by the desire to respond to the needs of citizens, and the creativity in using various available channels for active information of citizens.

Active information of sensitive groups of society

When organizing the active information of citizens, special attention should be dedicated to the members of sensitive groups of society, such as children and youth, women, old and poor persons, refugees and relocated persons, national and ethnic minorities, and disabled persons. For the purpose of providing these communities with timely and complete information, the information should be tailored to their capacities and needs. A great influence of the information of vulnerable and sensitive communities can have close cooperation of the local authorities with non-governmental organizations concerned the issues related to these groups, schools and other organizations gathering children and youth, as well as with the centers for social work.

II DIALOGUE

Consultation of citizens and collecting their proposals and objections is a two-way process in which the authorities ask for and obtain the opinions from the citizens about particular topics of interest for the citizens and the authorities. Unlike the processes of information, in which the citizens are the recipients of information, in the process of consultation the authorities take the role of the recipients of information provided by the citizens.

Establishing a dialogue between the citizens and the local government through the process of consultation creates the opportunity for citizens to become a key factor in the management of local affairs. The process of consultation is most often established and conducted by the local authorities themselves, by asking questions and offering the citizens, using various methods, opportunities to present their opinions.

The importance of consultation is derived from the fact that it is an opportunity for citizens to discuss or give proposals regarding particular policies or individual decisions, as well as from the principle that the decisions of local authorities must be based on the needs of citizens, and take into account their positions.

In addition, the process of consultation itself draws out the creativity of citizens themselves, which can improve the outlook of a decision, or the quality of a policy being created.

It is not easy to draw a precise line between a form of proposal and public criticism on one side, and a form of consultation on the other side, despite the fact that it is relatively easy to distinguish a proposal or criticism from consultation. However, when analyzing individual forms such as **citizens' meeting, right to petition or public debates**, it is obvious that they are forms in which proposals can be made, criticisms voiced, and the opinions of citizens about their priorities heard at the same time. The very process of voicing criticism ultimately is a form of listening to the opinions of citizens, and therefore criticism is also a form of

consultation. Therefore, the rights to consultation, proposal and criticism can be considered as a whole.

1. Current Situation and Problems

There are some formally established forms for citizen consultation on the local level in Serbia, such as citizens' meetings, citizen participation in the activities of the operating bodies of the assembly and the municipal advisory bodies, and the citizen rights to petition and public criticism, as well as a number of so far legally "unregulated," unofficial forms, such as public debates, researches and polls, Internet forums and debates, or various other forms of collecting suggestions from citizens.

1.1. Citizens' Meeting

Citizens' meeting is gathering of citizens that is organized for close areas of the territory of a municipality, for the purpose of debating and presenting proposals about the issues within the competencies of the municipality bodies. They are a legal category, and, according to the Law on Local Self-government, along with the referendum and citizens' initiative, they are one of the three basic forms through which the citizens directly participate in the affairs of local governance. The role of citizens' meetings covers two phases of the decision-making process - the debate and the proposal, but not the third phase of that process - the decision-making. Therefore, they are oriented towards collecting the opinions and proposals, i.e. the consultation of citizens. These proposals can be dealt with either by taking individual measures, or by regulating an issue with legal acts of the municipality.

The Law on Local Self-government stipulates that the issues of importance for citizens meetings should be developed in the provisions of the municipal statute, or the decisions on organizing the meetings. However, the issue of citizens' meetings is mainly not covered in detail in the municipal statutes, and therefore, in principle, any issues from the competencies of any municipal body may be discussed at them. Municipal assemblies did not even regulate with their statutes any issues from their competencies for which the organization of citizens' meetings would be mandatory in order to obtain the opinions of the citizens, but generally

regulate them as optional. Most often, the statutes stipulate that a meeting may be held and that valid conclusions can be adopted solely if at least 10% of the voters from the area where the meeting is held are present. The statutes do not even regulate the issues of establishing a quorum, or procedures for speaking at a meeting.

Practice has shown that the citizens' meetings are not adequately represented, except in the units of local community, where the significance of citizens' meetings goes beyond its consultative and proposing role.

1.2. Citizens' Right to Petition and Public Criticism

The right to petition and the right to public criticism of authorities imply the right of every citizen to submit proposals, suggestions, requests, criticisms and complaints to the governmental bodies. Citizens may, individually or collectively, make informal proposals through a petition for adoptions or changes of regulations, submit requests and suggest the resolution of a specific issue or the issuing of an individual act, propose the method for resolving an issue of public importance, or direct criticisms and submit complaints on irregular and illegal acts of governmental bodies towards them. Although the right to petition has the rank of a constitutional citizen right in Serbia, the Law on Local Self-government, as well as the municipal statutes we reviewed, contains no provisions on the right to petition.

The submission of petitions and public criticisms creates two sets of obligations for the governmental bodies: to consider the petition, and to respond to its submitters. If the petition contains criticism on the work of the governmental bodies, or has the form of a complaint on the work and acts of the governmental bodies and individual therein, such a petition would create the obligation of initiating a formal procedure that would examine the allegations from the petition, and based on the findings, take corresponding measures for determining the responsibility of authorized officials in the governmental bodies. The practice has shown that municipal regulations do not standardize this issue in detail, do not specify the forms of communication between the citizens and the municipal authorities regarding the submission of proposals, petitions and submissions or the deadlines within which the authorities are obliged to respond to the submitters, nor the manner of checking the validity of the alleged. Due to all of that, the rights to petition and public criticism in practice do not have the significance stipulated by the Constitution, which they should have.

1.3. Participation of Citizens in the Work of Operating and Advisory Bodies

Achieving citizens' participation in the work of the operating bodies of the assembly, and of the municipal advisory bodies, provides a very good opportunity for hearing the opinion of professional and distinguished citizens, irrespective of their political orientation. Municipal authorities can establish standing or ad hoc operating bodies in order to deal with issues within their competencies, and that issue can be regulated in the municipal statute, by a decision, or in the rules of procedure of the governmental and operating bodies.

Practice has shown that citizens who are not assembly members can also be appointed as members of the assembly bodies, where practice of citizen participation in such bodies exists, provided that their number does not exceed one third to one fifth of the total number of members of the operating body.

The Law on Local Self-government (Article 63) stipulates the establishing of a council for inter-ethnic relations in multi-ethnic communities, consisting of representatives of all national and ethnic communities. Although the role of this body has been solidly elaborated in the law, it has been shown that the realization of that role in practice can be somewhat difficult, and that it depends on permanent or temporary tensions, which may be the reflection of the state of inter-ethnic relations in the entire society, as well as in individual local communities.

Assembly bodies and commissions

After the review of municipal statutes, it can be noted that commissions or councils are generally formed as standing operating bodies, covering the following areas:

- Council for economy and finances,
- Council for urbanism, utilities, and environmental protection
- Commission for statutory issues, organization and normative acts of the assembly
- Commission for staff and administrative issues and employment
- Commission for mandates and immunity,
- Commission for submissions and complaints.

Article 127 of the Law on Local Self-government prescribes that the municipal assembly can establish the council for development and protection of local governance for the purpose of providing democratic influence of citizens on the improvement of the local governance, as well as that council members are elected from the lines of citizens and experts in the fields of significance for local governance. This council is stipulated by the

law as a facultative institution, although it has found room in the statutes of more than one half of the municipalities. The structure of this body is two-fold, as it includes members from the lines of citizens and experts from the fields of significance for local governance. Whereas, members from the lines of citizens are not intended to be directly elected representatives of citizens, or delegated by citizens' associations. They are appointed at the proposal of the president of the municipality, or at least one quarter of the total number of assembly members.

Practice has shown that the councils for the development and protection of local governance still have not started to operate in the majority of municipalities, so that there can be no debate about their actual effects and the potentials for providing democratic influence of citizens on the improvement of local governance through the institution of that council.

1.4. Public Debates

Public debate provides an opportunity for every individual to discuss all local issues and to critically re-examine them for the purpose of finding adequate solutions. While assemblies of citizens are organized for a closed circle of citizens living on that territory, public debates happen solely when they involve the broadest public, i.e. a broad circle of citizens.

As such, they exist in democratic countries, and are an important form of citizen consultation about their priorities, which the local authorities must fully take into account in order to perform their duties in accordance with the expectations and needs of the citizens in local community.

Organization of formal public debates in order to consult citizens regarding the most important issues from within the competencies of municipality authorities, is the legally least developed form of citizen participation of all forms analyzed so far, although it has found certain practical application.

Statutes of a number of municipalities have stipulated the obligation of the municipal assembly to hold at least one public debate during the municipal budget adoption procedure, as well as at the submission of reports on the operations of the municipal authorities and the annual report on the operations of public utility companies, institutions, organizations and departments established by the municipal assembly. However, the practice of public debate realization has not been satisfactory so far. Apart from the fact that there is no such practice in many municipalities, the conducting of public debates is burdened with the following serious problems:

- Citizen information about public debates is very limited and not functional. In general, they are invited to debates with posters/announcements on the bulletin board in the municipal building, which leaves the great majority of local population without any information about the debate. Other public information methods are rarely used.
- Public debates are generally organized only once per year, and often only in the central parts of towns and municipalities, excluding thereby large segments of population in numerous municipalities. In addition, neither the concerned groups nor the important players, such as the social partners, generally have the opportunity to participate qualitatively.
- Public debates were often thematically confusing and unsystematic, so they often turned into political conflicts and mutual accusations and insults, which indicates poor organization and a clumsy conducting of debate.
- Finally, in some environments, citizens also did not show any interest in public debates, which is probably the consequence of bad experiences, lack of time or lack of interest and apathy.

1.5. Other Forms of Consultation

Compared to comparative experiences, noticeable is also the absence of the so-called electronic debates (forums), mostly due to insufficient development of technical resources, which most of municipalities, as well as most of citizens, are lacking.

The situation is generally not any better with other similar forms of consultation, such as public forums, roundtables, expert meetings with the representatives of institutions, thematic debates with the representatives

of non-governmental organizations, associations of citizens, private sector, media and citizens, “open-door” policy, reception of citizens, polls, organization of operational teams for communication with citizens, or seminars and workshops.

However, according to the data from the research of public opinion carried out in preparation for this document¹, at the moment, the citizens themselves largely do not show any significant interest in a more active participation in the consultation process. A great majority of citizens have never signed a petition, or

¹ More details in *Citizen Participation at the Local Level – The Analysis of the Legal Framework and Policies in Serbia and Other European Countries; the Research of Present Situation*, Prepared by the Standing Conference of Towns and Municipalities, February 2006.

been at any meeting organized either by the citizens themselves, or by the local authorities. The reasons for that are different, and distinctive ones are the lack of information about the meeting, lack of time, and a belief that the opinion of citizens cannot change anything since the decisions have been already made in advance. All this indicates that in the domain of direct citizen participation in the local public life through their consultation, there is a necessity of reform and long-term strategy.

2. Proposals for the Improvement of the Existing Legal Framework and Practice

All mentioned forms of consultation are not even close to being developed in accordance with their actual necessity, and it also cannot be said that the authorities in individual municipalities are prepared to manage the municipal activities in accordance with the expressed priorities and expectations of citizens. Comments saying that regular citizen consultation requires a great deal of time and resources can often be heard, and, at present, the local authorities have neither the time nor resources, since changes and improvements are necessary in numerous fields.

Two basic principles of organizing all forms of consultation are **that it is necessary to combine several of them in order for them to be effective**, and **that after the process is completed, it is necessary to inform the wider public about its results** (i.e. about what shall be done regarding the conclusions from the consultations). Only by realizing these two key principles is it possible to develop an active society of citizens, and convince the citizens that their opinion was heard and respected.

A separate and very important issue is the position and consultation of specific interest groups, the members of vulnerable and inadequately represented communities, such as disabled persons, the poor, youth, women, national and ethnic minorities, and other communities. Still, and despite all available efforts, citizens often simply have no will to participate. The prevailing reasons for that are the lack of time, unfamiliarity of the matter, lack of sufficient information about the subject their opinion is sought for, but also the belief of citizens that their opinion does not matter. For those and other reasons, when forming the policy and practice of citizen consultation, it is very important to bear in mind the following requirements:

- Establish in advance which are the basic issues that the citizens should be mandatory consulted about,
- Carefully select the forms of consultation, and organize their preparation properly (for instance, in which manner will the citizens present their opinions - by mail, e-mail, fax, at public debates, through opinion polls, who is going to be in charge of that, who is going to perform the assessment/analysis of the citizens' opinions, etc.),
- Create the mechanisms that would ensure that the opinions of citizens are taken into account (a large problem in the process of consultation can be the belief of citizens that their opinions are not taken into consideration, and that the initiative for consultation itself is fake and insincere),
- Regulate the manner in which the employees of the town or municipal government are going to be trained to participate in the consultation process,
- Actively concentrate on citizen information and education for the participation in the consultation process, because it is the basis for their greater participation in that process,
- Actively engage in motivating the citizens to participate in the consultation process.

A number of municipalities in Serbia improved the relationship building process with the citizens, and their active introduction to the decision-making process. More or less successful, the steps that have been taken, similarly as on the level of the Republic, are primarily directed towards better information of citizens, but more and more frequently also towards the consultation of their opinions. The present situation, as it can be seen, demands further improvement of the legal framework and the practice of implementation of individual forms of citizen consultation.

The basic recommendation for improving the situation is the wide implementation of various methods for consultation of citizens. In addition to the introduction of innovative forms of consultation of citizens, it is necessary to further improve the existing forms - citizens' meetings, rights of citizens to petition and public criticism, participation of citizens in the work of advisory and operating bodies, public debates, and other similar forms of consultation.

2.1. Citizens' Meeting

The basic and the starting recommendation for the improvement of citizens' meeting is its positioning and defining. **The statute and a decision of the municipal assembly should define and organize citizens' meeting** as a flexible form of citizen participation, as an opportunity for groups and individuals to present, as simply as possible, their opinions and proposals regarding the issues within the competencies of the bodies of local governance. The citizens' meetings should be defined as a form of direct participation of citizens in the realization of local governance. All details regarding the convening and the manner of operation of citizens' meetings should be stipulated by the municipality statute or decisions.

For the purpose of improving the existing situation regarding the consultation of citizens through citizens' meetings, the following should be done:

1. Define individual issues that should be mandatory for presentation at citizens' meetings, such as town planning, operational plans and investments of utility companies on the territory that the meeting is convened for, public loans, etc.
2. Define the territory that the meeting is convened for (settlement, village, hamlet, part of a town, block, street).
3. Define possible initiators of citizens' meetings, including, at any rate:
 - The agencies and bodies of the municipality (the president of the municipality, the president of the municipal assembly in accordance with the decision of the municipal assembly, the council for inter-ethnic relations for discussions on the issues of protection of ethnic minorities, every assembly member),
 - The council of a local community unit,
 - Citizens' associations,
 - Each citizen whose proposal is supported by at least 20 citizens from the territory of the corresponding part of the municipality.
4. Define the number of citizens needed to adopt a valid decision at a meeting of citizens. Here, care should be taken to secure the most flexible and most efficient manner of convening the meeting, provided that the legality of adopting positions and proposals regarding the issues from the competencies of the municipality bodies is respected. This number could be:
 - For a territory with more than one thousand citizens - 5% of voters
 - For a territory with less than one thousand citizens - 10% of voters

5. Stipulate the manner of convention of the meeting, the manner of establishing the quorum necessary for valid decisions, and the manner of operation, with the procedure for establishing positions and adopting proposals by vote.
6. Stipulate the obligation of the municipality administration to provide expert support in convening and preparation of citizens' meetings, as well as in formulation of their proposals. If a meeting of citizens is convened to provide proposals about the issues from the competencies of the bodies of the local community unit, the expert and administrative tasks should be performed by the expert service of the local community, if there is one.
7. Define the manner of convening citizens' meetings on the territory of a local community for deciding on operational issues within its competencies, and on regulating the issues related to the statute of the local community.

2.2. Citizens' Right to Petition and Public Criticism

Even though the Constitution of the Republic of Serbia provides for a citizen's right to submit proposals, petitions and submissions, this issue is not regulated by law, which leaves the option of defining it further in the Law on Local Self-government and the municipal statutes. The following actions should be set as priorities for improving the situation:

1. The Law on Local Self-government and the municipal statutes should stipulate the obligation of municipal bodies to secure unrestricted submission of citizens' petitions, and to provide responses within a deadline that should not exceed 30 days. The Law on State Administration also stipulates a similar obligation for the administrative bodies of the Republic, where the deadline for responding is set at 15 days.
2. The Law on Local Self-government and the municipal statutes should stipulate the obligation of municipal bodies to examine the claims put forward by citizens in their submissions and complaints on the work of municipal bodies and the municipal administration, and to launch and conduct an investigation in case that such claims suggest potential illegal or irregular activities in their operation. Likewise, the obligations to provide feedback about the results of such an investigation to the party submitting the submissions and complaints should be clearly defined.

2.3. Participation of Citizens' in the Work of Operating and Advisory Bodies

In order to promote citizens' participation in the activities of advisory and operating bodies, the following is necessary:

1. The work of the council for inter-ethnic relations and the council for the development and protection of local governance should be supported by a more solid legal framework, which would contain a more detailed statutory regulation compared to the existing legal formulation of their role and the methods of work.
2. The municipal statute should provide the option of establishing civic advisory bodies in all important fields of local governance.
3. The municipal statute should provide the option of establishing advisory and operating bodies that would deal with the issues related to sensitive groups and communities (children and youth, women, old people, poor people, refugees, disabled persons, etc) in the local community, which would, depending on the problems of these groups, secure their representation and propose the measures for improvement of their position.
4. The municipal statute and the rules of procedure of the municipal assembly should provide for the appointment of a certain number of citizens to the operating bodies of the municipality, and define the manner of their participation in the activities of these bodies. When appointing these citizens, equal representation of both genders should be taken into account.

2.4. Public Debates

In order to promote direct citizen participation in consultation through public debates, it is necessary to do the following:

1. The Law on Local Self-government and the municipal statutes should introduce the obligation of the municipal assembly to hold at least one public debate in the course of the municipal budget approval procedure and the adoption of the balance sheet, adoption of development plans, as well as at the submission of the report on the operations of municipal administration, and the annual report on the operations of public utility companies, institutions, organizations and agencies founded by the municipality.

2. A decision on the municipal administration should stipulate a commitment of the municipal administration to organize a public debate in the course of preparation of decisions and other acts regulating the issues in the fields of interest for the development of the community and its citizens. Such an obligation would correspond to the similar obligation stipulated by the new Law on State Administration for the ministries and the administrative bodies of the Republic.
3. The organization of public debates should be realized in cooperation with all stakeholders in a local community. The partnership with citizens' associations and local community units is especially necessary. The local authorities should recognize and support the non-governmental organizations as the organizers of public debates with the topics from the competencies of the local governance, but also covering other issues beyond the territory of the unit of local governance; the public debates should be oriented towards reaching a consensus and towards a constructive exchange of arguments regarding the issues important for the life of the local community, which are the topic of the debate.
4. Develop organizational and financial capacities, and other necessary knowledge and skills for the organization of public debates.
5. The public debates or discussions should be organized in such a manner to lead to visible and practical results, in order for the citizens to become aware of the significance of public debates and their participation therein.
6. The procedures for organization of public debates should be clearly defined in order to avoid abuses. It is necessary to define the most efficient methods for inviting the citizens to debates, informing them about the purpose of public debates, presenting the plans, ideas and programs, and explaining to them what is feasible and what is not.
7. Use as diverse methods as possible for invitation to public debate. It is particularly important to use methods that would cover all citizens, and particularly the vulnerable groups such as the poor, pensioners, youth, ethnic minorities, disabled persons, etc. One of the more efficient methods is a direct invitation sent through post by the president of the municipality.
8. In multi-ethnic and multi-confessional environments, it is also important to pay proper attention to the use of appropriate languages, to select appropriate dates, etc.

9. Upon reaching conclusions in public debates, feedback should be provided to citizens regarding the effects of these conclusions.

2.5. Other Forms of Consultation

In practice, other forms of consultation exist in Serbia in addition to the forms described above, such as a mailbox for the citizens' suggestions, talks with citizens most frequently realized through "open door" policies, collection of comments and proposals related to a particular topic within a set period of time, the conducting of public opinion polls and researches, and the use of interactive websites. Still, there is room for further improvement of the use of these forms. Especially when conducting public opinion polls and researches, **the need to involve all stakeholders in a local community** should be emphasized. Their contribution is necessary both in the domain of defining the topic or elaborating the content of the polls, as well as in the implementation of the polls and the analysis of their results. In this manner, through this process, the participation of a (wider) population concerned should be facilitated, which would have a positive impact on the degree of recognition of the results by the broader community.

Internet and Citizen Consultation

The Internet can be used in many ways in the process of consultation. The use of interactive web pages significantly differs from simple spreading of information over the Internet. Interactivity allows citizens to search for answers to particular questions, or ask a question and thus participate in a dialogue with local administration. **Over the Internet, it is possible to engage in a dialogue with the citizens, using various easily accessible and simple methods.** Some of them are:

- **Online voting on various issues.** Usually organized as simple yes/no answers.
- **Online questionnaires.** These questionnaires or opinion polls are placed on the websites of local governments. They may pertain to various issues, and most often these are services provided by the local government.
- **Internet forums.** This form of consultation enables the exchange of information and opinions between the representatives of local bodies and the citizens, as well as among the citizens themselves.
- **E-mail subscription lists.** By using these lists, it is possible to distribute information to all members of the community that are using the Internet and wish to be on that list.

In addition to promoting the existing ones, the implementation of new, creative forms of consultation with citizens should also be taken into consideration. Very useful methods used in comparative practice include focus groups, civic panels and citizens' forums. These methods should be applied in Serbia as well.

In addition, room should be made also and conditions created for the organization of specific forms of consultation for unarticulated and vulnerable groups. As examples of successful forms, we would name youth councils and gender equality councils.

Finally, for the purpose of securing the quality of the process of consultation, the cooperation of local authorities with all partakers in the local community plays a significant role, and especially the cooperation with non-governmental organizations on their territory. A joint approach and exchange of resources with other partakers in the society can significantly facilitate the organization of the consultation process, and especially the use of innovative forms of citizen consultation.

Innovative forms of citizen consultation

Focus groups are organized discussion groups, addressing a particular selected topic. The participants in a focus group are selected by applying a representative sample that should reflect the population of a local community, or a part of the community. They present their opinions and reactions with respect to certain issues through discussions or interviews. In that manner, the discussion satisfies special criteria and represents the opinion of an extended segment of the community or of one part of that community. A focus group is convened only for one session, and its work is informal, which creates the room for a free discussion of those present and for their open responses. The value of this method resides in the fact that it provides an opportunity for a free, informal conversation, and the identification of open thinking and the actual needs of people. Besides, a properly organized focus group may lead to a consensus of various stakeholders, which is an extra value for any form of consultations with citizens.

Civic panels are a newer method for consultation with citizens. They represent a selected sample of the population – a defined number of people, who are several times a year to review certain issues in cooperation with local authorities. Civic panels are advisory bodies, and based on its opinion can estimate the opinions of the wider population represented by the members of the panel. In addition to meetings organized several times a year, the local authorities may consult these citizens on all issues of concern from time to time, over the telephone or using questionnaires, interviews, researches or workshops. The civic panel is an inexpensive, efficient and useful method for local authorities to learn on the needs and opinions of the citizens, and is usually applied before deciding on the adoption of a particular policy even before the start of the mobilization of the entire community for its purpose, in order to explore its potentials.

Citizens' forums represent permanent bodies that meet regularly. Their membership can be permanent but they also can be open for permanent or occasional participation of other members of communities. For the most part, their role is to consider specific issues and to give some recommendations to local authorities. There are several types of citizens forums, such as: the forum of users of services dealing with issues related to the concrete service, thematic forum, the forum of specific groups, such as minorities or youth, etc.

Youth Councils represent the assemblies organized at the level of the whole municipality or some micro-community (neighborhood, settlement, etc), and its members are young people elected by their peers. These elections are mostly held at schools, through an electoral process similar to the one organized for local assemblies. The organizing of these councils raises the level of knowledge of young people about the electoral and political process, and strengthens their role in the local public life. Local partakers become aware of the significance of youth participation, and start seeing the youth as partners, as a resource, and not only as passive recipients of services. The dynamics of life changes because the youth, through their councils, have an opportunity to participate in public life, and to offer their own models and solutions for the development of the community.

Gender Equality Councils discuss and propose the governmental policies related to the improvement of the position of women and men. These councils are normally established by the municipality assemblies, and they have the goal of increasing the sensitivity of appointed and employed persons in local bodies and municipal governments towards gender equality, and to oversee and propose the measures for establishing equality between men and women, and the policies of equal opportunities.

III SHARING OF RESPONSIBILITY

The sharing of responsibility today involves the orientation of the unit of local governance towards greater participation of citizens in direct decision-making. Direct decisions by the citizens are the rule of “demos,” the people, or more precisely - the citizens. In other words, the **direct participation of citizens is the right of citizens to directly decide on important political issues**. The oldest and the fullest form of direct democracy are the assemblies of all adult citizens, which, gathered at a meeting, govern by adopting decisions (for example in Switzerland). In modern times, however, such a form of democracy is difficult to imagine, and technically unfeasible, because local communities have become more populous.

Today, the referendum and the citizens’ initiative represent two fundamental forms of direct participation of citizens in the decision-making process. In addition to these two fundamental forms of direct participation of citizens, some European countries also apply other forms of direct citizen participation, by setting up various bodies in which citizens can participate, and which are adopting executive decisions or managing particular services (the so-called user democracy).

The significance of the role of referendum is specifically pointed out in the Recommendation R (96) 2 *On Referendums and Popular Initiatives at Local Level* by the Committee of Ministers of the Council of Europe, as well as the Recommendation 1704 (2005) *Referendums: towards good practices in Europe* by the Parliamentary Assembly of the Council of Europe.

On a referendum, the citizens should pass decisions or provide the opinions about the most important issues in their unit of local governance. There are several types of referendum, and several criteria for their classification (see frame on the next page). Two especially significant types of referendum at the level of local governance are the advisory and the mandatory referendum. They exist in a large number of European countries, and are organized in cases stipulated by law, or

at the request of a specified number of citizens, or a representative body. In some countries, this right is also given to national or regional administration. Regarding the number of citizens' signatures needed for an initiative to call a referendum, the percentage varies from country to country (from one quarter of the electorate in Bulgaria, to 1 percent of the electorate in Estonia). Interesting examples are countries having the principle of a reduced number of needed signatures in accordance with the size of the electorate of the units. Regarding the number of citizens (with the right to vote) that should vote in order for a decision to be valid, this number also varies from country to country (from, for instance, 50 percent plus 1 of the total number of registered voters, to 30 percent and less).

Types of Referendum

There are several types of referendum, which may also have specific functions. Their classification can be performed according to various criteria. Depending on whether the referendum is mandatory or not, it can be *mandatory* or *facultative*. Depending of the timing of its organization, it can be *pre-* or *post-legislation*. If a decision should be confirmed, the referendum is called a *constitutional referendum*, and if a decision is revoked - *abrogative referendum* or *popular veto*. An abrogative referendum can also be called to abolish a law or a decision already in force. According to the subject of the vote, referendum may be *constitutional, legislative, administrative, financial, international relations, international law, etc.* By nature of its effects, the referendum may be *binding* or *advisory*. In the first case, the decision reached at the referendum is final, and in the second case, it only expresses an opinion that the representative body will take into account when reaching the decision. The advisory or consultative referendum may also include any issue that the representative body wants to hear of the opinion of the people, and it may refer to issues that should be regulated by law, as well as political issues. When related to political issues, the advisory referendum is often called *plebiscite*. In practice, a plebiscite is often used as an instrument of governance, obtaining the support of the voters to strengthen or save the government with the help of the people. In that sense, a plebiscite is more a manner of obtaining a form of legitimacy for the decisions that the government plans to adopt, than a form of direct democracy. According to the area where it is organized, a referendum can be *national* or *state, regional and municipal as well as organized for other individual and specific parts of the territory*. In addition to the above-mentioned classifications, the theory of law differentiates other specific types of referenda, which differ from other types primarily in their subject, but also in their political character. For instance, these are the so-called *arbitration referendum* (deciding in a dispute between highest bodies of government) or *plebiscite* (presenting an opinion, and occasionally deciding about political issues, territorial changes, forms of government, or similar issues).

The subject of the referendum in the majority of European countries can be anything within the competencies of the units of local governance, or just a few significant issues, such as the change of borders, and the division or forming of a new unit of local governance. Many countries have also stipulated the requirement that a decision obtained at a referendum cannot be changed within a specified period of time, as well as that issues that were the subject of an unsuccessful referendum cannot be put to vote again before the expiration of a specific period of time. In addition, in some countries, it is not possible to organize a referendum during an election year, nor it is possible to organize two referendums on the same issue within six months.

Citizens' initiatives also do not have uniform legal effects in all countries. In some countries, they consist of authorizing a specified number of voters to propose the adoption of a decision or a resolution of a specific issue, about which the representative body is obliged to organize a debate and present an opinion. This is its *narrow definition*, which winds down to the right of the voters to put issues they want discussed on the agenda of local politics. According to its *wider definition*, citizens' initiative completes the final realization of a proposal, because in cases in which the representative body refuses to adopt the submitted proposal, the voters shall decide about it in a referendum. Thus is the direct democracy carried out to its full extent, because a draft law can be adopted without the participation of a representative body. Similarly, regarding its form, or its effects, two types of initiative are possible: an *initiative as a general suggestion*, expressing a general political request, and an *initiative as a formulated draft*, submitting a formulated new legal provision, or a whole legal act. These two forms, for instance, are clearly differentiated in Switzerland, and they cannot be mixed, i.e. the *principle of unity of form* must be respected, and an initiative is valid only if it complies with one of the two named forms. If not, it is returned to the initiating council for review.

Regarding the number of voters needed for the submission of a citizens' initiative, this number also varies from country to country, and amounts to from 30 percent to 5 percent of the electorate. Possible topics of citizens' initiatives may pertain to issues within the competencies of the units of local governance, or some specific issues, such as calling a referendum, or adopting a particular act.

As it can be seen, the similarities between the referendum and the citizens' initiative in its wider sense, lead to similar legal solutions in their regulation. When defining the legal framework and the policies for implementation of these

forms of direct participation of citizens in the decision-making process, the following very important issues should be regulated, among others:

- The issues that can be decided with a referendum or citizens' initiative;
- What are the legal effects of the decisions adopted in a referendum and the proposals given by citizens' initiative – is the decision or the proposal binding for the assembly;
- How many signatures are necessary for initiation of a referendum or citizens' initiative;
- How much time is permitted for the collection of signatures, and what does the procedure for the collection of signatures look like;
- What is the necessary quorum for a valid decision.

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. In addition to referendum and citizens' initiative, another form through which the citizens can directly decide on the issues having direct impact on their lives is the organization of the local community governance (the elementary unit in Serbia is a local community).

1. Present Situation and Problems

1.1. Municipal Referendum

At the beginning, it should be emphasized that the municipal referendum, despite the fact that it is the most important form of direct deciding of citizens about the affairs of local governance, is very poorly represented. In practice, the most frequent form is the referendum on introduction of local self-contributions, as a specific form - the only one stipulated in detail by the Law on Local Self-government. On the other hand, the Constitution of the Republic of Serbia, in Article 116 Paragraph 1, stipulates that the citizens should decide on the municipal affairs on a referendum, and through their representatives in the municipal assembly. By putting the referendum in the first place, the Constitution 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. The municipal referendum was given the same priority in the Law on Local Self-government, which, in its first provision (Article 1 Paragraph 1) underlines that the citizens' right to local governance shall be exercised directly, and through freely elected representatives. Consequently, the citizens with the right to vote and the residence on the territory of the municipality are fully entitled to manage the municipal affairs, and they can exercise that right directly or through their freely elected representatives.

In addition to the referendum, the same law stipulates the citizens' initiative and the citizens' meeting as forms of direct participation of citizens in local governance. Out of the three, only the referendum is a form that can adopt decisions.

The methods of direct expression of opinion, i.e. decision-making by the citizens through a referendum, as well as the manner of realization of the citizens' initiative, in the Republic of Serbia are regulated by the Law on Referendum and Popular Initiative.¹ This law does not apply only to the referendums at the level of the Republic, but also to the manner of and the procedure of conducting provincial, town and municipal referenda, unless the law (i.e. other laws) stipulates otherwise. The same applies to citizens' initiatives, which should be submitted in the manner stipulated in the above-mentioned law at the level of the Republic, but also at the provincial, municipal and town levels. Serbian constitutional and legal solutions for a referendum at the level of the republic, viewed in the context of comparative solutions, represent satisfactory solutions for the most part, but not the solutions that could not be improved.

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 self-contributions. Save for the mentioned case, this type of referendum is not covered in the municipal statutes we reviewed. In addition, there is also the *facultative referendum*, which, according to Article 68 of the Law on Local Self-government, is called (1) at the initiative of the municipal assembly, or (2) at the request of the citizens. According to the territory for which it is organized, the referendum can be called for the whole territory (i.e. *a municipal referendum*), or for a part thereof (for *one or several populated places on the territory of a municipality*). In accordance with the Law on Referendum and Popular Initiative, a referendum can be called in a municipality not only for adopting a decision, but also for preliminary opinions (*pre-legislative referendum*), as well as for approv-

¹ "The Official Gazette of the Republic of Serbia", No. 48/94 and 11/98.

ing 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 Popular Initiative, nor the Law on Local Self-government specifies a clear purpose of a post-legislative referendum called at the request of citizens, and neither do the municipal statutes.

The definition of the issue of a municipal referendum as stipulated in the Law on Local Self-government is fairly general, and that type of approach to this issue is also characteristic for the municipal statutes we consulted. According to the law and the statutes, the municipal assembly may, either at its own initiative or at the initiative of the citizens, call a referendum on any issue within its competencies. **It is obvious, however, that its competencies include a number of issues that are not suitable for a referendum.**

In order for the municipal assembly to call a referendum at its own initiative, it is necessary that it first adopts a decision on calling a referendum regarding a particular issue within its competencies. The decision should be adopted by the majority of assembly members, and in some municipalities that majority is qualified so that the majority of the total number of assembly members is required, while other municipalities require a simple majority. However, it is not specifically stipulated who has the right to propose such a decision, so it can be assumed that it is the right of every assembly member and president of the municipality.

On the other hand, regarding the 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. In order for a request to be valid, the list of signatories should be compiled in accordance with the law, and it should contain the number of voters stipulated by the statute of the municipality. The manner and procedure of compiling the list would be subject to the solutions pertaining to citizens' initiatives (as stipulated in the Law on Referendum and Popular Initiative), because neither the Law on Local Self-government, nor the municipal statutes have regulated this matter. The other important requirement for the validity of the request refers to the minimal number of voters supporting the request with their signatures. According to the municipal statutes we consulted, that number is set at a minimum of 10 percent of the municipal electorate.

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 that were the subject of our review, regulate any further issues of importance for the referendum procedure. For that reason, the municipal referendum conducting procedure is subject to the solutions stipulated in the above-mentioned state Law on Referendum and Civic 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. In such cases, the municipal assembly should authorize a body to compile a list of such persons, which will then be able to vote. The results of a referendum are thus established by including the number of such citizens and their votes. The act of calling a referendum is published in the same manner as the regulations adopted by the municipal assembly, and the funds necessary for conducting the referendum are provided by the municipal assembly. It also sets up the referendum commission, which further establishes the electoral committees to supervise the election at polling stations. The vote is cast on ballots, and the rules on voting, the handling of ballots, and the determination of the results of the vote are very similar to the rules covering the same issues at the elections. The results of the referendum are published in the form of a report, and in the manner prescribed for the publishing of the decision on calling a referendum.

***Referendum for One Part of the Territory of the Municipality,
and the Referendum on Self-contribution***

The particularity of a referendum conducted for one part of the municipal territory is not only its coverage of a smaller region, but also the fact that Article 68 of the Law on Local Self-government defines the subject matter of this kind of a referendum in a different manner. In this case, it is not specified that the issue in question should fall within the competencies of the municipal assembly, but rather that the issue should pertain to the needs and/or interests of the population in that part of the territory. For this reason, in principle, these could be all issues from the competencies of the municipal governance, provided that they pertain to the needs and/or interests of the local population. None of the municipal statutes that we reviewed have further elaborated on this provision, and it remains unclear which issues could that be, i.e. which issues “pertain to the needs and/or interests of the population in that part of the territory.” Some statutes contain a

provision prescribing a requirement for the validity of a request for calling this type of referendum, stipulating that such a request should be signed by at least 20 percent of the electorate from the corresponding part of the territory.

The comprehensive regulation of the referendum on self-contribution under the Law on Local Self-government (Articles 87 to 97) can be explained with the fact that it concerns the adoption of a very particular decision, establishing material obligations for the participants on the referendum, as well as for the citizens who did not vote (if the referendum is successful). Another reason for a more detailed regulation of the issue of self-contribution lies in the fact that this method for voluntary participation of citizens in the resolution of common problems in a local community is still regarded as very significant, although the figures show that the funds collected through self-contributions over the last several years amount to only 1 percent (on average) of the total municipality funds.

1.2. Citizens' initiative

The popular or citizens' initiative represents the second important form of citizen participation in the decisions about public affairs. However, in Serbian legislation, the citizens' initiative has limited legal effects, and constitutes the right to propose the resolution of a particular issue, or the adoption of a particular act. Voters are thereby practically placed at the same level as the individual assembly members or the president of a municipality, because they are entitled to make proposals. The citizens' initiative is explicitly stipulated in the Constitution of the Republic of Serbia (Article 2), and further regulated by the Law on Referendum and Popular Initiative, the Law on Local Self-government, and the municipal statutes.

It is necessary to emphasize that the municipal assembly is obliged to, in its statute, regulate the issue of direct citizen participation in local governance through the citizens' initiative, in accordance with the provisions of the mentioned laws. Practice has shown, however, that generally, the municipal assemblies regulate this matter in their statutes mainly by copying the provisions of the laws, without any adjustments to their actual needs. Citizens' initiatives, even in cases when citizens expressed a need to address the municipal assembly through one and to propose the resolution of a particular issue, were mostly unsuccessful.

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. From this definition, it is evident **that the current level of concretization of citizens' initiative is insufficient, since the municipal statute is the only undisputed issue for an initiative.** In the other two cases, the citizens' initiative can pertain to all issues that fall within the competencies of the municipal assembly, if they fall within the primary competence of the municipality. The only thing that is clear is that in this case, the Law on Local Self-government attaches to the citizens' initiative the same meaning that it has at the level of the Republic, i.e. as a legislative initiative.

The first and foremost formal requirement for exercising the right to launch a citizens' initiative concerns the minimal number of voters supporting it with their signatures. The statutes we reviewed prescribe the legal requirement of at least 10 percent of the electorate, which can hardly be criticized since the only freedom provided by law is to set a number higher than the prescribed minimum. Other formal requirements and rules for starting an initiative are stipulated by the Law on Referendum and Popular Initiative, and 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 that should be supported by the initiative, and the appropriate corrections of its shortcomings.** If a proposal is irregular (unclear), or illegal due to a contradiction with the Constitution or any laws and statutes, or inconsistent with legal competencies of municipal bodies, why should any signatures be collected, when it is clear from the start that it will be rejected? Furthermore, a problem in practice is also the passive attitude of municipal bodies, especially the municipal authorities, regarding the very procedure of providing expert legal support to the initiative. Citizens, unfamiliar with the problems, start the procedure for collection of signatures, while the municipal administration, although aware of it, remains "silent," i.e. does not put itself at the disposal of citizens, does not indicate the procedural irregularities on time, or the citizens themselves fail to ask for the support of the municipal officials, and the process is fruitless, because the citizens' initiative is deficient in the procedural sense from the very beginning.

The second major objection pertains to the type of body to which the proponent of the initiative should submit the information about the start of the collection of signatures. Without any intention to dispute that the collection of signatures in the open, or even indoors, may become an issue of public order, **it is absurd that the initiative committee should have the obligation to report**

the start of the collection of signatures to the police. As long as the obligation to report the start of the collection of signatures to the police exists, as it does now, it inevitably and repeatedly raises questions about the real intention of the legislator who devised such a solution, but also 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 in its essence the most serious, and is related to the extremely short deadline (just seven 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 contained in a valid initiative 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, all of it within 60 days. That is the only pertaining provision that can be found in the Law on Local Self-government, as well as in the reviewed municipal statutes. The Law on Referendum and Popular Initiative additionally stipulates that 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, and that the municipal assembly is obliged to organize a referendum in order for the citizens to decide on the issue and/or proposal put forth in the citizens' initiative.

1.3. Local Community

The Law on Local Self-government provides the possibility of establishing a local community and other forms of local community governance for the area of one, two or more villages, as well as for town settlements (area, district, zone and similar). The municipal assembly decides on the issues of education, the territory on which the local communities and other forms of local community governance are established, and their abolition, without the obligation of prior consultation of citizens, and the question can be raised whether that deprives the citizens of the right to decide on the necessity of organizing a local community, i.e. the right to

direct participation in the management of local affairs. It can further be concluded that the law provides only general principles for local community governance, and leaves to the municipal assemblies to further define these issues, based on the actual needs, specifics and interests of the local population. The Article 72 of the law obliges the municipal assemblies to define the form of the local community governance in their statutes and founding decisions, in accordance with the needs and interests of the citizens in a specific part of the municipality. The solutions in the statutes are generally just copying the provisions of the law, depriving the citizens the other right to voice their opinion regarding the organization of local community governance.

The only option left to the citizens is to use a citizens' initiative to demand from the municipal assembly to organize a referendum, in which the citizens would decide on the establishing of a local community, or other form of local community governance.

The broad definition of the local community, with unclearly and vaguely defined needs and interests of the local population, without paying any attention to its distinctive features (especially the differences between the rural and the urban local communities), and the realistic needs resulting from these features, does not provide good results in practice and does not lead towards establishing the conditions for qualitative fulfillment of the needs and interests of citizens, and their direct participation in the deciding local affairs. In addition, the issue of operation of the local community and the actual participation of citizens in exercising their right to local governance primarily depends on the provision of funds for the realization of programs and tasks of the local community. The practice has shown that the municipalities are generally reluctant to provide funds from their budgets for the operation of local communities, justifying it with a lack of funds, and the question remains - how is the local community supposed to fulfill the purpose of its foundation and provide the fulfillment of the needs and interests of the local population. Most often, the solution is being sought in the introduction of a local self-contribution, which becomes the main source of financing for the operations of the local community, and to a large extent covers the material expenses related to the operations of the bodies and the realization of programs and goals.

The obligation of the municipality towards the local community is mostly limited to providing the premises for the operations of the local community, expert legal support, and, partially, in performing the administrative and technical tasks for the local community.

The practice has shown that entrusting tasks to the local community causes large problems and a number of unregulated issues. In practice, municipal assemblies gladly entrust local communities with the performance of particular tasks from their core competencies (maintenance of market places, public areas, local roads, lighting, cemeteries and burials, culture centers, and others), but without providing the funds for their performance, which is their legal obligation.

Another problem that results from the misinterpretation of the local community arises in the election procedure for the bodies of the local community. The municipal bodies strive to directly influence the operations of the local community bodies, not only in the procedure of their election, but also in the procedure of controlling their operations, and often take the measures such as dissolving the local community councils and appointing a provisional body, which is contrary to the spirit of local community governance.

Finally, it is necessary to point out the poor and unsatisfactory communication between the local community bodies and the citizens, although the purpose of founding the local community is the fulfillment of the general, common, and daily needs of citizens, and their direct involvement in the process of management of the local affairs. Generally, upon its election, the local community council distances itself from the citizens. The meeting of citizens is usually convened once a year to adopt the balance sheet, and the conditions for a direct participation of citizens in the decision-making process about the affairs of local significance, are not being created.

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

- C. Steps and measures to encourage direct participation of the public in the local decision-making process and the management of local community affairs
- 4. Introduction of new or, if necessary, improvement of the existing legislation, providing for:
 - ii. Popular initiatives, demanding from the elected bodies of the local administration to resolve the issue stipulated in the initiative, to provide citizens with a response, or to initiate the referendum procedure,
 - iii. Advisory referendum, or the referendum deciding on the issues of interest for the local community, organized by the authorities at their own initiative, or at the request of the local community.

Excerpt from *Participation of Citizens in Local Public Life*, Recommendation (2001) 19 by the Committee of Ministers of the Council of Europe.

2.1. Municipal Referendum

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

1. Changes to the Law on Local Self-government should stipulate that the decisions changing the borders of the units of local governance cannot be adopted without an advisory referendum, in which the citizens of the municipalities that the changes pertain to would voice their opinions. The fact that the European Charter on Local Self-Government 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. Changes to the Law on Local Self-government should provide for 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, in order for that number to decrease from a smaller to a larger electorate. Although the current number of 10 percent is comparatively a solution that exists in other European countries, it seems more appropriate to support the request for a lower number of voters, especially bearing in mind the size of Serbian municipalities.

3. 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 Popular Initiative, because the current timeframe is uncharacteristically short, and suits only the organizations with large staff and financial resources, such as political parties.
4. Changes to the Law on Referendum and Popular 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.
5. Changes to the Law on Local Self-government should introduce the obligation for the units of local governance that they cannot revoke, change or amend a decision reached at a referendum within 12 months of the date the referendum was held.
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. Municipal 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 Law on Local Self-government 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. There are reasons to provide the initiative at the local level in Serbia with broader and fuller meaning, because 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. Changes to the Law on Referendum and Popular Initiative should abolish the obligation to report intention of the initiators to start collecting signatures for submission to the police, 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 uncharacteristically 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 stipulate the issues that can be covered by citizens' initiatives, which should correspond to possible issues for a referendum, perhaps extending them to include individual important issues from the competencies of the president of the municipality or the mayor. 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 issues that they could submit an initiative about. The necessity of definition comes from the fact that, when the issue of citizens' initiative is defined in a general manner (such as a general provision), it invariably happens that a significant number of initiatives are rejected (because they refer to the issues stipulated by law, for instance). Thus 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 formulated drafts. 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, and such solutions also exist in comparative legislations. The authority competent for notification of the proposal should be authorized to demand from the initiative committee to correct their proposal within a set deadline, and to reject it upon the expiration of that deadline, should the initiative committee fail to correct the deficiencies. Pursuant to the status of Serbian mayors and presidents of municipalities as the bearers of executive authority, it seems that a good solution would avoid their authorization to

reject initiatives, but have the municipal assembly do so at their proposal. Prior to submitting his/her proposal to the assembly, the mayor or the president of the municipality should forward the submission, with a clearly defined proposal of the citizens' initiative, to local administration, which should perform preliminary validation and express its opinion about the legality of the proposal and whether it is directed to the competent body, thus completing the validity check of the proposal for citizens' initiative.

2.3. Local Community

For the improvement of the current situation and of the position of the local community as a form of local community governance, the following actions should be taken:

1. Bearing in mind the size of Serbian municipalities and the underdevelopment of the forms of direct citizen participation in local governance, the Law on Local Self-government should stipulate the obligation of establishing the forms of local community governance, and prescribe that in them, decisions can also be reached by direct deciding at the meetings of citizens.
2. Changes to the Law on Local Self-government should stipulate mandatory consultation of citizens concerning the establishing of a form of local community governance, prior to the decision of the municipal assembly on the same issue. When adopting the decisions about local community organization, the specific needs and interests of the population in that part of the municipality should be the starting point. Especially in ethnically diverse environments, it is necessary to provide the ethnic minorities with equal participation in the operations of the local community, to consider the possibility of the use of their language and alphabet, and to satisfy their cultural and traditional needs.
3. Define more clearly the legal position of the local community, with a special emphasis on the development of rural local communities, the manner of fulfilling the general, common, and daily needs of the population,

It seems that at the seats of small municipalities and in the most developed parts of large towns, there are no needs for the establishing of local communities, since they only create "a duplicated local bureaucracy". In these cases, it is possible to stipulate the organization of local community governance through other forms (smaller in their size and competencies).

operating assets of the local community, and the obligation of the units of local community governance to foresee the funds for the financing of the operations of local communities in the municipal budget.

4. Taking into consideration the character of local communities as interest-based communities, the methods for election of local community bodies, and their activities and responsibilities should be stipulated more clearly, by defining the citizens as the managers of the local community governance affairs. When electing the bodies of the local community, direct secret ballot should be applied. Special attention should be dedicated to uniform (up to 30%) or equal (50%) participation of both genders on the local community council, and therefore the statute of the municipal assembly should stipulate a quota of a minimum of 30 percent, and optimally 50 percent of seats on the local community council secured for the underrepresented gender. The basic principle of operation of the bodies of the local community should be the transparency of their operations, and the obligation of regular and timely provision of information to citizens.
5. A more clear regulation of the position and role of citizens in the operations of the local community, and an obligation for, and the forms of their participation in deciding on the affairs of general interest.

If we bear in mind that our municipalities are among the largest in Europe, and that, therefore, the bodies of local community governance are not equally accessible to all citizens, and that thus not everybody has quite the same opportunity to fulfill his/her rights to local community governance, there is a need for the establishing of the units of local community governance. The development of the forms of local community governance, and a deeper and more profound reform of the local community as a unit, could be the adequate path towards a larger direct participation of citizens in the decision-making process, and towards overcoming the numerous shortcomings caused by the size of a large number (the majority) of municipalities and towns in Serbia. Consequently, it is a priority to direct the reform of the system of local community governance (the local community unit, and other forms of local community governance), towards a more clear definition of the local community unit's legal status, and of the position and role of citizens within the system of local community governance, on one side, and on the other side, towards the best method for providing the funds for the regular activities of the local community governance, and for the realization of its plans and programs.

IV PARTNERSHIP

The realization of the national policy for direct participation of citizens in the local public life is a long-term process. As we have seen in the assessment of the current situation, numerous problems and their causes exist, preventing the successful realization of a larger participation of citizens in the processes of creation, adoption and implementation of decisions and policies in the units of local governance. The general apathy of the citizens is one of the gravest consequences of the current situation in the society. Disillusionment, lack of interest, and lack of citizens' trust in the institutions, are the result of many years of indifference of that institutions for the opinions and positions of citizens. Current practice of direct participation of citizens is most often partial, and related to individual interests of citizens, as well as smaller activities organized by non-governmental organizations or political parties.

Two strategic dilemmas stand out in the creation of a national policy. The first dilemma is related to possible tensions between the direct participation of citizens and the efficiency and quality of the decision-making process at the local level, and the quality of services provided by the public sector. The second dilemma is the tension between the participation of the public and the economic potentials of a society.

It is clear that the participation makes the decision-making process more complicated, and that it is not without costs. The involvement of the public demands time, material and financial resources. However, the participation of the public in the decision-making process provides a larger degree of acceptability of the set policy, and its easier implementation. In addition, the contribution of the public improves the quality of the programs, policies, and decisions created and adopted within the local community.

On the other hand, although the direct participation of citizens demands the engagement of material and financial resources, it has a large influence on the reduction of costs and corruption, due to a larger consensus within the community,

and a better insight of the community in the decision-making process. With its positive influence on these processes within the society, the direct participation of citizens compensates the costs of the organization of information and consultation processes, or of the direct deciding by the citizens.

Strategic dedication to general reform of the political, legal, economic, and all other systems in the society, and the established goal of integration of the Republic of Serbia in the wider European Union, demands larger participation of citizens in the local and national life.

Aware of the importance of realizing the reforms and their goals, and especially the citizen participation in them, the Standing Conference of Towns and Municipalities (SCTM), with the financial and professional support of the Swiss Agency for Development and Cooperation (SDC), started the project "Support to Increased Citizen Participation at the Local Level." The basic goals of this project are directed towards raising awareness of the public about the needs for larger direct participation of citizens, towards improvement of the current situation in the Republic of Serbia, and towards the creation of a long-term national policy. We believe that the recommendations presented in this document are a good foundation for the realization of these goals.

The **openness** of local administration towards the citizens represents the first step towards a larger participation of citizens, and towards the creation of a democratic society. Passive and active information of citizens, their right to access the documents of the local government, and to timely and adequate information, are undeniably the foundation for a deeper direct involvement of the citizens. Compliance with the existing framework and its development, and the creation of better local mechanisms for the realization of the right of citizens to access the information of public importance, represent the basic recommendations and the first step of local authorities to a greater openness towards the citizens. The step towards the information of citizens is the second part of the principle of openness towards the citizens. The transparency of operations, publication of minutes and decisions of local bodies, organizing of modern information services, live communication with citizens, or creation of web presentations of towns and municipalities, are just some of the recommended forms of active information.

The **dialogue** of local authorities with the citizens comprises the second part of the process of direct participation of citizens in the local public life. Citizens' meetings, the right of citizens to petition and public criticism or public debates, are some of the forms through which the dialogue between citizens and local

authorities can be realized. The basic recommendation for a better dialogue, as presented in this document, is a combination of various forms and their wide application. Better and more precise regulation of the methods of organizing the dialogue with the citizens in the statutes of municipalities, and the changes of individual provisions of the law, are a precondition and a recommendation for further improvement of the dialogue of citizens with the local authorities. Precise definition of mandatory issues that the citizens must be consulted on, establishing the obligation of local authorities to react to proposals, objections, and criticisms from the citizens, larger participation of citizens on operating and advisory bodies, better and more frequent organization of public debates, or introduction of innovative consultation methods, are just some of the guidelines we suggested.

Sharing of responsibility is a key part of the direct participation of citizens in the local public life. Improvement of direct democracy or direct decision-making process of citizens on important issues and the development of the local community governance are the essence for the immediate influence of citizens on the processes in the local community. Increasing the significance of local referendums, improvement of the legal and political effects of citizens' initiatives, and the direly needed reform of the local community governance, are the basic steps towards the fundamental distribution of responsibilities between the local authorities and citizens. Precise definition of the subjects, reduction of the number of signatures required for an initiative for a referendum, are some of the key recommendations for the realization of the rights of citizens to independently decide through a referendum. Wider legal effects of citizens' initiatives, extension of the legal deadline for the collection of signatures, and the stipulation in the statutes of mandatory validity verification for a proposal that would be initiated by a citizens' initiative, are just some of the recommendations for the improvement of the legal framework and the practice of implementation of citizens' initiatives. Introduction of mandatory consultation with the citizens when establishing a form of local community governance, clearer definition of the legal position of the local community unit, the development of the rural local community, realization of financial sustainability of a local community, clearer regulation of the manner of election, operation and responsibilities of the bodies of the local community, and precise definition of the position and role of citizens in its operations, are some of the recommendations for a fundamental reform of the local community governance.

Still, as we have already emphasized, more space for direct participation does not automatically imply more democracy. The strengthening of a participative democracy would not have full significance without the strengthening of equal opportunities for participation of the majority of the members of a local community. Women, youth, ethnic minorities, old people or disabled persons, are frequently vulnerable and unarticulated communities in society. These communities are difficult to integrate, and their participation is typically directed towards less formal methods of participation in the local public life. Therefore, the reorganization and promotion of direct participation of citizens should and can be directed both towards formal and informal forms and methods of involvement of citizens in the local public life.

However it may be, the essential part of the new national policy would be **raising the awareness and responsibility of citizens, and promotion of the culture of democratic participation** of citizens in the public life and in the decision-making process. **The development of their awareness of belonging to the community**, and motivating the citizens to undertake **the responsibility** for their contribution to the public life, are based on **guaranteeing to the citizens the right of access to information about various issues of interest for the local community, the improvement of the dialogue between the citizens and the elected representatives, and the realization of the rights of citizens to directly participate in the adoption of decisions significant for the future of their community.**

Finally, **openness, dialogue and share of responsibilities** invariably lead towards the building of a **long-term partnership** between the citizens and the local authorities; a partnership that should create room for a deeper, continual cooperation and the development of an even more direct influence of citizens on the local life; a long-term partnership that would provide further development, reform, and improve the living conditions of citizens and the operations of institutions. Therefore, whichever method or channel may be used by the units of local governance in the Republic of Serbia for the direct involvement of citizens, they should always bear in mind that only a well-informed and regularly consulted citizen can provide his/her full contribution in the sharing of responsibilities, and be a real partner in the realization of a better life in the local community. Therefore, the fundamental goal of each local and any other government should be the building of a community of competent and aware citizens, prepared to fulfill their role in society.

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