



# A GUIDE TO MONITORING the work of local self-government

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**A GUIDE TO MONITORING  
THE WORK OF LOCAL SELF-GOVERNMENT**

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# FOREWORD

Serbia has experienced profound political, social, cultural and institutional changes within the last several years. Ongoing legislative reforms in the area of local self-government have laid the foundation for the democratization of political decision-making structures. Additionally, the decentralisation of state institutions and public services has helped to increase the efficiency, transparency and accountability of these important institutions and services.

The OSCE Mission to Serbia supports the development and consolidation of democratic institutions at the local, provincial and national level. As such, it advocates for the promotion of a democratic culture based on respect for human rights, the rule of law, peace and security. It also encourages a view of the democratization of state institutions and society as an ongoing process, one requiring continual oversight, evaluation and “fine-tuning” of the institutional framework and the political, legislative and administrative practices.

Democracy is not restricted to one-off electoral events; on one hand it requires democratic institutions that fulfil their obligation and mandate through consensus-driven, open, and transparent processes; on the other hand it also requires active citizen participation and thus a well-informed citizenry as well as effective participatory mechanisms.

The Guidebook is based on the findings and recommendations of an assessment done on the performance of local self-governments in ten pilot municipalities conducted by the OSCE, the Centre for Free Elections and Democracy and the Standing Conference of Towns and Municipalities. It seeks to increase the awareness and knowledge of civil society organisations, the media and citizens about various monitoring tools and mechanisms, as well as about the rights and responsibilities of the civil sector in a participatory democracy. The Guidebook also provides interested organisations and individuals with an overview of the normative framework regulating the work of local self-

government and the legal provisions setting the conditions for civil society and media to fulfil its “watchdog” function.

The OSCE Mission to Serbia hopes that the Guidebook developed in cooperation with CeSID and other experts will assist local self-government, civil society organisations, media and the citizens of Serbia to increase the accountability and transparency of State institutions and thus contribute to the dynamic democratic reform currently underway in Serbia.

*OSCE Mission to Serbia*

# INTRODUCTION

## The purpose and content of the Guide

In order to achieve a culture of openness and accountability of the local government on one hand, and better citizens' participation in decision making processes on the other, the OSCE and CeSID with the group of national experts, collected necessary information in the area of municipal assembly work, as a first and vital step in the process.

*The primary purpose of this Guide is to provide non-governmental organizations, citizens' associations and media with the instructions on how to monitor the work of the local self-government bodies, focusing on the work of the municipal assemblies.*

At the beginning, the Guidebook provides information on **the purpose and importance of monitoring** the work of local self-government bodies. Then, it introduces **the legal framework** regulating the functioning of local self-government units and the code of ethics for the local self-government officials. The goal was to acquaint the readers with the norms that should be respected by the local self-government bodies.

The section about **the sources of information and the methods of monitoring** the activities of the municipal assembly opens a new chapter related to the monitoring techniques. The Guidebook also contains the section about the areas **that should be monitored** (explaining how to reach reliable indicators on the activities of municipal assembly bodies). The following section explains how to conduct **public opinion polls** about the work of local self-government bodies. Since the media devote a great deal of



attention to the monitoring of municipal assemblies, that chapter contains a separate ***segment for journalists***, with practical advice for reporting on the assembly's sessions. The last part of the Guidebook explores one of the most efficient mechanisms for obtaining information from the local self-government – appliance of the provisions of the Law on Free Access to Information of Public Importance. At the very end, there are ***useful internet addresses*** for those who wish to learn more on the mentioned topics.

The authors have tried to present to the readers, in a practical and simple manner, the issues that should be taken into consideration in the process of monitoring.

\* \* \*

We hope that readers will find this Guide useful and that it will contribute to the creation of a more responsible and more efficient local self-government, based on active participation of the citizens and civil society in local affairs.

*Marijana Simic*



MILOŠ MOJSILOVIĆ

## THE PURPOSE AND IMPORTANCE OF MONITORING THE ACTIVITIES OF LOCAL AUTHORITIES

*“...local assemblies of citizens constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people’s reach, they teach men how to use and how to enjoy it”.*

*Alexis de Tocqueville*

### **The responsibility of civil society, media and citizens**

In an August 2005 opinion poll conducted by the Centre for Free Elections and Democracy (CeSID), as many as 67% of citizens asked gave a negative answer to the following question: “Can an ordinary person influence the activities of municipal institutions?” The percentage was even higher when the same question was asked in relation to other levels of civic authority. Such an outcome makes us wonder why citizens feel that they do not possess a sufficient degree of influence on those elected to represent them. Moreover, it is paradoxical that in a representative democracy citizens feel powerless in relation to their own representatives!

How can we explain such a paradox? The primary reason lays with the attitudes of citizens themselves, and likewise with “the other side”, in other words, the political institutions and their representatives.



There are three main reasons why citizens ought to feel responsible for their own perceived lack of influence on the activities of local authorities:

- Lack of interest in local politics;
- Failure to understand the importance of exercising influence on the work of local authorities;
- Lack of knowledge on how to influence the activities of local authorities.

***The lack of interest and apathy*** cannot be completely eradicated. In our society, their extent has become alarming, particularly with regard to the notion that politics is a public activity. Certainly, this lack of interest is not the same as the lack of interest in film, music or fishing! Politics is characterised by an important difference, namely that ***it is what directs and determines a great number of other social activities.***

**POLITICS** IS NOT – AS IS OFTEN THOUGHT – SIMPLY AN ACTIVITY OF OPPOSING OPINIONS AND ARGUMENT BETWEEN DIFFERENT ACTORS. THIS IS NOT THE ESSENCE OF POLITICS, MERELY ITS UNATTRACTIVE SURFACE. ESSENTIALLY, POLITICS IS THAT OF REACHING A COMPROMISE THROUGH DIALOGUE, WHICH POSES THE BEST SOLUTION FOR THE MAJORITY OF THOSE AFFECTED BY POLITICAL DECISIONS.

Therefore, one ought to be aware that the regulations adopted by political institutions serve as a framework for social activities in all areas of life. Citizens may show great interest in movies, for example, but this goes unacknowledged if municipal authorities deny financial support to the only cinema in town. Politics is therefore not simply “high politics”, or effecting decisions at the state level, a process in which regular citizens cannot take part. In a broader sense, politics refers to something ordinary, daily or even personal. Therefore, it is important to emphasise that, while the majority of citizens might perceive politics as something out of their reach, in fact we are the ones who have the power to change bad practices.

Often, citizens who have taken an interest in local politics, are aware of its importance, and would like to make a difference are discouraged because - ***they lack knowledge on what their role and the role of their organisations ought to be, what could be done, and how actually to affect change.***



This is the source of the other reason why citizens believe they do not have much of an influence: ***the very nature of politics, at all levels, including politics at the local level.*** Politicians often take advantage of indifference and a lack of knowledge on the part of citizens. This is how they generate an aura of secrecy and an exaggerated sense of the importance of their work. Such an attitude usually conceals ineffectiveness and inefficiency.

The purpose of this guidebook is to promote interest among citizens in the work of their local representatives, and to provide information as a means to alleviate the above-mentioned prejudices. In talking about politics, one should bear in mind that institutions are established to serve the citizens and not the other way round. The representatives of local institutions are themselves “ordinary” people who do not possess any ‘divine’ qualities simply because of the important work they do, though sometimes they would like to be perceived as such.

### **Monitoring the activities of municipal assemblies**

Why have we focused on the work of a local or municipal assembly? It is a body comprised of ***directly elected representatives*** as well as a “legislative” body, in that it adopts regulations important to the functioning of the local community. Based on these two characteristics, two significant reasons emerge that justify the importance of monitoring the activities of our municipal governments.

1. It is important to know ***whether, to what extent, and in what manner councillors represent the interests of citizens.*** It is of particular importance because our political and electoral system obliges elected representatives to take care of the interests of their political parties as well as the citizens they represent. Elections are the basic instrument for the replacement of those deemed not to be working in the best interest of citizens. They are held every four years, which is a rather long period. As such, monitoring the activities of an assembly is an important means to influence the work of elected representatives in the period between elections. Public control or oversight is necessary so that citizens’ representatives do not forget who has elected them, and why they have been empowered to affect the life of the local community through their work.

*Crucial decisions are made in local assemblies and the functioning of the community depends on them. Monitoring would ensure the public is aware of what those decisions are, who has proposed them, and who has voted for or against them. With this knowledge, citizens are better able to assess the appropriateness of these decisions and whether their adoption and implementation is truly in their best interests, and the interests of the community.*

2. However, it is not just that political institutions are accountable to citizens.

*Citizens and their organisations are accountable to the community in which they live* and to themselves. Political institutions should be continually reminded of the responsibility they assumed at election; equally, the citizens themselves must not be passive, because a pro-active attitude on their part is a sign of the responsibility they have to themselves and towards their community. If an assembly adopts a decision that is not in the interest of the majority of citizens, the citizens are responsible as well. Merely complaining about something that could have been prevented is no remedy. *At every stage, citizens can influence and work to change an unpopular decision through various channels and instruments of influence, provided they monitor the work of the assembly and are duly informed.*

All citizens have the **right and freedom to exert influence on those who make decisions on their behalf**. The Law on Local Self-Government stipulates the right to local self-government, which is exercised “directly and through freely elected representatives”<sup>1</sup>. In this way, citizens create for themselves the space for freedom, exercised first in their immediate neighbourhood. This is the leading idea of this text, inspired by the French theorist Tocqueville who emphasised the importance of the relationship between citizens and municipalities (the lowest level of authority) more than 170 years ago!

So, where do we stand today, and what can we do to that end? We hope this guidebook will answer these questions and communicate how important it is to monitor the work of this critical institution.

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<sup>1</sup> The Law on Local Self-Government, Article 1, Paragraph 1.

## Civil society and monitoring the activities of municipal assemblies

The effect of organised influence on the activities of local authorities can be more extensive than that of an individual. Civil society groups, primarily **non-government organisations and citizens'** associations bring together pro-active citizens who are aware of the importance of public work. Non-governmental organisations are primarily involved in advocating for the needs and interests of certain groups of citizens or the community as a whole. They often address the political institutions that are able to contribute to fulfilling those needs and interests through the adoption and implementation of relevant regulations.

THE **ACTIVISM** OF OUR CITIZENS THROUGH CIVIL SOCIETY INSTITUTIONS IS NOT AT A SATISFACTORY LEVEL. IN OPINION POLLS CONDUCTED IN JULY 2005, ONLY 1.4% OF THOSE INTERVIEWED SAID THAT THEY WERE MODERATELY OR VERY ACTIVE IN THE WORK OF NON-GOVERNMENTAL ORGANISATIONS. THIS LOW PERCENTAGE SPEAKS TO AN EXTREMELY **PASSIVE ATTITUDE AMONG CITIZENS**.

Being active in civil society often involves engagement based on pure enthusiasm, without the expectation of material benefit. This is one of the main reasons for the low level of participation among citizens in the work of these organisations. In an adverse economic situation, individuals are preoccupied with efforts to gain additional income, and often perceive participation in civil society as a waste of time. In any case, engagement in civil society organisations can be the path leading to other forms of activism – for example, political or economic activism – which may well improve the quality of life. Although in this guidebook we do not discuss in a detailed manner the importance and advantages of being active in various associations or organisations, we believe that **such engagement is a necessary and important precondition attempts to exert influence on political institutions**.

Citizens organising themselves is not exclusively for monitoring the work of state authorities<sup>2</sup>. **Co-operation and mutual support between local civil society and political institutions are themselves important preconditions for the democratic development of a local community**. These efforts should be

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2 Certainly, the monitoring and criticizing of all levels of authority are almost impossible without media and therefore a separate chapter in this Guidebook has been devoted to them.



complementary since they all aspire towards public interest and welfare – only they use different methods and instruments to reach this goal. One of the ways to achieve this synergy could be to acquaint local non-governmental organisations with the policies and functioning of the most important local self-government body, thus demonstrating their own willingness to cooperate, and at the same time gauging the level of willingness of the part of local self-government to co-operate.

## II

# NORMATIVE FRAMEWORK

IN ORDER TO PROPERLY MONITOR THE ACTIVITIES OF MUNICIPAL ASSEMBLIES OR OTHER BODIES OF LOCAL SELF-GOVERNMENT, IT IS NECESSARY TO BECOME FAMILIAR WITH THE NORMATIVE FRAMEWORK REGULATING THE RIGHTS, OBLIGATIONS AND COMPETENCIES OF SELF-GOVERNMENT UNITS, AS WELL AS THE RELATIONSHIPS BETWEEN DIFFERENT BODIES OF LOCAL AUTHORITY. WHAT FOLLOWS IS AN OVERVIEW OF THE LEGAL FRAMEWORK THAT REGULATES THE WORK OF LOCAL SELF-GOVERNMENT.



JELENA JERINIC

*The purpose of this section is to present the basic ideas and institutions essential for an understanding of the system of local self-government, to outline relevant legislation regulating this system in Serbia, and to recommend references for further reading.*

### Decentralization and local self-government

Decentralization is the process of transferring state affairs to organisations or entities outside of the state (or centralized) system. The essence of decentralization is the judgment that another entity will perform certain tasks more efficiently, most often because it is closer to the beneficiaries of a particular service or to those whom they should fulfil certain obligations. In talking about this process, we usually refer to **territorial decentralization** – or, the decentralization of local self-government, a form characterised by the transfer of tasks to certain territorial collectivities and to the citizens living there.

Therefore, local self-government can be defined as a ***method of citizens' decision making and governing in a local community – either directly or indirectly through their elected representatives.***

Decentralization may also be real (functional) or personal, which means that the central authority's tasks are transferred to certain organisations or institutions (schools, universities, health care institutions), or to citizens' groups or collective entities (ethnic communities, citizens' associations, etc).

IN TRANSFERRING CERTAIN COMPETENCIES, THE BASIC RULE IS A SUBSIDIARITY **PRINCIPLE** ACCORDING TO WHICH ALL TASKS SHOULD BE CONDUCTED **AT THE LEVEL CLOSEST TO CITIZENS**, UNLESS THEY COULD BE CARRIED OUT MORE EFFICIENTLY AT A HIGHER LEVEL. WITH THIS IN MIND, IT SHOULD BE STATED THAT THERE ARE SOME TASKS THAT CANNOT BE DECENTRALIZED, FOR EXAMPLE, DEFENCE OR FOREIGN AFFAIRS.

There are other ways of bringing state affairs closer to citizens. One of these is **deconcentration**, or the establishment of regional units, branches, or local offices of central authorities. Examples are the Tax Administration with 179 branch offices throughout the country, and the Police Administration, which consists of 27 regional offices. These units represent the central authorities and as such, their competencies have not been transferred to another level of authority. However, as these services are often located close to municipal offices, sometimes even in the same building, it can be difficult for citizens to distinguish between them and to recognize their different competencies.

Although the bodies of local self-government as well as the functions of their representatives are often similar to that of state-level bodies (parliament, ministries, agencies) and decision-makers at the state level (deputies, ministers, agency directors), **local self-government does not constitute a part of central authority or its administration**. On the contrary, they are independent in performing decentralized tasks, the so-called primary tasks of local self-government.

## Local self-government in Serbia

There is only one level of local self-government in Serbia, and all units (towns and municipalities) have the same status, the same structure, and very similar competencies.<sup>3</sup>

In recent years, the sectorial laws have regulated the transfer of broader competences to cities instead of municipalities – e.g. founders' rights in hospitals, whilst municipalities take care of health centres and pharmacies. The new Law

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<sup>3</sup> All indicators for municipalities refer similarly to towns/cities, unless otherwise indicated.

on Local self-government envisages the possibility to establish the city communal police. However, the differences between cities and municipalities are not so significant as to establish cities as separate units of local self-government.

Such an arrangement is rare in Europe where you find primarily two- and three-tier local self-government, with several types of units, depending on the territory, number of residents and economic strength. Different types of units are entrusted with different competencies. In addition, the positions of towns and capitals are usually regulated separately, and alongside the competencies of local self-government, they may be entrusted with some competencies of districts, or regions.<sup>4</sup>

***Serbia has the largest “basic unit of local self-government” in Europe: its municipalities and towns have more than 50,000 residents on average.***

- In terms of territorial size, the largest municipality in Serbia is ***Kraljevo*** covering 1529 km<sup>2</sup>, and the smallest are ***Sremski Karlovci*** (51 km<sup>2</sup>) and ***Lapovo*** (55 km<sup>2</sup>). Among city municipalities, the largest is ***Palilula*** (447 km<sup>2</sup>) in Belgrade, and the smallest are ***Stari Grad*** (7km<sup>2</sup>) and ***Vracar*** (3 km<sup>2</sup>).
- The municipality of ***Novi Beograd*** has the highest number of inhabitants (218,439) – and if we exclude the four largest cities – ***Leskovac*** has the highest number of inhabitants (154,113) and ***Crna Trava*** the smallest number of inhabitants (2,159).

*(Data from the Republic Statistics Institute,  
www.statserb.sr.gov.yu).*

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<sup>4</sup> See examples of local self-government structures in European countries in a publication by the PALGO Center entitled, *Anticipating a New Status of Towns in Serbia – Reality and Needs*, available at <http://www.palگو.org>.



### *What should local self-government look like?*

The fundamental European document in the field of local self-government is the **European Charter of Local Self-Government**<sup>5</sup>, adopted by the Council of Europe in 1985, and since ratified by 43 Member States, including Serbia, who ratified the Charter in 2007.

*“Democracy begins in the towns and villages of Europe. There is no democracy without local democracy.”*

*Giovanni di Stasi, former President of the Congress of Local and Regional Authorities<sup>6</sup>*

The Charter sets common European standards for the protection and promotion of rights and freedoms of local authorities. In addition to the subsidiarity principle, the signatories to this document undertake to organise local self-government with the aim to:

- Guarantee political, administrative and financial **independence** of local authorities;
- Ensure the **legal** foundation for the right to local self-government – and whenever feasible the **constitutional** foundation;
- Elect representatives of local authorities in **general elections**;
- Provide that local authorities regulate and administer a substantial number of **public tasks**.

In addition, the Charter includes the principles of the protection of local borders, adequate administrative structures and resources, limitations of administrative supervision by central authorities, and legal protection of the right to local self-government.

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5 The text of the European Charter is available in Serbian on the Council of Europe Office in Belgrade web site at <http://www.coe.org.yu>.

6 The Congress of Local and Regional Authorities in Europe (CLRAE) is a body of the Council of Europe comprised of the representatives of local and regional authorities of Member States, charged with monitoring the implementation of the European Charter of Local Self-Government. For additional information, see <http://www.coe.int/t/congress>



Regulations regarding local self-government in Serbia:

- The Constitution of the Republic of Serbia – in particular Articles No. 12, 86, 87, 91, 92, 93, 137, 176-181, 188-196
- **The Law on Territorial Organisation of the Republic of Serbia**
- **The Law on Local Self-Government**
- **The Law on Local Elections**
- **The Law on the Capital City**
- **The Law on Financing Local Self-Government**
- The laws on transferring to the municipalities and towns the tasks from the area of competence of the Republic, often referred to as “sector laws”
- The laws regulating the activities of local self-government (for example, the law regulating general administrative procedure, public enterprises, public services, the system of budgets, etc.)

### Territorial organisation

According to the 2007 Law, the territory of the Republic of Serbia is organised into two autonomous provinces (in the form of territorial autonomy), and towns and municipalities (in the form of local self-government). The Law also stipulates the conditions necessary for an entity to obtain the status of a town or a municipality.

- A municipality is a unit with a minimum of **10,000 inhabitants** or less, for particular economic, geographic, or historical reasons. Even earlier the Law allowed (the first/primary) municipalities to retain this status even if they have less than 10,000 inhabitants<sup>7</sup>, and this did not change the number of local self-government units.
- Similarly, a city is a unit with a minimum of 100,000 inhabitants, unless there exist particular economic, geographic, or historical reasons to warrant this status without the specified number of inhabitants. Within the territory of Serbia, excluding Kosovo, under the new Law, there are **23 cities**, of which ten have less than 100,000 inhabitants. Earlier regulations required that a unit that contains two or more municipalities to be a city; now, aside from Belgrade, regulations do not require this, and leave towns/cities the ability to regulate their internal structure.

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<sup>7</sup> Excluding Kosovo, there are 6 such municipalities in Serbia.

CURRENTLY, ONLY THE FOUR LARGEST CITIES, WHICH HAD THIS STATUS UNDER EARLIER LAWS, ARE DIVIDED INTO TOWNS/MUNICIPALITIES. BELGRADE IN ITS ENTIRETY **CONSISTS OF 17 MUNICIPALITIES, NIS AND KRAGUJEVAC EACH HAVE 5, AND NOVI SAD 2.** SINCE CITY MUNICIPALITIES ARE NOT UNITS OF LOCAL SELF-GOVERNMENT AS ARE TOWNS, THE MANNER OF ELECTION AND THE FUNCTIONING OF THEIR RESPECTIVE BODIES ARE REGULATED BY CITY STATUTES THAT DIFFER FROM TOWN TO TOWN. THE PRESIDENTS OF BELGRADE MUNICIPALITIES, FOR EXAMPLE, ARE ELECTED INDIRECTLY. IN NIS, THEY ARE ELECTED DIRECTLY, WHILE IN KRAGUJEVAC AND NOVI SAD SUCH A POSITION DOES NOT EXIST..

**The table below explains the structure of local self-government units (LSGU) in accordance with 2007 Law on Local Self-Government.**

LSGU	Non LSGU	Description
<b>Municipalities</b> (122 in total)	<b>City municipalities</b> (for now 29)	Not recognized under the law. The division of cities/towns into municipalities are determined by town statutes, as well as by the bodies of town municipalities and the tasks from the competence of towns that should be performed by them.
	<b>Local communities</b> (approximately 4000)	LC (local community) is a form of local self-government established by the municipal assembly in order to meet the needs and interests of the local population in villages and towns. It has the status of a legal entity. A municipality may entrust the LC with some affairs from its area of competence.  LC should not be confused with local offices, which are detached units of municipal administration, usually in rural areas.
<b>Towns</b> (23)	<b>Administrative districts</b> (24 + Belgrade)	An example of deconcentration, regulated by the Law on State Administration. Established by the state government for conducting state administration outside of the seat of the state administration body.
	<b>Provinces</b>	A form of territorial autonomy, based on the special status of an area and its authority to independently regulate certain affairs.

## Affairs conducted by local self-government

Municipalities and towns perform two types of tasks: **tasks from their original (own) scope**, and **delegated tasks**.

Original tasks are determined by the Constitution and/or laws. In original tasks, local self-government enjoys absolute **independence** (for example, in communal affairs, urban planning, environmental protection, local roads, elementary education, primary health-care); central authorities can control only their constitutionality and legality.

Delegated tasks are those transferred to municipalities from republican or provincial purview for the purpose of increased efficiency. Examples are administration of registry books, electoral rolls and other records, inspection of trade in commodities and services, agriculture, and forestry. With delegated tasks, the republic or province retains the right of **control**, as if these affairs were conducted by the state administration. The delegation of tasks is determined by the laws regulating specific areas, such as agriculture, entrepreneurship, and culture.

IT IS ESTIMATED THAT  $\frac{3}{4}$  OF ALL REGULATIONS ARE IMPLEMENTED AT THE LOCAL LEVEL.

## Enactments adopted by local self-government

- To perform the tasks in the field of original or delegated competence, a municipality adopts numerous enactments that can be individual and or general. The highest general legal enactment adopted by an assembly is a statute, which regulates all issues important for the functioning of a municipality, unless already regulated by the Constitution and laws. Examples are the organisation and functioning of services, the formation of communities, and the establishing of municipal symbols.

In addition to a statute, a municipal assembly also adopts its budget, annual financial statement, urban plan, development plan, plan of environmental protection, and rules of procedure for its activities. Other bodies, most often

the municipal administration, issue various decisions, rules of procedure, and instructions.

## Bodies of local self-government

PEOPLE ARE OFTEN MISTAKEN WHEN REFERRING TO THE “DISTRIBUTION OF POWER AT THE LOCAL LEVEL” AND IN DESCRIBING THE MUNICIPAL ASSEMBLY AS THE BODY OF “LEGISLATIVE POWER” AT THE LOCAL LEVEL. AT THE LOCAL LEVEL, THERE IS ACTUALLY ONLY THE DISTRIBUTION OF FUNCTIONS – THE FUNCTION OF THE PRESIDENT OF MUNICIPALITY AS A HOLDER OF EXECUTIVE FUNCTION, AND THE FUNCTION OF A MUNICIPAL ASSEMBLY AS A REPRESENTATIVE BODY, WHICH ADOPTS GENERAL ENACTMENTS.

According to the Law, local self-government is comprised of the following bodies: *municipal assembly, the president of a municipality, municipal council and municipal administration*. The same bodies, with different names (city assembly, Mayor, city council and city administration) exist in cities. In addition, instead of former municipal managers, chief architects and other experts, the Law envisages the function of *an assistant to the president of the municipality*. In nationally diverse towns and municipalities, the Law envisages the establishment of a municipal Inter-ethnic Relations Council as an obligatory body. The citizens’ protector (*ombudsperson*) is, according to the Law, still an optional body.

<b>OBLIGATORY Municipal bodies</b>		
<b>BODY</b>	<b>FUNCTION</b>	<b>METHOD OF ELECTION</b>
<b><i>Municipal Assembly (MA)</i></b>	Representative body	19 to 75 councillors (i.e. 90 in cities and 110 in the city of Belgrade) who are directly elected, according to the proportional election system
<b><i>President of the Municipality</i></b>	One of the two municipal executive bodies, He/ she presides over the municipal council. He/ she can have an assistant, appointed by municipal assembly.	Indirectly elected, by the majority of votes and by secret voting, out of municipal councillors. He/she has four years mandate.
<b><i>Municipal Council</i></b>	One of the two municipal executive bodies, it consists of the president of the municipality, deputy president of the municipality and up to 11 members appointed by the municipal assembly.	Up to 11 members elected by the MA upon the proposal of the president of the municipality
<b><i>Municipal Administration</i></b>	Holds the administrative function in the municipality.	Head of the municipal administration, appointed by the municipal council, after the public announcement of the position. HoA has a five years mandate.
<b><i>Council for Inter-Ethnic Relations</i></b>	Independent working municipal body, obligatory in multi-ethnic municipalities. It deliberates issues on establishment, protection and improvement of national minority rights.	Representatives of all national and ethnic communities representing more than 1% of population. (The law does not stipulate the method of their election)

## Dissolving a municipal assembly

The Government of the Republic of Serbia, on the motion of the ministry or the provincial body in charge of local self-government affairs, may dissolve a municipal assembly in the following cases:

- If it did not assemble for a period longer than 3 months;
- If it fails to adopt a statute or budget within deadlines stipulated by the Law;
- If it fails to appoint, at the proposal of the assembly, the president of the municipality and the municipal council within a month from the day of constituting or the day of the president's recall, i.e. her/his resignation.

IN THE EVENT OF DISSOLUTION, THE SPOKESPERSON OF THE NATIONAL ASSEMBLY WOULD CALL FOR NEW ELECTIONS, AND THE AFFAIRS OF THE MUNICIPAL ASSEMBLY WOULD BE CONDUCTED BY A FIVE-MEMBER INTERIM BODY SET UP BY THE GOVERNMENT UNTIL A NEW ASSEMBLY IS CONSTITUTED. FOR UNKNOWN REASONS, THIS PROCESS IS OFTEN MISTAKENLY REFERRED TO AS "COMPULSORY ADMINISTRATION" OR "THE APPOINTMENT OF A COMPULSORY ADMINISTRATIVE BODY".

## The municipal administration

- Of all bodies and organs of local self-government, citizens deal primarily with their municipal administration, as it is in charge of the administration and implementation of regulations that determine all affairs of local self-government. This is precisely why many municipalities have rearranged their administrations and offices into **service centres**, an effort to make their services and information more available to citizens.

The organisation of its administration is regulated by the municipal assembly and pursuant to the Law. In smaller municipalities (with up to 50,000 residents) the administration is organised as a **single service**, while in larger municipalities (with more than 50,000 residents) it is divided into **more administrations for different areas**, i.e. for economy and financing, social welfare, general services and similar.

- The number of employees in an administration varies - from fifty in smaller municipalities to over a thousand in Belgrade.

**THE LAW ON CIVIL SERVANTS DOES NOT APPLY TO THE EMPLOYEES IN LOCAL ADMINISTRATIONS. THE REGULATION OF THE STATUS OF LOCAL OFFICIALS HAS YET TO BE ESTABLISHED.**

<b>OBLIGATORY Municipal bodies</b>		
<b>BODY</b>	<b>FUNCTION</b>	<b>METHOD OF ELECTION</b>
<b><i>Civil Attorney (Ombudsman)</i></b>	He/she oversees the protection of citizens' rights violations done by enactments, acts or activities performed by municipal administration and services, especially in cases of breach of regulations and general municipal acts.	The Law does not envisage the appointment of the Ombudsperson, but usually he/she is appointed by the MA.
<b><i>Municipal president's assistants</i></b>  (In the city of Belgrade they can have the title City Manager or City Architect)	Part of the municipal administration. They initiate activities, propose projects and give opinions on the issues related to development of certain areas (e.g. economical development, urbanism, primary health protection, environmental protection, agriculture, etc.) There can be 3 of them at most in municipalities and 5 in the cities.	Appointed by the president of the municipality.



## Financing local self-government

- The budgets of municipalities and towns come from three sources: – original and ceded income, and transfers. Original incomes are funds whose rate, determination and criteria are defined by the local self-government, with the possibility to limit their amount by law. These include various *fees* and *charges*, and recently, *property tax*. Soon, all municipalities will establish their own tax administrations to collect this income.
- Ceded income is the republican income from which a portion (or the entire amount) is given to a municipality or town in whose territory it has been collected. According to the current law, 40 % *of income tax* is ceded in this manner.
- Among several methods of transfer in accordance with the current Law, we shall single out the total *unspecified transfer*, amounting to **1.7% of gross domestic product**. Its largest portion (the so-called ‘general transfer’) is distributed among all municipalities and towns based on criteria such as the number of residents, size, number of classes and facilities in elementary and secondary education, etc. Pursuant to the Law, there is a standardization *transfer*, for those municipalities whose income has been less than 90% of the republican per capita average. In this way, major disparities between the level of income in different municipalities and towns have been reduced.
- One of the sources of income typical of local self-government is self-contribution, which – subject to vote by citizens – is introduced in certain territories. For example, a self-contribution can be granted to settlement to fulfil particular needs such as paving a road or other improvements.

*MANY MUNICIPALITIES CONDUCT OBLIGATORY **PUBLIC DEBATES IN THE PROCESS OF ADOPTING A BUDGET.***

## Property belonging to local self-government

- *Serbia is the only European state in which municipalities do not have the right of ownership over the assets they use.* All facilities used are the property of the Republic of Serbia, and municipalities must seek approval



from the Republic Property Directorate for all forms of property use, including leased property.

- A study published by the Standing Conference of Towns and Municipalities (SKGO) in 2005 shows that the average waiting period for approval by the competent republican body is **3 years and 10 months**, and that during the past ten years this procedure has resulted in losses amounting to **1.3 billion Euros, and several thousand jobs**<sup>8</sup>.

THE INITIATIVE OF THE SCTM TO ADOPT THE LAW ON PROPERTY OF LOCAL SELF-GOVERNMENT WAS SUPPORTED BY 140 PRESIDENTS OF MUNICIPALITIES AND MAYORS. BY THE END OF 2005, THE BILL, THE DRAFTING OF WHICH WAS INITIATED BY 21 DEPUTIES, ENTERED INTO PROCEDURE IN THE NATIONAL ASSEMBLY. HOWEVER, THE BILL HAS NEVER REACHED THE ASSEMBLY'S AGENDA. GOVERNMENT REPRESENTATIVES EMPHASISED THAT SUCH A LAW WAS CONTRARY TO THE CONSTITUTION AT THE TIME. THE 2006 CONSTITUTION EXPLICITLY MENTIONS THE RIGHT TO PROPERTY ON THE PART OF LOCAL SELF-GOVERNMENT.

## Direct citizen participation

- In addition to participation through their elected representatives, citizens have the right to directly manage their affairs at the local level. The Law recognises three mechanisms of direct participation: **civic initiative** (as a method of proposing decisions within the purview of the municipal assembly), **referenda** (as a decision-making method) and the **gathering of citizens** (as a means to collectively define proposals and requests to submit to local self-government).
- However, due to inadequate legislative and statutory elaboration, and the lack of knowledge among citizens about these options, these mechanisms are rarely used.<sup>9</sup>
- A similar situation exists with local communities, which – due often to a lack of resources – do not function in municipalities although they

<sup>8</sup> The integral text of the Study on Economic Consequences of Appropriating the Property of Local Self-Government by the State is available at [www.skgo.org](http://www.skgo.org)

<sup>9</sup> For additional analyses and proposals for improvements in these areas, see Direct Participation of Citizens in Public Life at the Local Level, [www.skgo.org](http://www.skgo.org).

can be a suitable mechanism particularly in municipalities with larger territories and a comparatively large number of rural settlements.

### **Protection of local self-government**

- Municipalities are entitled to initiate procedures before the **Constitutional Court** for the judgement *of the constitutionality* or legality of laws or enactments determined by the Republic or provincial authorities that violate their right to local self-government.
- In addition, a municipality is entitled to appeal to the **Constitutional Court** for judicial *protection from enactments or actions of central or local self-government authorities* that prevent them from exercising their function.

## ETHICAL CODE OF CONDUCT

AN ETHICAL CODE OF CONDUCT FOR LOCAL SELF-GOVERNMENT OFFICIALS CONTAINS GENERALLY ACCEPTED RULES OF BEHAVIOUR, REGARDLESS OF WHETHER THEY ARE REGULATED BY LAW. BY ADOPTING A CODE AND CREATING PRECONDITIONS FOR THE MONITORING OF ITS IMPLEMENTATION, A MUNICIPAL ASSEMBLY CAN IMPROVE ITS WORK SIGNIFICANTLY. HOW SUCCESSFUL IT WILL BE DOES NOT DEPEND SOLELY ON WHETHER COUNCILLORS AND OTHER OFFICIALS RESPECT THE ACCEPTED RULES, BUT TO WHAT EXTENT THE ASSEMBLY AS AN INSTITUTION VALUES THE ENACTMENTS IT HAS ADOPTED. THEREFORE, IT IS CRUCIAL TO MONITOR WHAT THE ASSEMBLY IS DOING IN ORDER TO TURN THE PROVISIONS OF A CODE (IF ADOPTED) INTO PRACTICE.



NEMANJA NENADIC

# AN ETHICAL CODE OF CONDUCT FOR LOCAL SELF-GOVERNMENT OFFICIALS

## Why should we have a Code?

One who wishes to do good deeds – in the interest of community – will find a way to do them even if there is no obligation set by rules or external controls. It is not certain, however, that those entrusted with the tasks of public well-being will do their job conscientiously.

First, we must establish what we mean by ‘public welfare’ or the term public interest, and then define how this is pursued in practice.

If citizens are to rely on institutions and those at their head, both must be ***bound by rules and procedures specified in advance*** and then ***subjected to control or oversight***. This does not seem to be enough, however, and modern societies demand additional guarantees. For example, the work of institutions must be public; institutions are required to justify their decisions, to inform citizens on the policies chosen or that are under consideration, and the factors taken into account; to inform citizens on their rights, how to exercise them and what quality of services they can expect from the public sector.

Not only institutions, but also the individuals leading them are requested to guarantee that they will not use public authority in their private interest.

Laws regulate the decision-making procedures of government bodies as well as the relationship between authorities and citizens. The appropriate laws are those, which stipulate the measures of enforcement if obligations are not ful-



filled. In actuality, legislators are occasionally unprepared to fully regulate all and every situation: instead, they define principles or norms – in other words, recommend certain behaviour. *An example could be traffic experts recommending drivers to keep below 50 km/h instead of placing a sign that would ban speeding over 60 km/h.*

**The Ethical Code of Conduct** resembles these “soft” laws. They contain descriptions of exemplary behaviour that should be adhered to even when not stipulated by law. What is common to most codes, and at the same time differentiates them from laws, is that they set the norms that are valid exclusively for a specified group of people, such as journalists, judges, doctors, etc.

Therefore, we could say that *codes regulate issues that cannot be included in law*. Even if they are not particularly useful, codes surely cannot cause any harm. A code, which does not foresee any sanctions, nor has the power to curb undesirable conduct, can still be a useful means to influence behaviour: compliance with the code can be monitored and can be used to suggest to legislators to make changes. In the event that a problem is successfully resolved owing to the code, the legislator should be aware that things are functioning well and that there is no need for the “heavy artillery” of regulation.

## Codes of Ethics and local self-government

### Adopting the Code

*An Ethical Code of Conduct for Local Self-Government Officials* prepared by the Standing Conference of Towns and Municipalities (SCTM) was adopted on 15 December 2004. In preparing this document, the SCTM took into account relevant regulations of the Council of Europe and the European Union, and carefully adjusted certain provisions to align with domestic regulations in the field of local self-government.

Since the SCTM is an association of local self-governments (and not their supervisory body), the decision to adopt a Code in the municipalities was not implemented immediately. Nevertheless, in response to a powerful campaign and promotion, municipalities began to adopt the Code, mainly through



*assembly resolutions and the content, with rare exceptions*, remained unchanged. In this way, the Code has so far been adopted by about 90 percent of town and municipal assemblies in the territory of central Serbia and Vojvodina.<sup>10</sup>

There is no doubt that such a document owes its popularity not only to its importance and quality, but also to the fact that municipal leaders were aware that the Code would increase their credibility among citizens. Even those who are not particularly interested in respecting the norms did not hesitate to adopt the Code, in the hopes that – in a country where the laws are openly violated and go unsanctioned, the Code will not pose an actual impediment to inappropriate behaviour.

Therefore, it was positive that activities continued. After the Code had been adopted on such a large scale, the SCTM supported those municipalities that wanted to go a step further. Namely, the ***last provision of the Code refers to the possibility for a municipal assembly to establish a body that will monitor the implementation of the Code.***

It should be noted that, once adopted, the Code becomes part of the system of applicable regulations in the municipality. The Code's validity is not limited by the mandate of the assembly that adopted it; it is not necessary that every new assembly composition adopt the Code anew. On the other hand, it is useful that new deputies be informed about their obligations under the Code, and understand what should be done in order to improve the efficiency of its implementation.

## Problems and solutions

In order to ***create new working bodies to monitor the implementation of the Code***, it is important to define their status, composition, authorities, and working method. As for status, current legislation does not offer many possibilities. Since an independent body of local self-government cannot be established without amending the Law on Local Self-Government, and it is not possible to establish a standing working body without amending municipal statutes,

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<sup>10</sup> The list of these municipalities and other useful information is available at <http://www.skgo.org/code/navigate.php?id=514>.

a solution was seen in entrusting the monitoring function to a newly established, ***ad hoc working body of the municipal assembly***. These circumstances, however, impede necessary continuity and independence.

The situation is not much better regarding the composition of working bodies, since municipal statutes usually do not allow “ordinary” citizens to become members alongside councillors. Nevertheless, it is important that citizens, local media and non-governmental organisations show interest in taking part in working bodies that monitor the implementation of the Code. In those municipalities where citizens are able to become members of these bodies, their associations should be active and propose candidates whom they deem to possess integrity and relevant knowledge.

On the other hand, in the area of powers and methods of work, there has been enough room to regulate matters in the best possible way. *The SCTM offered to local self-governments a decision model specifying procedures for the implementation monitoring body, opening up legal solutions to conduct relevant procedures, gather data and announce appropriate measures against those who ignore the principles of the Code.*

## The Code and the Laws

We have already mentioned that codes of ethics differ in extensity and approach. The Ethical Code of Conduct for Local Self-Government Officials contains the principles covered by regulations but also those that were not foreseen by legislators.

As such, the Code overlaps with the Law on Local Self-Government, the regulations related to the relations in municipal bodies, public companies and public institutions, the Law on Public Information, the Law on Preventing Conflict of Interest in Discharge of Public Office, and the Law on Budget and the Law on Financing Political Parties.

Among other issues, the Code tackles ***conflict of interest, public relations, and relations with municipal officials, use of entrusted public resources, elections, and respect of the citizens' will in elections***. When citizens, media and non-governmental organisations monitoring the work of municipal officials suspect violation of legal norms, they always have the option to address

a competent state body. However, the period of establishing responsibility for the violation may be quite long. Hence, it can be useful to verify whether the violation of law also counts as a violation of the Code. If so, the matter should be brought to the attention of the local community and subject to discussion before the relevant municipal body.

Should the suspected violation be found groundless, the conduct of a municipal official may still be found inappropriate and contrary to the Code.

FOR EXAMPLE, THE COUNCILLORS IN THE MUNICIPAL ASSEMBLY WHO VOTED AGAINST THE ELECTION OF AN OFFICIAL ARE NOT OBLIGED, PURSUANT TO THE LAW, TO PROVIDE JUSTIFICATION FOR THEIR OPINION, NOR ARE THEY OBLIGED TO EXPLAIN THEIR VOTING TO CUT THE BUDGET FOR THE LOCAL LIBRARY DESPITE PUBLIC APPEALS. HOWEVER, ON THE BASIS OF ARTICLE 15, PARAGRAPH 1 OF THE CODE, THEY ARE OBLIGED TO PROVIDE SUCH JUSTIFICATIONS.

## Conflict of interest<sup>11</sup>

### Officials

***Several articles of the Code are devoted to conflict of interest.*** At the outset, we shall define which officials are subject to the Code.

We should be aware that legal experts disagree whether certain persons, considered by an average citizen to be municipal officials (for example, secretaries and heads of municipal administration, city architects, city managers), are in fact municipal officials in the context of law and the Code.

In short, to consider someone an official, he/she must be ***elected, appointed or nominated*** to a post. Therefore, municipal employees who gained em-

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<sup>11</sup> For more detailed explanation, see further in the text. Information on other provisions is available in the SCTM presentation, (Manual for the Implementation of the Ethical Code of Conduct for Officials in Local Self-Government, B. Milosavljevic and N. Nenadic, 2005).

ployment through public announcements are not officials, nor are persons contracted to perform certain jobs, regardless of the level of importance and responsibility of their post.

Another necessary precondition is that a certain function is performed *within a certain body*. In addition to bodies, the municipality may have other organs for whose members the Law and the Code are not binding. For example, the Commission for the Preparation of Tenders for Public Purchase, the Council for Inter-Municipal Co-operation, committees for organisation of cultural events, and other ad hoc bodies.

Finally, since the Code applies not only to the officials of local self-government bodies but also to the managers of public enterprise, public institutions and organisations established by municipality, the founder of such bodies should be verified.

FOR EXAMPLE, A MUNICIPALITY APPOINTS MEMBERS OF THE SCHOOL BOARDS, BUT THE MEMBERS OF THE BOARD ARE NOT COVERED BY THE CODE SINCE THE FOUNDER OF THE SCHOOLS IS THE REPUBLIC.

Another important point is *that the number of persons covered by the Code is greater than that covered by the Law*. More specifically, and in accordance with the Code, the managers of cultural, health-care and educational institutions count as officials. Moreover, it is in this area that the number of officials in local self-government increases through the process of decentralization (for example, health-care institutions).

### **The primary importance of public interest**

Under the Code, officials are obliged to act *exclusively* in accordance with public interest and not according to their personal, private, group or party interest. The Law contains a similar provision. On a first glance, it appears rather simple: anyone elected to a public post is to be guided solely by public interest in the decision-making process. However, misunderstandings or even malevolent interpretations are possible.

**PUBLIC INTEREST** IS CHALLENGING TO DEFINE. FOR EXAMPLE, IT IS DIFFICULT TO DETERMINE, IMPARTIALLY, WHETHER IT IS IN THE PUBLIC INTEREST TO FINANCE AN EXHIBITION OR BUY A NEW CAR FOR THE MAYOR WITH FUNDS FROM THE MUNICIPAL BUDGET. THE OPINIONS ABOUT AN ART EXHIBITION MAY VARY, AND ONE CAN ARGUE WHY ONE ARTIST WAS SELECTED OVER ANOTHER. LIKEWISE, IT IS DIFFICULT TO JUDGE THE PURCHASE OF AN OFFICIAL VEHICLE: A NEW CAR MAY BE EXPENSIVE BUT IT LIKELY USES LESS FUEL AND HAS LOWER MAINTENANCE COSTS. ALTHOUGH IT MAY SEEM IN THE PUBLIC INTEREST TO BUY A CHEAPER MODEL, THE MORE EXPENSIVE MODEL MAY LAST LONGER AND PROVE A BETTER INVESTMENT IN THE LONG TERM.

Since there are many variations in the definition of public interest, we should pay attention to whether a decision-making procedure and a set of standards were respected. The justification of decisions is also very important. Moreover, public interest may interfere with the officials' financial or other interests. In such situations, suspicious citizens will more readily criticise the conduct of a particular official.

AN EXAMPLE: THE PRESIDENT OF MUNICIPALITY WHO DECIDES TO INVEST MUNICIPAL FUNDS TO REPAIR A SKI TRAIL UNDOUBTEDLY WORKS IN THE PUBLIC INTEREST, SINCE THE INVESTMENT WILL LIKELY INCREASE TOURISM REVENUE. ON THE OTHER HAND, IF CITIZENS ARE AWARE THAT THE TRAIL IS LOCATED CLOSE TO THE PRESIDENT'S VACATION HOME THAT HE OFTEN RENTS OUT TO SKIERS, MANY CITIZENS WILL LIKELY BELIEVE THAT HE WAS IN FACT GUIDED BY PERSONAL INTEREST. THERE ARE MANY VARIATIONS OF PUBLIC AND PRIVATE INTEREST: WE MIGHT ALSO IMAGINE THAT THIS OFFICIAL DOES NOT OWN A VACATION HOME BUT IS HIMSELF AN AVID SKIER, OR THAT HIS BROTHER OWNS A COMPANY THAT SELLS SKIING EQUIPMENT, OR THAT A MEMBER OF HIS POLITICAL PARTY IS THE MINISTER OF SPORT WHO USES THE OPPORTUNITY FOR THE PROMOTION OF HIS PARTY MIDWAY THROUGH AN ELECTION CAMPAIGN. IN EACH OF THESE SITUATIONS, VARIOUS PRIVATE INTERESTS MAY AFFECT THE OFFICIAL'S DECISION, WHICH AT THE SAME TIME ARE NOT CONTRARY TO PUBLIC INTEREST. THIS ILLUSTRATES WHY IT IS NOT EASY TO IDENTIFY A VIOLATION OF THE CODE OF CONDUCT.

*The critical issue is whether a decision was made in public interest or not.*

Then citizens may assess whether the degree of private interest was such that the official in question should not have participated in the decision-making process.

### **Disclosure of property**

The Code obliges officials to adhere to all regulations regarding the obligation to disclose information on property. This obligation is defined in the Law on Prevention of Conflict of Interest. The gathering of information is centralised, and conducted by the Republic Board for Resolving Conflict of Interest. Under this Law, an official is obliged to file a disclosure report for their property and the property of their spouses and first-line relatives (parents and children). Citizen interest in this matter, already evident before the existence of the Law, has increased since its adoption. The main reason behind this was the new possibility to verify whether a public official became wealthy through illegal means, while making decisions on the use of public money. This is almost impossible to ascertain however, since property information is classified and the Republic Board is only able to verify this information if it receives reports claiming inaccuracy in the information filed. Since these reports are not published, this effort can go no further. Despite these shortcomings, filing such reports is extremely important since it reflects the attitude of officials towards the Law. Still, the situation in this respect is rather negative: according to existing estimates, one third of officials – many among them from the local level – fail to report their property.

Any citizen may address the Republic Board for Resolving Conflict of Interest and ask if a particular municipal deputy or an official has fulfilled their legal obligation to report all property and income. Such reports are filed after assuming public office, once a year (until 31 January) after terminating public office, and in any case, when the property's value increases to the point that it exceeds ten average incomes in the Republic. In those municipalities where the implementation of the Code has been monitored in an organised manner, this data should be requested from the Republic Board by competent bodies. The website of the Republic Board contains information on cases where officials failed to file reports.<sup>12</sup>

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<sup>12</sup> See <http://www.sukobinteresa.sr.gov.yu>.

## Holding more functions

*The Code also refers to the respect of limitations set in legal regulations, starting with the Constitution.* The Code goes a step further in this case and obliges a municipal official to “avoid performing other public functions or activities that may interfere with the performance of his/her duties”, even if there are no legal obstacles to their doing so.

An example of such a situation could be where a municipal official also performs certain functions in a republic or advisory body, as a consequence of which he/she is frequently absent from the community. Or, in the case where his/her engagement in post-secondary education prevents him or her from participating in the meetings of the local body.

## Exception

Exception from the decision-making process is the best way to **resolve a conflict of interest**. The purpose of this norm cannot be brought into question since no one can be an impartial judge of his/her interests. The reasons for exception are related to **private interest**. The existence of these reasons can be presumed (when the interested party or his/her close relative is an official) or it can be necessary to first establish a connection that may affect impartiality, such as friendship, or business partnership.

The primary responsibility of an official who finds themselves in such a situation is to make this conflict of interest **public** and secondly to refrain **from** making any statement or participating in voting. In this way, they avoid the possibility of influencing the decision – both directly or indirectly. Still, problems can arise. Not only might an official ignore his or her obligation, but also the entire decision-making process may be blocked if there is a conflict of interest with an official responsible for taking decisions. Municipal deputies, it should be noted, make decisions that affect all citizens in their municipality, including themselves. The fact that their right to vote cannot be taken away from them does not diminish their obligation to publicly declare any conflict of interest.

FOR EXAMPLE: A COUNCILLOR PROPOSING A CHANGE TO AN URBAN PLAN, ADVOCATING THAT A SEVERAL-STOREY BUILDING BE BUILT ON A PLOT OF LAND INSTEAD OF A TWO-STOREY BUILDING, SHOULD NOT CONCEAL THE FACT THAT HIS BROTHER OWNS THE LAND IN QUESTION. IF THEY FAIL TO DO SO, JOURNALISTS WHO OBTAIN THIS INFORMATION SHOULD POINT OUT THE VIOLATION OF THE CODE.

## Gifts

In order to prevent abuse (such as extortion and bribery), *the Law and the Code set limits on gifts received related to public service*. In addition to money and goods, gifts include various free services given or promised to an official or a person close to him or her. The only exceptions are gifts related to protocol, or other such small gifts. Legislators often spend considerable time establishing the maximum value of gifts (for example, half of the average salary). However, abuses that are more serious derive from allegedly private gifts, which are in reality connected to the public service of a particular official.

AN EXAMPLE CAN BE THE SON OF A DIRECTOR OF AN INFLUENTIAL PUBLIC COMPANY WHO IS GETTING MARRIED. POTENTIAL BUSINESS PARTNERS GIVE EXPENSIVE GIFTS TO “THE NEWLY-WEDS”.

## Subsequent rewards for services rendered

The Code obliges officials not to perform “activities related to organisations and companies they monitor, with which they have contractual relations, or which were established within their mandates, in order to ensure private and professional privileges for themselves or others once they are no longer performing these functions.” Since political mandates do not last indefinitely, it is logical to expect that individuals will be prone to abusing their current influence to provide for themselves in the future.

Such actions are often sanctioned by other regulations, including criminal charges. For example: officials might violate the rules regarding public purchases in order to ensure good business for a certain company in which they will be employed as a “consultant” once they leave office. Sanctions exist for such violations.

### Monitoring the implementation of the Code

In monitoring the implementation of the Code, the first step is to determine whether a municipality has adopted the Code, whether it has adopted a decision on establishing the bodies that will monitor the implementation of the Code, and if this body has been constituted. This information can be obtained from the SCTM or from the local self-governments themselves.

It should be noted that the acceptance of the Code is a **voluntary act** – a document adopted by municipal assemblies at their will. Ideally, local officials and candidates for positions are aware of their obligations deriving from the Code, but their failure to do become familiar with its provisions does not free them of responsibility.

Those who monitor the implementation of the Code should **consider whether all the provisions of the Code have been consistently formulated**. In some provisions, it explicitly states what is prohibited, or what is required, while others contain only recommendations and guidelines.

It should also be considered whether **a violation of the Code by an official also constitutes a violation of a legal provision**. If that is the case, those who expose the violation of the Code can find additional support in that fact, and inform the competent authorities (police, prosecutor’s office, the Board for Resolving Conflict of Interest, Budget Inspectorate, and so on...).

In communities that have bodies for monitoring the implementation of the Code, **each person who identifies the violation of its provisions should address this body**, so that the body may initiate proceedings and pronounce certain measures where relevant. Envisaged measures are similar to those contained in the Law on the Prevention of Conflict of Interest, such as warnings, a recommendation for dismissal, etc.).



## How to conduct monitoring

Monitoring of the implementation of the Code can be carried out in several ways. In some cases, informal contact with municipal institutions can be sufficient, while in other situations the local media may be informed of conduct contrary to the Code.

Some data on flagrant violations of the Code may be obtained from republic authorities or from municipal authorities upon filing a request for free access to information.

In addition to monitoring the implementation of the Code, citizens, media and non-governmental organisations should focus their attention on what their municipality has done in order to achieve practical implementation of the Code. For example, through their councillors, or by submitting a motion to the municipal assembly, they may request the adoption of an enactment on the establishment of bodies that will monitor the implementation of the Code. They can encourage the prompt election of the members to that body, as well as the nomination of persons who will perform their duties in an impartial and just manner. Similarly, the assembly can also be encouraged to provide the necessary support to these working bodies, to ensure necessary funding, to protect them from attacks or intimidation, to respect their recommendations, and to assist the monitored municipal bodies to submit data needed for the verification of compliance with the Code.

## The future of the Code

Currently, the number of municipalities where the implementation of the Ethical Code of Conduct is actively monitored is considerably less than the number of those that have adopted it. There are also several local self-governments that did adopt an enactment on establishing a working body for monitoring the implementation of the Code, but failed to establish the body. At present, working bodies function in the municipalities of Veliko Plandiste, Mladenovac, Arilje, Pirot, Vranje and Sabac.



EXPERIENCE INDICATES THAT WE STILL HAVE A WAY TO GO TOWARDS THIS GOAL, BUT THAT SERBIA IS – SIMPLY FOR LAUNCHING THIS INITIATIVE – NOT ONLY THE LEAD COUNTRY IN THE REGION, BUT ONE OF THE FEW COUNTRIES IN EUROPE THAT HAVE SUCH A CODE.

Experience during the first year of monitoring the implementation of the Code demonstrates that issues related to compliance with this document are often closely related to political turbulence at the local level. For example, one of the urgent issues related to violations of the Code that emerged was the issue of councillors changing parties, a matter of legal as dispute as well. Very often, and for political reasons, members of a monitoring team have been exposed to great pressure from municipal leaders.

It should also be noted that success in the functioning of a monitoring body depends on the *reputation* of its members within the local community – regardless whether they are councillors or (where possible) “ordinary citizens”. Finally, the major task of the working body is to fight for its rightful place in society. The best way to go about this is to inform municipal officials of their obligations under the Code, maintain an appropriate attitude towards members of all political options, maintain communication with local media, and co-operate with the bodies dealing with similar issues at the republic or provincial level.

In any case, the best message may be that the working body must have an *active attitude* towards respecting the Code. That is why, in some municipalities, such as Vranje, and in line with the decision to establish a working body, citizens are given the opportunity to submit their complaints against a violation of the Code in boxes placed in the major municipal buildings. Moreover, the working body itself is used to initiate procedures for evaluating violations of the Code based on local media reports, statements from sessions of the assembly, and other sources.

From the second half of 2008 onward, it will be necessary to establish these bodies as independent municipal bodies needed to successfully monitor the implementation of the Code. Their words should be heard and respected. After all, their success will not depend solely on the will of politicians, but whether citizens will reject the notion of being subordinate to their representatives.



## IV

# MONITORING METHODS AND TECHNIQUES

THE FOLLOWING TEXT EXPLAINS THE APPROACH TO MUNICIPAL ASSEMBLY WORK, AVAILABLE SOURCES OF INFORMATION AND THE WAYS OF USING IT FOR BETTER MONITORING PURPOSES. THIS SECTION ALSO CONTAINS INFORMATION ON THE ENACTMENTS ADOPTED BY AN ASSEMBLY THAT REGULATE ITS WORK, AS WELL AS THE USE OF VARIOUS MEDIA.



MILOŠ MOJSILOVIĆ

## SOURCES OF INFORMATION AND METHODS OF MONITORING MUNICIPAL ASSEMBLIES

### How to obtain information on municipal assemblies?

#### 1. Documents regulating the work of municipal assemblies

Observing and monitoring the work of *municipal assemblies* entails an awareness of *all rules and norms regulating their activities*, namely its *character*, its competencies and the procedures related to its functioning.

Obtaining information about the work of municipal assemblies starts from relatively “stable” data - documents regulating their activities. These documents provide a framework for its functioning, direct the activities of municipal assemblies, and eliminate any ambiguities. Above all, they limit the arbitrariness deriving from daily political game-playing, personal animosities, and other factors that may undermine their legitimacy and credibility.

Municipal assemblies are mentioned in the supreme law – *the Constitution of the Republic of Serbia*. However, since it is a rather general regulation, the assembly is mentioned only in Article 130 of the Constitution as the highest body of the local self-government unit. In any case, this is important since its introduction into the Constitution entails that it cannot be abolished by any other enactment, or any person’s arbitrary will.



The second important regulation is the Law on Local Self-Government<sup>13</sup>, which refers to municipal assemblies in Section 3.1.1, Articles No. 28 - 41. This part of the law defines the following:

- Character of a municipal assembly
- Position of its members (councillors)
- Competencies,
- Decision-making methods,
- Possibility of establishing ad hoc and standing working bodies,
- Election and the position of those presiding over assembly sessions or preparing them.

The provision of Article 35 is also important in that it prescribes that **assembly sessions shall be public**. We will return to this issue later on: for now, it should be emphasised that this Article, like all others, is important because no other enactment can abolish what has been stipulated under the Law.

The part of the Law that determines **competencies** is relevant for observing and monitoring the work of municipal assemblies. It is necessary to know **the activities of the assembly**. Numerous uncertainties arise from a lack of knowledge about the mandate of local self-government bodies. Often, citizens address the assembly with issues, which are not within its competence. In Article 32, the Law enlists 20 competencies of the municipal assembly, mostly of a general character. The formulation of these competencies leaves the possibility of regulating the activities of municipal assemblies in detail through other enactments.

The next legal enactment regulating the work of municipal assemblies is the **municipal statute**. Under the Law, the municipal assembly itself is obliged to adopt a municipal statute, which will also partly define its position. The statutes adopted so far show that their structure and content are mainly in accordance with the Law on Local Self-Government. As for the position of the municipal assembly, the statutes contain more particulars; they mostly repeat the competences enlisted in the Law, specify the number of councillors, working methods and termination of mandate.

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<sup>13</sup>Text of the Law is available at the webpage of the National Assembly of the Republic of Serbia: [www.parlament.rs.gov.yu/akti/doneti/zakoni](http://www.parlament.rs.gov.yu/akti/doneti/zakoni).



It is important that the statutes specify particular, *standing working bodies in the municipal assemblies*, which form an integral part of this institution, and whose work should be monitored as closely as the work of the assembly plenary. The working bodies are usually called *councils* or *commissions*, and they are organised to cover specific areas. They consider the proposals and decisions of the assembly, and therefore – depending on the issue of interest – their activities and positions should be taken into consideration. It should also be evaluated whether they are taken into account, and to what extent. Some statutes regulate in more detail the matters related to working bodies (composition, competencies, method of work); some rely on the rules of procedure for the work of municipal assemblies, and others on the municipal assemblies' decisions. The statutes determine the establishment of provisional or ad hoc working bodies for certain competencies.

In order to observe and monitor the work of the assembly it is necessary *that statutes define the manner of convoking sessions and decision-making*. The statutes usually repeat the tasks of the assembly, but some also specify the kind of majority required for making decisions in particular spheres of competence, which speaks to the different levels of importance of different areas.

*The Rules of Procedure for the work of a municipal assembly* is another important source of information related to the work of a municipal assembly. A general enactment, like the Law and the statute, it regulates in detail the work of the assembly, since it deals only with the regulation of the work of that body. By analysing certain number of existing municipal assembly Rules of Procedure, we can see that they regulate the following:

- Constitution of the assembly;
- Election, position and powers of the president, deputy president and secretary of the assembly;
- Election, position and authority of the working bodies of the assembly;
- Sessions (decision-making, proposing amendments, maintaining order, order of speakers, right to reply);
- Public nature of the work;
- Position of councillors.

These are general issues that are defined in nearly every set of rules of procedure, using slightly different terminology.

**Minutes from the sessions (meetings)** are individual documents maintained by assemblies. The minutes are important sources of information since they contain a record of the course of sessions so that all those who have not attended can get detailed information of what transpired. Minutes may be kept in the form of excerpts or in an integral form. Many rules of procedure mention obligatory or in some cases audio recording of assembly sessions.

Minutes can also be found in the material the services are obliged to deliver to councillors before each assembly session. That material normally contains minutes from the previous assembly session.

As for other sources of information, we should mention the **enactments adopted by the municipal assembly**. Before the adoption of the final version of enactments, there are various proposals and amendments to proposals, which the assembly does not have to adopt. These documents can be important in the process of following its work, since they truly reflect the balance of power in this institution.

The adopted enactments are usually **decisions, conclusions, rulings and opinions**. Local self-government is obliged to publish all of its enactments in the Official Gazette of the municipality (or in the Official Gazette of the district covering several municipalities). In addition, some municipalities require the posting of information on notice boards or on the Internet.

A GROWING NUMBER OF MUNICIPALITIES USE INTERNET PRESENTATIONS. THIS METHOD IS INEXPENSIVE, AND WIDELY AVAILABLE. IN ADDITION TO DOCUMENTS (STATUTES, RULES OF PROCEDURE, ETC.), MUNICIPAL WEBSITES OFTEN CONTAIN OTHER IMPORTANT INFORMATION AND NEWS RELATED TO THE WORK OF ITS BODIES. HENCE, IT IS ADVISABLE FOR ALL PERSONS WHO WISH TO HAVE TIMELY AND RELIABLE INSIGHT INTO THE ACTIVITIES OF THEIR MUNICIPALITIES LEARN HOW TO ACCESS THIS INFORMATION FROM THE INTERNET.<sup>14</sup>

<sup>14</sup>Municipal presentations may be accessed through a single data base on Serbian municipalities at the website of the Standing Conference of Towns and Municipalities (SKGO): [www.skgo.org](http://www.skgo.org)

The municipality is also obliged to archive its acts in order to make them available to interested citizens. In case they are not – if, for example, there is no will to make them available for public use and insight, the instrument to address this problem is contained in the Law on Free Access to Information of Public Interest, outlined in another section in this guidebook.

## 2. The media as a source of information on the work of municipal assemblies

Media – particularly local media – present a substantial source of information on the work of municipal assembly. However, media reports, unlike the documents regulating the work of a municipal assembly and adopted by it, are **indirect sources of information**. According to the logic of their work, media representatives select the information they will publish. The information is selected according to its importance, the degree to which it can be considered interesting, and up to date. In that respect, the municipal assembly is no exception, and the criterion of **importance** should be considered in particular. Local journalists who follow the activities of political institutions are often well informed about what is going on in a community, and can help those who are less informed decide which areas of municipal activities they should focus on - i.e. what is most topical and most important for the functioning of that community.

However, the fact that the media represent an indirect source of information is their main limitation. In selecting information – deliberately, accidentally or simply because media are not always interested in the same issues as a given individual or organisation, certain details are left out. Media usually adjust their coverage to ordinary citizens. Undoubtedly, their reporting on events that concern the entire community or its majority, gives the media an extremely important role in society.

In terms of the sources of information, the following issues should be considered:

- Media have their own **editorial policy**, which also covers daily reporting. That policy often depends on some other policy including those at the local level. That is why media are often used as instruments of propaganda and influence, and one should be cautious when using information obtained from the media. Before using the information,

we should be aware of who owns particular media, who is the founder and who determines its editorial policy – because the answers to these questions can often explain the information itself.

- Local communities can have more than one media outlet. In gathering information, one should **follow all media** dealing with the work of local authorities. The so-called “regime” media are prone to embellish reality while the “opposition” media are often unjustifiably critical, and only by having a complete insight can one gain a more truthful picture of the situation.
- One should distinguish between different **types of texts or reports** on the work of local authorities. News usually contains no judgemental connotations and may be unreservedly used. Analytical texts and reports are much more useful but one should be cautious, because information is supported by evaluative judgements about the work, enactments or conduct of the assembly.
- It is necessary to promote **co-operation with journalists**. They can be of great assistance because they can provide official information and interpret what is going on “behind the scenes”.
- Organisations and individuals that deal regularly with certain issues related to the work of local institutions often maintain their own archives and databases. This is a good means to follow developments, and a way to learn the “history” behind certain decisions or events in the assembly.

## How to monitor the work of an assembly?

In accordance with the above, we can draw conclusions on how to use these sources of information for meaningful and impartial monitoring of the work of an assembly. There are two basic methods: the first is to monitor the work of an assembly by attending its sessions, and the second method includes various types of reporting on an assembly’s work.

### 1. Attending the sessions of a municipal assembly

THE SESSIONS OF MUNICIPAL ASSEMBLIES SHALL BE PUBLIC.

*Law on Local Self-Government, Article 33.*

The most direct and authentic form of monitoring the work of an assembly is **attending its sessions**. This is enabled by the above-mentioned article of the Law and is confirmed by all municipal statutes and rules of procedure.

Although the work of an assembly is public, the Law on Local Self-Government stipulates certain limitations: “A municipal assembly may decide that an Assembly session may not be public for reasons of security or other reasons stipulated by the Law and the Statute” (Article 35). In actuality, these restrictions apply in exceptional situations, so that the principle of public work is not often brought into question. Therefore, the municipal statutes stipulating that assembly sessions may be closed most frequently cite security reasons (for example, the state of war or imminent danger of war). Nevertheless, some statutes stipulate that a majority of the total number of councillors may decide to close the sessions regardless of which matter is discussed – which can present a serious limitation to oversight. Although public presence at assembly meetings is allowed, it does not entail that anyone may exercise this right at any time. **For technical and organisational reasons, it is necessary to announce one’s presence in advance**. Most often, this task is performed by the secretary of the municipality, as they are in charge of organisational matters. This should not be understood as a threat to the public character of the assembly’s work, but rather as away of securing proper conditions for those that wish to attend the sessions.

Before each session, it should be established whether the groups of councillors would have separate meetings in advance of the session and whether leaders will meet with the chairperson.

When monitoring an assembly session it is important to:

- Be informed about the contents of the agenda for the session;
- Pay attention to the manner of adoption of the minutes from the previous session;
- Establish in which areas of the assembly’s competence do particular topics from the agenda belong, since the decision-making method often depends on this;
- Establish who submitted particular proposals, which will provide indirect information about the target group for lobbying;



- Establish who proposes amendments since it is equally important;
- Monitor the decision-making process related to certain issues in order to recognize the balance of power in the assembly among possible “collaborators”, “opponents” and “neutrals”;
- Note whether there are changes to the agenda, at whose initiative, and with what explanation, as well as how the changes are made, since this can be a valid indicator of the priorities and the proportions of power and influence;
- Note who requests to speak, about what, and whether it is relevant for the session and for the life of the local community (the observer should check the rules of procedure which provide information on possible limitations with regard to speeches, the aim of which is to prevent obstruction of the assembly’s work);
- Note whether there are situations of conflict and how they are addressed.

Certain situations that are not regulated by laws, but by customary and informal, or widely accepted, patterns of behaviour, often say more than is officially registered. For example, the issue of the influence of political parties and their policies on the work of the assembly and its councillors. Frequency of requests to speak, number and nature of replies, the decision to allow only the leader of a group (or other members) to speak are just a few of the signs of who works in whose interest in the assembly! In addition, the sessions may be a place to identify the “targets” of influence of citizens or their organisations.

Finally, the conduct of councillors, their interest in certain issues or lack of interest, informal conversations and agreements and even spontaneous reactions – during the session and outside of it – may give an answer to the question why the assembly operates as it does. That kind of insight represents one of the basic advantages in favour of direct monitoring of the sessions.

## 2. Analysing the documents on the assembly’s work

Attending sessions often requires a great deal of time, energy and attention. The sessions may last a long time, with nothing important going on, and with some segments that are not essentially important for those monitoring its work. Time, energy and attention are not limitless resources. That is why



*analyzing documents and enactments adopted by the assembly are a way of monitoring its work.* While this may save time, it lacks the quality derived from direct attendance. In order to monitor the work beyond the session, it is necessary to obtain the *minutes on its work*. This document is a record of what has taken place at the session and provides data on the format of the session. We have already mentioned other important elements in terms of content.

The criteria for monitoring the format of sessions are the same as criteria for direct attendance. It is a favourable circumstance that the answers to almost all questions can be found in the minutes. What is lacking there may be taken from media reports or obtained from competent persons (such as councillors). Apart from understanding the general situation, the available information can lend insight into the motives for certain types of behaviour which are often more important than what is visible “on the surface”. (The methods of collecting this information are addressed in a text related to research on local public opinion).



## MONITORING THE WORK OF A MUNICIPAL ASSEMBLY

HAVING DESCRIBED THE SOURCES OF INFORMATION ON THE WORK OF THE MUNICIPAL ASSEMBLY AND THE METHODS OF MONITORING ITS WORK, WE SHALL NOW ADDRESS PARTICULAR STEPS THAT SHOULD BE UNDERTAKEN IN MONITORING THE WORK OF A MUNICIPAL ASSEMBLY. HOW CAN WE MONITOR ACTIVITIES OF A MUNICIPAL ASSEMBLY AND ITS RELATIONS WITH OTHER LOCAL SELF-GOVERNMENT BODIES? MOREOVER, HOW TO ESTABLISH WHETHER ACTIVITIES ARE SUFFICIENTLY TRANSPARENT? BASED ON EXPERIENCE GATHERED BY THE CESID LOCAL SELF-GOVERNMENT TEAM, THE NEXT CHAPTER OFFERS BASIC GUIDELINES AND SUBSTANTIAL PRACTICAL ADVICE.



DJORDJE VUKOVIC

## MUNICIPAL ASSEMBLY SESSIONS MONITORING

A municipal assembly is the body that most directly affects the life of local communities. It has the authority to make decisions on issues that directly affect the daily lives of citizens: infrastructure (roads, electricity, telephones, heating), social welfare, health care, education, etc.

This fact demonstrates the need to define formal and informal patterns and rules of conduct for this body. The quality of decisions made by the local assembly and thereby the quality of life of the community largely depends on these rules and patterns. Therefore, we ought to structure the monitoring of the activities of local assemblies and to define *desirable models of work and conduct for this body*.

A report on monitoring the work of the assembly should *ideally* contain the following elements:

- The agenda of the municipal assembly contains topics and problems defined by municipal long-term plans.
- Proposals for the resolution of certain problems are made in co-operation with the competent services, professional organisations and representatives of the civil sector.
- All councillors keep the discussion to topics on the agenda and make plenty of proposals that could improve the proposed solutions.

- Proposed improvements are adopted by a majority, reflecting that they were considered meaningful not only by the government but by the opposition as well.
- Discussions were short and to the point, and there were no situations of conflict...”

Obviously, this is an ideal projection. The primary task of monitoring is to identify the type and extent of difference between such an ideal model and actual conduct.

### Pre-session Preparations

*The first condition* for a meaningful and effective session is ***adequate preparation***. Councillors are key actors in the assembly, and the fulfilment of the above-mentioned condition largely depends on their individual ability and conduct. Most often, they are divided into groups that are expected to determine a ***uniform strategy and approach*** before each session. The meetings of the groups of councillors are used to become acquainted with the agenda, discussing each topic of the agenda and deciding whether they will support or reject it, or if they will change or improve the proposed solutions. A uniform approach thus defined will ensure effective work within the assembly.

*The second step* in the preparatory phase is to ***organise meetings of leaders or representatives of the groups of councillors with the president of the municipal assembly***. In these meetings, it is possible to determine to which extent councillors agree on particular topics on the agenda and whether there is the required majority for making decisions. On these occasions, disagreement can also be identified, as well as its extent, and the possibility of disagreement leading to conflict during the meetings. In fact, the meetings between the presidents of municipal assemblies and leaders of groups of councillors may serve to eliminate potential problems in advance, to reach a consensus to respect good practice, and reduce the uncertainty of the outcome of a session.

## Municipal Assembly Sessions

After the preparatory phases, we focus on the sessions themselves. First, attention should be paid to **establishing the number of councillors present**. Several details should be considered:

- It is important to establish whether there is a practice that entire **groups of councillors** are regularly absent. If that is the case, it is necessary to establish the reasons behind that. There can be different political motives for not attending the sessions. The decision on non-participation may be the consequence of the opinion that boycotting the work of the assembly is the most adequate political action or response to the work of this body. Absence may be due to justifiable circumstances or by a political position. For example, the entire party is “falling apart”, and its councillors have lost the motivation to participate in political life. It is often felt that the absence of a certain group of councillors may block the work of the assembly, due to a **lack of quorum** – such a situation may occur in the National Assembly. All of these motives are politically legitimate, but not desirable.
- Monitoring should also include recording of absence of certain councillors. There are several illustrative situations. Usually, not all assembly councillors are present. Some have other obligations preventing them from attending the session, are ill or absent for other justified reasons. However, if some councillors are permanently absent for reasons other than those listed above, the motives for such conduct should be established. Absence may be a consequence of disagreement with the positions of the councillor’s own group, or his/her conviction that as an individual he/she cannot affect any major changes of political climate. We should not overlook the possibility that some representatives of citizens in reality do not wish to perform their function. Although citizens have elected them, they do not wish to spend their time on the work of the assembly and choose to focus instead on their personal affairs. The reason behind this can be the assembly’s manner of work, but also simply the rude and irresponsible conduct on the part of a councillor.
- Usually, assembly sessions begin with the adoption of minutes from the previous session. The adoption of the minutes can be the most important indicator of the work of the assembly, and the prevailing relations between the majority and the opposition: the minutes can be adopted

without objections, with objections, or they can be rejected. The minutes from the previous session are usually adopted; however, occasionally they contain formal shortcomings or conclusions that have not been adopted. If the disputed minutes are adopted, it will speak to the conciliatory conduct of assembly councillors; on the other hand, failure to adopt them or adoption of the minutes with many objections can illustrate the quality of the relationship between the government and the opposition, and problems within the assembly majority. It is a common but undesirable situation when the adoption of the minutes is used to settle political accounts, or to open another front of political combat between the government and the opposition.

*In the course of discussion*, there are some important elements to focus on, elaborated here.

- First, it should be established whether and to what extent ***the rostrum was abused***, i.e. whether councillors adhered to the agenda, and the topics they announced they wanted to discuss. Councillors often discuss topics outside the agenda, or even outside the areas of competence of the local self-government. Motives for such behaviour vary, from attempts to obstruct discussion to intentions to prevent the adoption of certain decisions. Such an approach may be the result of a desire to emphasize an issue identified as important by a councillor or by a lack of knowledge. Regardless of the motives, the consequences of such behaviour may be serious, and contribute to a negative image of the assembly. Therefore, since it is desirable to keep the discussion within the frame of agenda, *monitoring will establish whether and to what extent the discussion diverged.*
- Although it may appear as a purely technical issue, it is very important to know whether there are any limitations to the ***duration of the discussion*** and to what extent the deputies adhere to these limits. An ideal political climate should not require any restrictions, since there would be no councillors abusing their right to address the assembly. Practice, however, has shown that limitations are necessary. They are usually defined by the Rules of Procedure. *Monitoring should also indicate whether the councillors respected the time limitations since this is another important indicator as it refers to circumstances that may lead to abuse of the assembly rostrum, or to obstructions.*

- **Improper behaviour** by councillors can sometimes be witnessed in the National Assembly, and one of the goals of monitoring is to note whether it is reflected at the local level. The key indicators of poor relations and improper behaviour include removal of councillors or groups of councillors, or their walking out of sessions. It is important to note whether the removal was a consequence of irresponsible behaviour on the part of councillors or the president of the assembly; whether councillors' groups left for justifiable reasons (inability to act), or due to incompetence. When such cases are recorded, one can get a snapshot of the work of the local assembly. Ideally, there should be no such cases, but their existence is a valid reason for a negative evaluation of the work of a particular municipal assembly.

### Decision Making Process

The most characteristic aspect of the **decision-making process** is the adoption or improvement of proposed solutions. Ideally, the reaction to good suggestions, regardless of who has proposed them, should be constructive proposals for their promotion and improvement. Practice does not resemble this, and divergence from the ideal may go in several directions.

It could be the case that the opposition advances senseless proposals in order to obstruct the work of the assembly or the decision-making process. On the other hand, there are situations where the government proposes and adopts decisions in the interest of a small number of people in a local community, and rejects suggestions from the opposition. It is not uncommon that neither the authorities nor the opposition are familiar with the topics on the agenda, and make decisions without serious discussion. These elements lead to a negative assessment of the work of the assembly.

An example of good practice is a situation where proposals and suggested improvements are in line with the public interest, where councillors possess a high level of knowledge about the issue, and where the government and the opposition work together towards improving the proposed solutions.

*It should be emphasised an observer must be neutral, and not influenced in any way by his or her party policy. The assembly should be perceived, as a body comprised of deputies regardless of what party they belong to. In this way, it*



*is irrelevant who is responsible for failure, the government or the opposition, since monitoring focuses on the discussion of results, not of actors.*

### **Monitoring the relationship between a municipality and other local authorities**

Why is co-operation among local self-government bodies important?

In the distribution of power, the municipal assembly represents the highest body at the local level. In order to function, local self-government bodies should co-operate with other branches and bodies. These are primarily the local administration bodies and representatives of local authorities. These entities are crucial in the implementation of decisions and fulfilment of the obligations determined by the local assembly, since they can highlight problems encountered in practice, and advance new proposals and solutions to regulate local life. In addition, they are in a position to evaluate to what extent certain decisions can be implemented. Therefore, their presence and participation in the work of the local assembly is essential: they enable the adoption of meaningful and relevant regulations. .

The presence of other bodies of local self-government in the work of a municipal assembly

The establishment and functioning of the relationship between a municipal assembly and other institutions of local self-government is an important indicator of the assembly's work. Frequent and fruitful consultations with certain bodies, especially in areas of their competence, are a good method for establishing the rules applicable at the local level.



THE RELATIONSHIP BETWEEN A LOCAL PUBLIC COMPANY – IN CHARGE OF MAINTAINING THE LOCAL WATER SUPPLY SYSTEM – AND THE LOCAL ASSEMBLY, COULD SERVE AS A GOOD EXAMPLE. THE EMPLOYEES OF THE COMPANY ARE THE RIGHT PERSONS TO IDENTIFY PROBLEMS IN THIS FIELD – WHETHER IT IS THE PRICE OF A CUBIC METRE OF WATER, SYSTEM MAINTENANCE, COLLECTION OF PAYMENTS, OR INVESTING IN NEW CAPACITIES. IN AN IDEAL SITUATION, PUBLIC COMPANY REPRESENTATIVES WOULD INFORM COUNCILLORS OF THEIR SYSTEM OF WORK, PROBLEMS AND POSSIBLE SOLUTIONS, AND THEIR ELECTED REPRESENTATIVES WOULD LISTEN AND TAKE INTO ACCOUNT THEIR COMMENTS TO PROPOSED SOLUTIONS. REGULAR COMMUNICATION UNDER SUCH A MODEL ENSURES MEANINGFUL AND FEASIBLE IMPLEMENTATION OF DECISIONS.

It should be understood that the mere presence of representatives of local authorities and local administration does not automatically involve fruitful co-operation. The representatives of executive authority often attend assembly sessions, but their goal is to control the assembly majority and the adoption of decisions in line with their politics. On occasion, the presence of other bodies of local self-government is merely a facade, a formal certificate of democracy. They just attend the sessions: they are not asked for their opinion, and their comments and recommendations are not taken into account. The majority of councillors are guided by other reasons and arguments, in line with their interests or party politics.

Therefore, it is necessary to define criteria based on which it can be established whether and to what extent the co-operation between local assemblies and other bodies is fruitful. Monitoring methodology in this field should consist of three interrelated steps:

1. As a first step, it should be established if **a representative of a certain body of local self-government** was present at the assembly session. Evidently, it is necessary that the focus of discussion or at least one topic on the agenda should relate to the work of this body. If both criteria are satisfied – a representative of a particular body is present at the meeting, in which an issue from his/her area of competence is being discussed – we can say that this condition has been fulfilled.

2. The second step concerns the ***activities of the representatives of local self-government bodies***. First, it should be established whether a body whose representative is present at the meeting proposed some of the agenda topics. If not, it should be established whether some of those that did propose it communicated with this body, and whether the proposal was made because of their co-operation. If one of those two criteria is met, we can speak of direct cooperation between the body of local self-government and the local assembly.
3. Following that, monitoring is directed towards ***the assembly debates***. It is necessary to establish to what extent the representatives of local self-government bodies participated in the debates, and how the session proceeded. Some negative phenomena could be recorded in this respect. For example, representatives of other bodies of local self-government always take part in the work of the local assembly, aiming to control the work of the assembly i.e. of the majority of councillors. In this way, the executive body is actually trying to influence the legislative body. It also happens that representatives of other bodies discuss more topics and exert pressure on councillors. On the other hand, it is possible their presence is merely in respect of formality. In some cases, they are not allowed to discuss an issue beyond their competence, and the discussion can be meaningless since the majority of councillors have already made up their minds.

Furthermore, both sides should be committed to co-operation and respect each other's arguments. This situation is characterized by elements such as fruitful consultations between councillors and representatives of other bodies; councillors' efforts to learn more on the subject; effort to understand practical problems; attempts to materialise some of the proposed solutions. In these circumstances, the work of local bodies can be qualified as very good.

### **An assembly's control of companies, institutions and bodies founded by the municipality**

The other type of activity that demonstrates the relationship between an assembly and other bodies of local self-government relates to the control of municipal companies, institutions and bodies. This is usually conducted by the adoption of a report on their activities. Statutes and internal enactments specify deadlines and the format in which these entities should submit re-

ports to their local assemblies. The usual procedure is such that the reports are submitted annually, but an assembly can request them more frequently. Statutes stipulate that all reports for the previous year be submitted by the end of March.

MONITORING SHOULD ESTABLISH TO WHAT EXTENT THE EXISTING PROCEDURE HAS BEEN RESPECTED, WHETHER THERE WERE ANY DIVERGENCES AND IF SO, WHICH ONES.

### **Standing and ad hoc bodies of local assemblies**

The third field that defines relations between an assembly and other local bodies relates to the functioning of its standing and ad hoc bodies. Standing bodies are established when an assembly is constituted, and ad hoc bodies are established based on need. Standing working bodies meet at varying intervals: some once a week, others once a year. It largely depends on their competencies, obligations and problems. As ad hoc working bodies are established according to need, their duration and frequency of meetings varies from case to case.

***The key monitoring indicator in this case is the manner of establishing these bodies.*** There are several ways to establish them, and each can be evaluated.

An ***undesirable model*** describes a scenario where members of these bodies are exclusively the representatives of parties from the ruling majority. This is often the perception of power in Serbia, where political positions are regarded as trophies. Perhaps the more serious problem is that in establishing these bodies, personal characteristics are not taken into account, leading to a situation where incompetent persons are empowered to make decisions on vital issues.

There are, on the other hand, desirable situations where the working bodies of an assembly are composed of representatives of all groups of councillors. However, in addition to party representation, the members of the working bodies should possess adequate knowledge and experience. The most positive system would be equal participation by all groups of councillors, representa-

tives of departmental bodies of local self-government, the non-governmental sector and relevant professional organisations. Therefore, the committee for gender equality should include councillors as well as representatives of non-governmental organisations dealing with related issues. Only such composition would ensure professional and political representation.

*Monitoring in these three areas may reveal an accurate portrait of the relationship between an assembly and other bodies of local self-government. Information collected will indicate how close or distant local practices are from the desirable model. This is surely a significant element in the evaluation of the work and activities of local assemblies.*

### **Transparency of the work of a municipal assembly**

The last element involved in the monitoring of local assemblies concerns transparency in their work. Public presence, interest, and participation in decision-making processes represent an important indicator of an assembly's true performance.

IDEALLY, THE PUBLIC SHOULD BE INFORMED OF ALL ACTIVITIES OF THE LOCAL ASSEMBLY IN A TIMELY AND COMPREHENSIVE MANNER. IT IS DESIRABLE TO HAVE A BROAD-BASED PUBLIC DEBATE ON ALMOST ALL TOPICS, TO HIGHLIGHT ADVANTAGES AND DISADVANTAGES OF CERTAIN SOLUTIONS, TO SEEK CITIZEN APPROVAL, AND TO ENSURE THAT ALMOST EVERY MUNICIPAL ADMINISTRATION BROADLY COMMUNICATES WITH CITIZENS USING VARIOUS FORMS OF MEDIA, ESPECIALLY THE INTERNET.

To assess whether there is adequate transparency in the work of an assembly, monitoring should include several parameters

- In terms of the method of informing ***the public on the sessions of the assembly***, monitoring should encompass at least three areas:
- It is important to establish whether information on the session has been communicated to the public in a timely manner, with the date and time of the session announced well in advance.

- It is equally important to communicate information using as many media as possible. If possible, through local media (TV, radio, newspapers) or the Internet (on the municipal or local assembly website). However, there are cases - for example, when security issues are discussed – where information should be delivered only to interested parties.
- The next necessary step in informing the public implies that information on the session includes time and venue, as well as an accurate agenda and information on who proposed the topics.

If all those elements are satisfied, we can say that the public has been properly informed in terms *of time, method of communication and content*.

- The second step in monitoring is to establish whether *the assembly's work is public*. This generally means whether the sessions are broadcast or not. Broadcasts may be live or recorded. In terms of transparency, it is desirable, where technically possible to broadcast assembly sessions live through the local media (TV or radio). The reports announced through these media are also evaluated positively. It is inadmissible that no information methods are available to inform citizens about the sessions of the local parliament.
- The next phase consists of *monitoring the methods of informing the citizens about decisions*. At each session of a local assembly, decisions are made with an aim to regulate life in a local community. It is necessary then that as many citizens as possible be informed accordingly. Information may be provided using various means: through media (electronic or print), in the form of reports, but also in communication with the municipal administration through notice boards in municipal buildings. There is a legal obligation that the decisions be published in an Official Gazette or in the municipal journal. It is difficult to say which is the best means to inform citizens of adopted decisions; perhaps the most effective way is to combine all means available. Thus, when the broadest public will have been informed of the assembly decisions, it can be considered good practice.
- Although it is considered as media, *the Internet as a form of communication between local authorities and citizens* is a specific example, as it provides rapid, two-way communication and follow-up. The monitoring process as it relates to use of the Internet should focus on two issues: first, whether or not the municipality has an Internet

presentation. If it does, it should be established whether the municipal site, in addition to general information, contains the most important documents and decisions of municipal bodies, contacts for municipal services, and the latest news on municipal activities. In order to achieve efficient communication and co-operation with foreign users, it is necessary to have some of this information translated into English. In some cases, if these requirements are met, the municipal presentation will be considered very successful. However, this will not be sufficient for an overall positive evaluation, since one of the parameters determining quality also concerns the regular updating of information on the website. Ideally, municipal presentations should be updated on a daily basis with the latest information of importance to the residents of the municipality. Only then, the presentation may be evaluated as positive.

- The latest segment in monitoring transparency concerns the method and scope of public participation in the decision-making process. For a number of issues there is a legal obligation or recommendation to organise public debates – in an effort to reach the most meaningful solutions. Public debates are actually the key element of this segment. The first step involves determining whether a procedure to organise public debates was respected, and next to answer the question whether public debates have been organised even without legal recommendations. This information indicates general transparency of the work of a local assembly, and the municipal administration as a whole. Including citizens in the decision - making process concerning issues important to community life demonstrates openness, the spirit of democracy and readiness on the part of the local parliament to respect the views of the citizens it represents. On the other hand, public debates may simply act as a cover for undemocratic behaviour on the part of local authorities. Therefore, it is important to monitor the method with which public debates are organised. The topic of debate should be clearly defined, and the number and structure of participants should be determined in advance. It is also desirable, depending on the topic, to invite representatives of professional organisations and the civil sector whose work deals with these issues. Therefore, the method of conducting a public debate, the manner in which it proceeds, and the decisions adopted as a result form a basis for its evaluation as a mechanism of transparency.

Participation, mediation or the presence of citizens in the work of local assemblies contributes to a positive image of local self-government. Any official discussions taking place without any public representation will inevitably arouse suspicion of corruption or the influence of particular interests. To avoid this, it is crucial that all local assemblies and sectors of local authority aim to behave and work in line with the above-mentioned ideal practices.



## LOCAL OPINION POLLS

IN ORDER TO GAIN A COMPREHENSIVE PICTURE OF THE WORK OF A MUNICIPAL ASSEMBLY, IT IS NECESSARY **TO ESTABLISH OBJECTIVE INDICATORS**, AS WELL AS THE POSITIONS OF REPRESENTATIVES OF CIVIL SOCIETY, THOSE WHO SHAPE PUBLIC OPINION AND CITIZENS. IN OTHER WORDS, IT IS NECESSARY TO DETERMINE HOW THE PUBLIC RESPONDS TO THE MESSAGES RECEIVED FROM THEIR MUNICIPAL ASSEMBLY, AND HOW IT EVALUATES THEIR WORK. THE FOLLOWING METHODOLOGICAL TECHNIQUES— OPINION POLLS, IN-DEPTH INTERVIEWS, FOCUS GROUPS, AND S.W.O.T. ANALYSES — MAY BE USED TO STUDY ATTITUDES TOWARDS THESE INSTITUTIONS AND OTHER FACTORS THAT COMPRISE LIFE WITHIN A LOCAL COMMUNITY.



SRECKO MIHAILOVIC

## LOCAL OPINION POLLS – A PRECONDITION FOR THE DEMOCRATISATION OF LOCAL AUTHORITIES

### How to begin? What are our assumptions?

Before attempting to **conduct a survey**, it is necessary to select an appropriate approach, taking into consideration the social context of the issue in question, and the theoretical concepts that create possibilities for analysis and resolution.

**Topics** surveyed within a local community that relate to the capacity of local authorities should be based in local reality. At the same time, the **methodologies** used should include procedures for the collection of relevant data.

We can begin with the hypothesis that it is not possible to discuss or analyse the capacities of local authorities without examining the capacities of local citizens (which involves moving a step beyond “We are just watching you!”). It means that citizens, **as members of the local community and the local authorities are two sides of the same process**. Then, we shall suppose that these two actors (authorities and citizens) in a majority of cases fail to reach that level of consciousness that would enable them to ensure the democratic and effective functioning of local politics, or the organisation and realisation of public interest in local community life.

## Seven preconditions for establishing a democratic and efficient local authority

In order to achieve democratic and efficient local politics, it is necessary to promote the following:

- (1) **Motivation among citizens to participate in the decision making process:** there can be no motivation if there is a sense that one is powerless. It is imperative that citizens understand that they can make a difference.
- (2) **Sense of importance of a contribution to the community:** it is important to be aware of a contribution to the community, which is of a specific interest, but also to be aware of the values and needs of both citizens and authorities.
- (3) **Informing citizens about the problems of the local community and policy** - making strategies in order to resolve these problems: citizens should be aware of and understand these policies.
- (4) **Mobilisation and organisation of the citizens' support**, to ensure support for local community policies by the majority of citizens: local authorities and their institutions should gain public trust.
- (5) **Citizen participation in creating the policies that regulate the local community:** active public participation in the creation of local policy.
- (6) **Citizen participation in the implementation of the policies of the local community:** aiming at achieving a certain level of citizen participation in the implementation of these policies.
- (7) **Evaluate the work of local authorities and their organisations and institutions** – such that citizens assess what has been done and identify what has not been done, and evaluating the work of all actors implementing and organising local policies, as well as their personal capacities.

**LOCAL OPINION POLLS ARE AMONG THE PRECONDITIONS FOR INITIATING PROCESSES THAT LEAD TO DEMOCRATIZATION OF LOCAL AUTHORITIES.**

Although there is no consensus regarding the **definition of public opinion**, it is generally considered to be **more or less the prevailing public opinion on certain matters of general social interest.**

In relation to the **topics** in this discussion, we can recognise the following four types of public opinion (and accordingly, four types of survey):

- (1) Citizens' public opinion
- (2) Expert opinion
- (3) Opinion of prominent personalities (those creating or shaping local public opinion)
- (4) Opinion of decision-makers.

As for methods **of gathering data**, we will focus on opinion polls, in-depth interviews, focus groups and S.W.O.T. analysis.

### Opinion polls

An opinion poll is one of the most significant and frequently used methods of conducting a survey of public opinion. In many developed countries, polls are regular and irreplaceable tools used in the formulation of local policies and to evaluate their results.

At first glance, it appears to be a rather simple data gathering procedure, but in actuality is quite a sophisticated method. Generally, proper polls are best conducted by professional pollsters.

It is important to note that pollsters do not deal with the origins of phenomena: -citizens are not asked to define the causes that may have led to particular phenomena. The analysis of causes is task of researchers, not interviewers. In order to establish the origins of a particular problem or to explain the reasons behind behaviour or levels of satisfaction or dissatisfaction among citizens, other research methods ought to be employed. Some of these will be discussed later on in this chapter.



## Procedure

Polls are conducted in the following phases:

- **Fulfilling all requirements** for conducting an opinion poll: preparing the staffing plan and timetable, financial plan, obtaining approval by those who will use the results of the poll, etc.
- **Defining the subject** of survey and the type of polls, conducting necessary consultations regarding the content of the polls, consulting experts on research methods, considering the engagement of mentors, etc.
- **Preparation of the questionnaire<sup>15</sup>** and decisions on the type of questions (open, closed, semi-closed). Questions should not be too numerous since polls should not take more than 15-20 minutes. Questions should be simple, unambiguous and adjusted to the knowledge and experience of interviewees.
- **Selection of pollsters** (interviewers) and their training. If the pollsters already have some experience, then training would include basic information on the polls.
- **Conducting pilot-polls** in order to test the questionnaire (i.e. to see whether the questions are feasible) and give the opportunity to the pollsters to gain experience.
- **Defining and selecting samples.** For this type of research, a combination of stratified and random samples (a representative sample) is recommended. A quota sample is also suitable.
- **Field phase.** Brief, face-to-face interviews are recommended. This method is best conducted during a four-day long weekend.
- **Processing of Statistical** data in an appropriate statistics programmes, including logical control of interviewed persons and answers, coding

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<sup>15</sup> What questions should be asked in local public polls? Here is a list of topics concerning municipalities : identification of major problems and their influence on individuals and families; budget priorities (water supply, heating, environment, health care, transport, sewage, culture, agriculture, economy, roads and streets, social policy, tourism, education); assessment of the performance of institutions, basic affairs (health care, education, social policy), public companies and services; reasons for discontent; confidence in organisations, institutions, functions; readiness for participation in resolving problems; basic socio-demographic data (gender, age, education level, profession/employment status, average salary, number of unemployed persons, children, persons in educational system, the ill or infirm. ).



- of answers, setting up a database and entering data, tabulating data, data crossing and working out statistical and graphic indicators.
- **Analyzing poll data**, with possible consultations with experts or mentors and the proposal of specific measures.
  - **Informing authorities** in the local community of the poll results and subsequent proposals. All relevant organisations and institutions in the local community should also be informed.
  - **Publishing a report** on findings. It is necessary to inform the local public on the poll results and it can be done in a press conference or in direct presentation in relevant local media.

### In-depth Interview (IDI)

***In-depth interviews are a method for gathering data*** (positions, opinions, assessments, statements, ideas, proposals) through direct personal communication. During an in-depth interview, an interviewer tries to obtain as much information as possible from all interviewees. Interviewees are therefore required to provide thorough answers: replies should be descriptive, precise and detailed. Contrary to most other data-gathering instruments, ***this method addresses the causes of certain phenomena, the motives, explanations and integral interpretation of the issues under examination.***

Interviews should be conducted in pleasant environment and not last longer than two hours. If shorter than one hour, such an interview is considered a waste of time and resources. Interviews should be recorded (audio), and notes should be taken. The interviewer should be well prepared, with sound knowledge of the topic and be acquainted with data-gathering techniques.

Responses of the interviewees must not be ignored. Experienced interviewers claim that two-thirds of questions should be formulated in advance (and be in written form), while one third should be formulated during the interview itself, and used for clarification purposes. Discussions with the respondents are not allowed, let alone disputes.

Transcripts and notes should be made as soon as possible after the interview. Experienced interviewers suggest that a draft report be made immediately fol-



lowing each interview, and updated after each subsequent interview. Previous interviews and collected data should be used to formulate new questions.

Respondents are usually anonymous – but, depending on the topic and agreement, the level of anonymity may vary. It is possible (only with the respondent's explicit approval) that some parts of the interview are not anonymous.

### *Procedure*

- The first step is the **selection of a topic**. Not all topics are appropriate for the in-depth interview method, and therefore the research procedure should be selected accordingly. For example, in-depth interview is most appropriate for surveying the structure of influence of the top level of authority in a local community. For that purpose, it is more suitable than opinion polls (since the citizens are not acquainted with the issues, although they do have an idea about them), focus groups (since it is difficult to have discussions among the representatives of authorities about who is the most influential), and S.W.O.T. analysis. In short, in-depth interviews with several representatives of local authorities can reveal a lot.
- The second step is **the selection of interviewees**. It should be kept in mind that interviewees are informers. Each interviewee should be approached as a person that ostensibly has answers to all questions (only such persons should be part of an in-depth interview sample). They should possess knowledge and experience or hold positions, which involve relevant knowledge and experience.
- An in-depth interview is a **communication** between two persons, which means that its success does not depend only on the will of one actor. The collocutor should be made aware of the intentions, subject, context and purpose of the interview; he/she should be informed that the interview would be recorded. An agreement should be reached on whether or not the interview will be anonymous, as well as on the time and place of the interview.
- The interviewer has to be aware of he/she does not know, but would like to know. They must **define in advance, both what information they expect** to obtain from the interview and from the respondent. During an



interview, the interviewer is allowed to formulate additional questions and seek explanations.

- The interviewer must be **qualified for the job** he/she is going to perform, and any training should be conducted by professionals. The best option would be the researchers themselves conducting the interviews, although this is not always possible. The interviewer must be acquainted with the subject of the interview; he/she asks what the researcher does not know, but the researcher should not be ignorant of the topic either.
- It is desirable to **engage experts as advisors or mentors**. In-depth interview procedures appear easy and simple, however their implementation is similar to that of other data-gathering methods - complex and requires adequate knowledge and experience.
- In-depth interviews are data-gathering procedures but can also be tools for obtaining the information necessary for further research. That is why **the number of interviewed persons** is relatively small. There are few topics that require more than a dozen in-depth interviews in a local community.
- **Reports on research findings should be delivered** to those who ordered the research, interested organisations and institutions, as well as to the local public.

### Focus group

A focus group usually involves conducting **focus group discussions (FGD)**, **organised in order to gather data** (attitudes, opinions, assessments, proposals) **from a group consisting of 6-10 citizens who have knowledge and/or experience of a specific topic**. It usually takes the form of a debate but can also be a presentation of opinions on a certain issue (group interviews with a moderator asking questions and participants answering).

As a methodology, a focus group is suitable for:

- **gathering information**, particularly from certain social groups within a local community (for example, expert opinions or the opinions of local prominent citizens on issues of importance for the community);



- **gauging responses to certain phenomenon**, such as an assessment of performance by public services or other organisations within a local community;
- **Interpretation of data** gathered by other research techniques, such as. Analysing conclusions obtained from research of public opinion in the local community.

### *Procedure*

- First, it is necessary to **define the purpose of discussion**, determine what goal should be achieved, which data should be gathered – in other words, to explain why the activity is being undertaken.
- Then, a **discussion topic** should be selected. Usually, one topic is discussed, since an unfocused interview could be long tiresome. In addition, there should be considerable interest in the selected topic within a particular community. It is desirable to avoid general topics like (“How well do we live in our community?”), as well as those that are too specific or require specific knowledge (for example, “How to prepare a menu for a pre-school institution?”).
- Usually, several focus group **discussions should be held on one topic**. Researchers usually recommend a minimum of three. In any case, the composition of all groups should be taken into account in order to avoid uniformity of views and assessments, or completely contrary views, which might lead to conflict.
- There are different views regarding the **number of participants** in a focus group (for example, 10-15, 6-12 or 8-12 persons). According to the experience of the author, the optimal number should be between 6 and 10.
- As for the **selection of participants** of the focus group, they can be chosen randomly, although it would be better to select them according to the topic, to get different views on a topic that represent various social groups (defined by gender, age, education level, profession, residence, and social status). The selection will be conducted only among those who have knowledge and/or experience on the proposed topic.
- Participants should be **informed in advance** of the topic for discussion (and its specific aspects), the goal and method of conducting the



discussion (i.e. what is expected from actors), and on issues related to anonymity, time, place and anticipated duration.

- As for the **environment** for the focus group meeting, discussions should be held in a place that is easily accessible by all participants, and where normal communication is possible. Participants should be able to sit comfortably at a table, where recording is possible and where all participants can see one another. Refreshments should be served (water, juices, coffee), and a cigarette break allowed. Papers and pens should be provided to the participants should they wish to take notes.
- Focus group discussions are **conducted by a moderator**, who encourages those who are reserved, or interrupts those participants who are too dominant. This is not an easy task; in fact, conducting a discussion is a critical point of this method since an inexperienced moderator may lose control, and the discussion may become chaotic. The moderator must be acquainted with the data-gathering method, the topic of discussion, must be properly prepared.
- The topic should be **structured and divided into segments** so that the discussion can be easily moderated. The moderator will have questions prepared in advance, and inform the participants about them in advance (they have to know what will be discussed so that they may decide whether to participate). Depending on the structure of the topic, moderators should plan the duration of each segment of debate or discussion. The entire discussion should be limited to between two and maximum two and half hours.
- Based on my experience, **the discussion should be preceded by a group interview**, in which every participant is asked to present himself/herself and in 3-4 minutes present his or her views on the topic. Also based on my experience, I strongly believe that the concept of S.W.O.T. analysis is a very suitable structure for focus group discussions.
- It is necessary to record the **discussion** (audio), and then make a transcript. If it is not too difficult, the discussion may be videotaped. Regardless of the type of recording, it is necessary to make working notes (for example, on non-verbal communication). This will render the task easier and enable the more efficient preparation of the discussion material and possible conclusions. The participants in the discussion should be informed in advance that they will be recorded (since it may affect their decision to participate). It is not recommendable that the moderator conducts the recording; his/her assistant who will also take

care of the overall atmosphere in which the discussion is conducted should perform this task.

- **A report** on the focus group discussion should be prepared as soon as possible, and the same applies for the report on all discussions on different topics. The report must guarantee anonymity of all participants who can be represented by nicknames of their choosing, under their professional titles or similar conventions. The report should also contain data that are often forgotten: the precise topic, number and structure of participants, date and place, duration of discussions, and basic elements of their progression, and the full name of the moderator. A discussion summary is also expected.
- All relevant organisations and institutions in the local community, particularly those dealing with the topic of discussion, should be **informed on the results** of this research technique.
- It is also necessary to **inform the local public** on the results of the focus group discussion. This can be done through a press conference or by presenting research results directly through relevant local media.
- All participants in the focus group **should be sent a complete report**, both on the discussions in which they participated, as well as on other discussions on the same topic. On delivering the report, the participants should be thanked for their co-operation.

### S.W.O.T. Analysis

S.W.O.T. is an acronym of the English words, Strengths (powers, advantages), Weaknesses (limitations), Opportunities (chances, possibilities) and Threats (dangers, risks, shortcomings). In this model, all relevant information on the situation and perspectives in both the internal and external environment are grouped into the four categories: strengths, weaknesses, opportunities and threats.

Below is an example of a S.W.O.T. matrix.

<b>S.W.O.T. analysis</b>	INTERNAL FACTORS	EXTERNAL FACTORS
“POSITIVE” FACTORS	<b>Strengths</b> (power, advantages)	<b>Opportunities</b> (chances, possibilities)
“NEGATIVE” FACTORS	<b>Weaknesses</b> (limitations)	<b>Threats</b> (dangers, risks, shortcomings)

S.W.O.T. analysis is a good method used to determine and assess the situation and strategies of an organisation or an institution. It consists of the monitoring of the four above-mentioned factors in order to evaluate positive and negative elements, or. The advantages and problems of a particular organisation, institution or social phenomenon. Strengths and weaknesses represent key internal characteristics of an organisation or an institution (**internal factors**), and the chances and risks represent main characteristics coming from the outer environment (**external factors**). The purpose of S.W.O.T. analysis is to reduce weaknesses and at the same time increase strengths, and to take maximum advantage of opportunities by reducing external threats.

In order to undertake a S.W.O.T. analysis, it is necessary to:

- **identify strengths (advantages) and chances (opportunities)** that may contribute to the fulfilment of goals and policies of a particular organisation or institution (for example a municipality, company, or non-governmental organisation);
- **identify weaknesses (limitations) and shortcomings (threats, dangers)**, which may hamper the achievement of goals and policies of a particular organisation or institution;
- Divide the factors favouring development (i.e. strengths and opportunities) into **internal and external conditions** relevant for the achievement of goals and policies of a particular organisation or an institution, and answer the question whether these factors originate from the immediate, potentially controlled environment or from an environment that cannot be easily influenced.

Data should be structured into two dimensions positive/negative and internal/external.

In short, S.W.O.T. analysis – a kind of diagnostic and prognostic instrument – represents a subjective method, which assists in the evaluation of the situation an organisation or institution finds itself in, and helps towards working out development strategies. S.W.O.T. analysis could also be considered a supplementary method to gather and organise data on the current state and future perspectives. The fact that this method is simple to use, that it is frequently used and has become rather popular does not render the process of analysis any easier. It even complicates it.

## VII

# INFORMING THE PUBLIC

ALTHOUGH THEY GATHER INFORMATION USING METHODS AND TECHNIQUES AVAILABLE TO OTHER INTERESTED REPRESENTATIVES OF THE CIVIL SECTOR, MEDIA OUTLETS ARE IN A POSITION TO PRESENT DATA TO THE PUBLIC WITH GREATER EASE THAN OTHER STAKEHOLDERS. THROUGH THE MEDIA, THE COMMUNITY ACQUIRES INFORMATION ON THE DECISIONS OF THE MUNICIPAL ASSEMBLIES, THE DECISION-MAKING PROCESS AND THE CRUCIAL REASONS BEHIND PARTICULAR DECISIONS. THE FOLLOWING TEXT IS INTENDED FOR JOURNALISTS DEALING WITH THE WORK OF LOCAL SELF-GOVERNMENT BODIES, AND INCLUDES GUIDELINES THAT CAN LIKewise BE USED BY REPRESENTATIVES OF THE NON-GOVERNMENTAL SECTOR AND THOSE MEDIA THAT ARE NOT INTERESTED PRIMARILY IN LOCAL EVENTS.



DJORDJE VLAJIC

## INFORMING THE PUBLIC ON THE WORK OF LOCAL SELF-GOVERNMENT

### A municipal assembly as viewed by the media

There is a word that determines the essence of journalism. That word is truth – a term that explains what journalism stands for at any time and in any media. All codes of ethics for journalists are based on the idea of truth. In fact, all significant documents in the field – from the Declaration of the International Federation of Journalists to the EU Munich Declaration and the codes of conduct of media associations and houses – insist that journalists should always be guided by truth in performing their job.

On the other hand, journalism also implies the freedom of the media to speak of all issues of public interest. In short, public interest is the reason the media exist. Given that this Guidebook is intended primarily for journalists and representatives of non-governmental organisations, we hereby present only the most fundamental ethical and professional instructions, or practical advice. The experience of countries in transition has shown that the media and civil sector are natural partners and important correctives for the authorities at all levels.

## Ethical norms

Efforts to establish a foundation of ethical principles for the field of journalism have been ongoing for decades. Numerous recommendations, declarations and codes have been prepared by professional associations and international organisations. Elements of ethical principles have been taken from various documents, such as the Universal Declaration of Human Rights (UN), International Principles of Professional Ethics in Journalism (UNESCO), recommendations for reporting on children (UNICEF), the European Convention on Human Rights (Article 10), and numerous recommendations and declarations by the Council of Europe Committee of Ministers and Parliamentary Assembly. Obviously, professional association and organisation are currently seeking to define precisely their guidelines on ethics. For the sake of brevity, we have included here a number of segments from the Code of Journalists of Serbia, adopted by all three professional associations – the Independent Association of Journalists in Serbia (NUNS), the Association of Journalists in Serbia (NUNS) and the Journalists Association of Vojvodina (NDV). In the section on the Code of Journalists of Serbia includes a number of rights and obligations that should be respected in order to ensure the highest professional standards.

We quote:

- The obligation of journalists is to objectively, fully and in a timely manner report on events of importance to the public, respecting the public right to receive news in due time and with respect for the basic standards of the profession.
- The media are entitled to have different editorial concepts, but it is the obligation of journalists and editors to make a clear distinction between fact and comment, assumption and speculation.
- Journalists have an obligation to quote the source of information. If the source does not wish to be quoted, the journalists and editors must act in accordance with professional principles and use their professional integrity to support information and assume responsibility for its accuracy.
- Journalists have an obligation, when necessary, to consult several sources and give them an opportunity to present their views.

- In professional journalism, it is unacceptable to present unfounded allegations, slander/libel, rumours and false or anonymous letters or those written by unreliable authors.
- In the event a journalist assesses that it is in the interest of the public to publish unconfirmed information or assumption, they have an obligation to explicitly state that the published information is unconfirmed.

The Code of Journalists of Serbia insists that journalists resist all pressures against professional freedom and any form of censorship. This means that journalists should not be pressured into expressing views contrary to their conscience.

As for the *responsibility of journalists*, the Code determines that,

- Journalists are primarily responsible to their readers, listeners and viewers. This responsibility must not be subjugated to someone else's interest, particularly the interest of publishers, government and other state authorities. Journalists must oppose all those who violate human rights or advocate for any form of discrimination, hate speech or instigation of violence.
- Forged documents and plagiarism are inadmissible and considered serious violations of standards in the field of professional journalism.
- Journalists have an obligation to respect the presumption of innocence and cannot proclaim anyone guilty before a court ruling to that effect.
- Journalists should not use inappropriate, controversial, pornographic and other content that may have harmful effects on children.
- Journalists have an obligation to respect and defend the rights and dignity of children, victims of crime, disabled persons and other vulnerable groups.
- Journalists should promote a culture and ethics of the public word, respect the right of replying, apologising and correcting with an obligation to publicise relevant corrections.
- Any form of commercial advertising and political propaganda, which is not clearly marked as such, shall be considered in serious violation of the standards of professional journalistic conduct.

The Code of Journalists of Serbia also specifies other professional norms, such as a journalist's consideration, attitude towards sources, respect of privacy, use of honourable means, respect of authorship and protection of journalists. All journalists and media representatives are recommended to carefully study the Code.

## **Professional principles**

The following is a description of the fundamental professional values in journalism identified according to experience of some of the biggest international media houses (The British Broadcasting Corporation (BBC), The Associated Press (AP), The New York Times, and The Washington Post).

### *Impartiality*

Impartiality should be of crucial importance for media. It is a value essential for all aspects of media. Impartiality of all those who work in media entails fairness, open-mindedness and respect for truth. Media should avoid inaccuracies, neglect, and partial and distorted reporting because of the use of emphasis, omission, or technological manipulation.

### *Accuracy*

Regardless of the subject they are dealing with, journalists must aim for accuracy. Therefore, they should be prepared to check and double-check information and seek advice in order to preserve their own integrity and impartiality.

Unquestionably, it is not easy to be precise. Therefore, it is important to make a distinction between indirect and direct sources of information. If a mistake is made in that respect, it will affect the entire work. Reliability may be seriously questioned if a journalist relies solely on one source of information. Precision is more than just knowing the exact state of affairs: it involves careful assessment of the importance of certain information for reaching the truth, particularly if it deals with controversial topics, which require the examination and comparison of all relevant facts and opinions.

### *Integrity*

Since media should strive to deal with all subjects impartially, it helps to be calm when dealing with "hot" issues. In such cases, media should ensure the

exchange of different opinions and comments. This particularly concerns situations where opinions and comments differ from the values inherent in editorial policy. The authors of editorials and personal comments have to be clearly indicated as such. Media reports on themselves or members of their own editorial board should be equally open as when reporting about other institutions, organisations or individuals. The interest of the editorial board, owner or individual journalists should not be an excuse for distorting or misinterpreting facts.

### *Independence*

Media and journalists should not have any obligations towards their sources or persons they write about. Even the false impression of obligation or a conflict of interest should be avoided. Journalists should not accept any valuables either from their sources or from someone outside of the profession. Journalists should not accept any gifts, free or at reduced cost, tickets, travel arrangements, entertainment, or accommodation; all costs associated with reporting should be paid by a media outlet. Journalists can be active in their community only to the extent that it does not lead to a conflict of interest. They should stay away from politics, demonstrations and public activities that can cause real or misinterpreted conflict of interest. In addition, it would be desirable if journalists did not work for the people or institutions about which they write.

### *Sources*

If sources of information are not explicitly named, they may pose a serious threat to the credibility of the media. It appears that in Serbian media there are ever increasing references to so-called “well informed” sources, or sources “close” to someone or something (person or institution). Usually, the least controversial are official sources, and they should be used.

When a source is giving data with the remark that it is “for your information”, his/her statement can be attributed to a person whose name does not have to be indicated. An agreement may be reached with a person providing important information that he/she may be represented as an official from a certain institution. In such situations, journalists should insist to publish as much information on their sources as possible. Information from unknown sources should not be used, not even as a motive for research. Journalists have the right to deliberately omit the source of information, indicating that the source is known, but his/her identity is not revealed for a justified reason (for example, personal security). Nevertheless, such situations should be avoided as much as possible. If it turns out that the alleged source does not actually

exist, the credibility of the newspaper, radio or TV station will be seriously damaged. In that case, one should not count upon the short memory of an audience. Moreover, it seriously undermines ethical and professional rules.

### Practical advice

Professional journalism in Serbia continues to face numerous challenges. The process of transition has opened up the space for media, that, once completely chaotic, is nowadays more or less regulated. However, the profession is still not free from various pressures as new forms of symbiosis between media, politics and business are formed. As for the media at the local level, they are in a considerably more difficult situation compared to the so-called 'capital city media'. Journalists and editors at the local level are exposed to serious threats. A particular difficulty is the ongoing process of privatization of local media, which is primarily under the control of local authorities. On the other hand, due to this uncertain situation, private media face difficulties in trying to survive in the market. It is even more difficult to maintain a high level of professionalism while struggling for survival, circulation, readership and viewership. That is why we offer some practical advice that aligns with ethical and professional standards:

- ***News is the basic professional form*** and it should be the starting point for any thorough analysis or presentation of a topic. The purpose of news is to give 'up-datedness' to coverage. Print and electronic media present news in various forms. They are usually dealing with agency news, which, in electronic media, should be adjusted, to spoken language. In a radio programme, it is useful if news is illustrated with a sound clip, such as an excerpt from a statement. As far as TV is concerned, pictures whenever possible should cover news. For local media, it is important that they themselves "produce" news, particularly about the events in their community – but not only related to services and utilities. Administrations and political parties present a special problem for those media since they usually insist that the statements be published in their integral form, or as extensively as possible. The media outlets should not agree to that: they have to protect the right, in line with their editorial policies, to present statements in concise form, in other words to present those positions, which are most important for the public.

- **Laws, regulations, decisions and rules of procedure** related to the local assembly, mayor and municipal authorities should be carefully read. This is a precondition for good reporting on the activities of local administration. In such cases, journalists cannot be excused for a lack of knowledge about certain issues or for an erroneous interpretation of some of the decisions of local authorities.

An example can be the provincial, city or municipal budget. It is important to know the procedures involved in formulating a budget and the participation of certain bodies of local authority in that process. It is also necessary to know what the budget consist of, or how it is financed: which are direct financial sources and what comes from the republic budget. Budget spending should also be carefully examined. Actually, it is on the priority list of local authorities and that fact can be used to assess to what extent the local authorities focus on the fundamental interests of a particular community, and to what extent they focus on strengthening the position of local political leaders and parties. In addition, it may also be assessed whether personal or party interests are pursued more or less indirectly. Similarly, it is possible to analyse each decision taken by the local authorities or their bodies.

- **“Just follow the money”** – is a well-known and universal maxim that can be applied to local communities. Money flows will clearly indicate any type of protectionism. Contrary to big towns or the state, this is more visible in small places. For example, an official, a politician or a businessperson suddenly becomes wealthy. Certainly, not all money is questionable, and journalists have to be careful and thorough in order to avoid mistaken judgements against those who work legally.
- In smaller communities, it can be difficult to find **relevant expertise**, since it is impossible to find independent experts. Journalists from local media usually hesitate to look for experts in bigger centres. It does necessarily require more effort or time, and even the most well known experts rarely refuse to co-operate. Therefore, if in addressing topics important to the local community, local journalists obtain an assessment from an independent expert, no doubt the entire research will be more convincing. Nowadays, a large number of national universities, institutes and scientific institutions are accessible through the Internet, which makes it rather easy to establish contact with relevant experts, and engage them for analysis. It is extremely useful, in particular because the local public will be more likely to believe stories that are not based on the

analyses of journalists or local experts since they may be supposed to have connections with local actors, or be in conflict with them.

- **Opinion polls** are a very attractive “spice” in journalism, which give additional up-to-datedness and authenticity to reporting. This applies to all areas, from green market prices to the most complex political, economic or cultural issues. However, authors often make a mistake, which leads the audience to the conclusion that the views of residents of a certain town are representative, or constitute prevailing opinion. Therefore, it is important to always indicate that the expressed views were given by randomly chosen respondents. A representative opinion may be obtained only by conducting professional public research.
- **Children** require a special approach and particular attention. In that respect, there are special instructions and recommendations for writing about children, and for their treatment in media. In addition, it is particularly unacceptable for journalists to patronise children or inappropriately (mockingly) act as if their age. Children are persons that deserve utmost respect. That is why they must be treated with dignity in newspapers, on radio and TV.
- Often, there is a problem with **using documentary materials** to illustrate a current topic, since many media outlets fail to acknowledge that archival materials are being used. Regardless of the high quality of documentation (excerpts from previous texts or radio and TV programmes), it is necessary to indicate that these are not current materials in order to avoid confusion.
- **Professional training and education** should become regular practice in all media outlets. Over the past several years, many international organisations conducted media training, from basic courses to specialised training and research journalism. Continuous training is common practice in all major international media outlets, and some (BBC, for example) have special departments that deal exclusively with training. All journalists, depending on the level and quality of professional experience, occasionally attend courses or special thematic seminars. In the local media in Serbia, there is growing interest in additional training and education among journalists and editors. Such opportunities should not be missed, since they can substantially improve the quality of this profession.

## How to evaluate a local administration?

This is a very important issue, particularly if media and non-governmental organisations wish to be impartial and avoid being excluded. Local authorities make decisions all the time on issues directly affecting the life of a community (for example, allocating funds for the development of certain activities, communal infrastructure, etc.). Based on such experience, decisions would be most efficiently evaluated according to the following criterion: ***the greatest number of people should benefit from the decisions over the longest period of time.*** If a decision of a local administration is to the benefit of a small group of people, we can hardly speak of public interest. Obviously, this is a general pattern and it takes a great deal of tact to evaluate a decision made by local authorities. One should be particularly careful when addressing some of the most serious problems that may affect a small group of people, a family or an individual. In such situations, interventionist measures are usually undertaken, which should be followed by a systemic resolution of the problem. If this does not happen, particularly in some specific situations (for example, just before elections), there may be a reason to suspect political manipulation. In addition, favouring party sympathisers – and business connected to political interests – causes concern among citizens, media and the civil sector.



## VIII

# THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

THE RIGHT TO FREE ACCESS TO INFORMATION REPRESENTS AN EFFICIENT TOOL FOR THE PUBLIC IN COMBATING CORRUPTION AND THE ABUSE OF POWER. EFFICIENT OVERSIGHT OF THE WORK OF STATE BODIES IS POSSIBLE ONLY IF INFORMATION IS MADE AVAILABLE. IN ORDER FOR CITIZENS – AND REPRESENTATIVES OF THE MEDIA AND NON-GOVERNMENTAL SECTOR – TO SUCCESSFULLY UTILISE THIS MECHANISM, IT IS NECESSARY THEY LEARN HOW, WHAT TYPE OF INFORMATION TO SEEK, AND FROM WHOM, AND HOW TO PROTECT THIS CRUCIAL RIGHT. THE FOLLOWING TEXT ADDRESSES THESE QUESTIONS.



RODOLJUB SABIC

## THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

The right to free access to information of public interest, or access to information possessed by authorities was included in Serbian legislation through the adoption of the *Law on Free Access to Information of Public Importance*. With its entry into force on November 13, 2004, Serbia joined a large number of countries that guarantee in their constitutions and other legislation citizen access to information of public importance.

This right, though relatively unknown in Serbian society, does not represent anything new in democratic countries. Like many other democratic institutions, the right to free access to information was first formulated by a law in Scandinavia – more precisely in Sweden, nearly two and half centuries ago. Later, gradually at first and then gaining momentum in the second half of the 20th Century – it is currently incorporated in the legal systems of close to one hundred countries.

IT SHOULD BE NOTED THAT THIS RIGHT HAS BEEN EMBRACED BY STATES, BUT ALSO BY INTERNATIONAL ORGANISATIONS. THE EUROPEAN UNION FOUNDING AGREEMENT EXPLICITLY MENTIONS AVAILABILITY OF INFORMATION IN POSSESSION OF ITS PARLIAMENT, THE COMMISSION AND THE COUNCIL OF MINISTERS, WHILE THE CHARTER ON THE FUNDAMENTAL RIGHTS OF THE CITIZENS OF THE UNION ALSO GUARANTEES THE FREE ACCESS TO INFORMATION.

*There are at least four reasons to adopt such legislation:*

- Modern democratic societies are based on the **active participation** of citizens in public life. This involves the possibility that citizens directly participate in public life, influence the content and quality of relevant decisions, and participate in the conduct of public affairs and exercise control or oversight over the authorities. In order to achieve that, information in possession of authorities has to be available to all citizens. Guaranteeing and exercising this right is a necessary precondition to achieve one of the fundamental goals of a modern democratic society – that the principle of “ruling” be replaced by the principle of “good governance”.

In a democratic society, **media and journalists** play a particular role. They are the “eyes” and the “ears” of the public, an important watchdog over the work of state authorities. To perform this role, they must have at their disposal relevant and documented information. Legal guarantees for the availability of information of public importance provide the necessary conditions to that end.

- Truly democratic societies can be recognised for their adoption of the regulations on free access to information and for implementing them efficiently in practice. Adopting the regulations is only a precondition for fulfilling the proclaimed goal. By actively seeking access to information and insisting on the respect of this right, citizens, journalists, media, non-governmental organisations and others must and can contribute towards **achieving democracy**.
- In 2002, the Council of Europe adopted a Recommendation to member states on access to public documents, thus inviting them to protect, through regulations, the interest of individuals, and enable them to efficiently control or oversee the work of state authorities. Our Law largely reflects the legal standards from this document. Undoubtedly, its qualities can be advanced only through implementation, which also makes it possible to establish shortcomings, if any, and eliminate them. For that reason, it is very important that citizens and media recognise it as an significant **tool for the control or oversight of authorities**, and that it is not perceived by democratic authorities as a set of imposed obligations, but as one of the elements of the relationship between authorities and the public

## Basic rules on the free access to information

### *1. Information of public importance*

***According to the Law, information of public importance is all information that derives or is related to the work of public authorities, is contained in certain documents, and related to the issues that the public has the right to be informed about.***

Therefore, the essential characteristic of information of public importance is that it is contained or materialised in a document. It is not important what kind of document it is - paper, film, tape, electronic or any other media. On the other hand, information that may be of interest to the public and is not materialised but represents mental content (ideas, plans, etc.), is not information of public importance, according to the Law.

### *2. Bodies of public authorities*

The Law provides access to information held by the entities designated as bodies of public authorities. ***This term refers to a large number of legal entities***, including many that are not usually defined as such. The bodies of public authorities, under the Law are the following:

- State bodies, bodies of territorial autonomy, bodies of local self-government, as well as organisations entrusted with public authorisations;
- Legal entities founded or financed (entirely or mainly) by a state body.

### *3. Legal presumption of justified interest*

The Law anticipates the presumption of justified interest of the public to be informed of all information held by public authorities. ***Requestors of information do not have to explain, and should not prove their interest and particular justifiability of that interest.*** Bodies of public authority should not ask for any justification from the requestor.

The presumption of justifiable interest on the part of the public is absolute when it relates to information concerning the threat and protection of life and health of people and their environment. Bodies of state authority must not deny access to such information.

The same presumption applies, though relatively, to all other information held by public authorities. It means that bodies of state authority may, as stipulated by the Law, deny access to this information.

#### *4. Users and the essence of the right to free access to information of public importance*

**Everybody and under equal conditions is entitled to free access to information.** It is not important whether the requestor of information is a domestic or foreign citizen, foreign or domestic legal entity. The right does not depend on permanent residence, temporary residence, or head office and there can be no discrimination on any personal grounds (such as national or ethnic background, religion, race, gender or disability).

The essence of the right to free access to information is multifaceted. In fact, this right combines **four basic elements**:

- the requestors' right to be informed whether certain bodies of state authority hold certain information or whether certain information is available;
- the requestors' right to be enabled to access information of public interest, by being provided with insight relevant to the document which contains the requested information;
- the requestors' right to be provided with a copy of the document which contains requested information, with the payment of fee;
- The requestors' right to receive a copy of the document sent by post or through other means, with the payment of a fee.

The requestor of information has the right to freely decide which of these rights he/she will exercise, and the state authorities can impose no limitations in that respect.

## Procedure for exercising the right

### 1. Request to initiate procedure

The procedure for exercising the right to free access to information is initiated by **filing a request to a state authority body that holds particular information**. The request can be submitted orally or in writing. For practical reasons, it is more convenient to submit a request in writing, but authorities must not refuse oral requests, and must record them. In addition to the name of the state body, and full name and address or the seat of the requestor of information, the request must contain content that describes the requested information, as well as a note specifying the way of exercising the right, and any other information that could help facilitate the process of finding the requested information. If the request lacks necessary data, the relevant body of state authority is obliged to instruct the requestor how to improve their request, and to determine an adequate deadline for resubmission. If the requestor fails to correct these shortcomings or fails to add necessary data to his/her request, the state authority may reject the request as inappropriate.

### 2. Processing requests for access to information

The state authority bodies shall be obliged to respond to a request without delay, and not later than within **15 days of its receipt**. This entails that within a 15-day period the state will inform the requestor on whether it has the requested information, to enable the requestor to access the document containing the requested information and, if requested, to issue a copy of the document.

In case the state authority bodies is unable to process the request within the stipulated deadline, and if for justified reasons, it will inform the requestor immediately and set another deadline, within a maximum of 40 days from receiving the request.

If the requested information concerns the protection of life and freedom of individuals, threats or protection of environment or public health, the state authority shall be obliged to respond to the request within 48 hours.

In the event that the state authority rejects the request, fully or partially, for reasons stipulated by the Law, it shall be obliged to issue a separate decision.

It is contrary to the Law to deny access to information, or to reject the request through informal statements (oral or in writing), and particularly to ignore a request. Contained in the procedure for exercising the right to free access to information of public importance, the so-called “silence of the administration” is prohibited. Therefore, if a request is rejected, the public administration is obliged to issue a separate document/administrative act, containing the applicable justification and legal remedy.

### *3. Costs related to access to information*

***Information on whether a body holds the requested information and access to the document*** in which it is contained, ***shall be free of charge.***

If someone requests the delivery of a copy of the document, he/she shall be obliged to pay the costs associated with preparing and sending of the document. Journalists are exempted from paying these fees if they request copies of documents for professional reasons; also exempt are associations for human rights protection, if the requested information is intended towards achieving their goals. If the requested information concerns threats or relates to the protection of the environment or public health, all requestors, regardless of their status, shall be exempted from paying the costs of preparing and/or sending documents

## **The procedure to protect this right**

### *1. Procedure with the Commissioner for Information of Public Importance*

The requestor may lodge a complaint with the Commissioner for Information of Public Importance in the following scenarios –

- If state authority fully or partially rejects a request for information;
- fails to process a request within prescribed deadlines;
- conditions the release of a copy of a document with a payment of fees exceeding that of the actual cost;
- fails to provide insight into the document;

-fails to make the document available in the language in which the request has been submitted (although it possesses the document in that language).

***A complaint to the Commissioner may be lodged within 15 days of the receipt of a decision to deny the request, or the day when the requestor was prevented to exercise the right to access information pursuant to the Law.***

After allowing the bodies of state authority to make a statement, and upon verifying and establishing the facts according to which the disputed decision was made, ***the Commissioner for Information will decide upon a complaint without delay, and not later than 30 days from when the complaint was lodged.***

The Commissioner's decisions are legally binding. The state authority, which has been ordered to provide the requested information, provide insight into the document, or deliver a copy of the document, shall be obliged to act in line with the Commissioner's decision. If necessary, the Government of the Republic of Serbia shall intervene with respect to the execution of the Commissioner's decision.

## *2. Procedure before the Supreme Court*

The requestor is not permitted to lodge a complaint with the Commissioner for Information of Public Interest in cases explicitly prohibited by the Law, that is, in cases where the following six state bodies have denied access to the requested information:

- **The National Assembly of the Republic of Serbia,**
- **The President of the Republic of Serbia,**
- **The Government of the Republic of Serbia,**
- **The Constitutional Court of Serbia,**
- **The Supreme Court of Serbia,**
- **The Republic Public Prosecutor.**

The fact that these six bodies exclude the right to formally complain to the Commissioner ***should not be interpreted as though these bodies are above the Law.*** All obligations prescribed for the bodies of state authority apply to the above-mentioned bodies; the only difference is that in these cases, the pro-



tection of the right to free access to information of public importance is different. The protection against decisions or acts of the above-named authorities can be realised through an administrative dispute, initiated by lodging a complaint before the Supreme Court of Serbia.

Under the Law, the legal remedy against a decision by the Commissioner is an administrative dispute that may be initiated before the Supreme Court.

To date, some bodies of public authority using this option have lodged complaints before the Supreme Court against the decisions of the Commissioner. In all of these cases (those concluded up to this point), the Supreme Court of Serbia has rejected the complaints as inadmissible. Therefore, only dissatisfied requestors of information can utilise the possibility of initiating an administrative dispute against the decision of the Commissioner. Hence, only the requestors, and not the first-instance public authority, may initiate an administrative dispute against a decision by the Commissioner or if the Commissioner failed to issue a decision on their complaint within the prescribed deadline.

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It is obvious that the Law on Free Access to Information of Public Importance challenges the interests of individuals and groups. Though these interests vary, their common feature is the fact that in a democratic society they cannot be legitimate. The Law envisages new obligations for those who work within organs of public authority, but also gives them another opportunity to affirm positive results, if any. Nonetheless, there is a gulf between this Law and the sluggishness of a traditionally conservative society with an atmosphere in which the monopoly over “secret” information continues to be a tool with which to control or influence important social processes. As such, the consistent implementation of this Law is in the interest of the majority of individuals who aspire to live in a democratic and prosperous society.

***Ignorance has been one of the major opponents of this law from the very beginning.*** Citizens and the media have not been familiarised with the essence of their rights or ways to exercising them. Not even those employed in the bodies of state authority have had relevant information, and for that reason, the majority have been unprepared to respond properly to their new obligations.



Since the adoption of the Law, things have changed significantly. We do not have to be satisfied with the tempo of these changes, but we can neither deny that they are happening.

In that sense, it is important to note that although the process is slow and inconsistent, citizens have begun to understanding that the right to free access to information has both an active and a passive component, and both are equally legitimate.

*The first, active component* implies the right of each person to request and receive information of public importance, and the obligation of state bodies to respond to this right responsibly.

*The second, passive component* implies the obligation of the state to expand the amount of documented information, deriving from its work or related to the work of state authorities, which is available to the public even before it is requested.

The existence of both components forms a basis for exercising the right to free access to information guaranteed by the Law (and recently by the Constitution), and is an essential precondition for effective public participation in the process of making informed decisions. In this way, this right becomes a practical instrument to exercise accountability over authorities, and a powerful tool for combating abuse and corruption.



## USEFUL WEBSITES FOR FURTHER INFORMATION ON THIS TOPIC

<b>OSCE</b>	<a href="http://www.osce.org">www.osce.org</a>
<b>Council of Europe</b>	<a href="http://www.coe.int">www.coe.int</a>
<b>Standing Conference of Towns and Municipalities</b>	<a href="http://www.skgo.org">www.skgo.org</a>
<b>Ministry for State Administration and Local Self-Government</b>	<a href="http://www.mpalsg.sr.gov.yu">www.mpalsg.sr.gov.yu</a>
<b>National Assembly of the Republic of Serbia</b>	<a href="http://www.parlament.sr.gov.yu">www.parlament.sr.gov.yu</a>
<b>Government of the Republic of Serbia</b>	<a href="http://www.srbija.sr.gov.yu">www.srbija.sr.gov.yu</a>
<b>Republic Board for Resolving Conflicts of Interest</b>	<a href="http://www.sukobinteresa.sr.gov.yu">www.sukobinteresa.sr.gov.yu</a>
<b>Independent Association of Journalists of Serbia</b>	<a href="http://www.nuns.org.yu">www.nuns.org.yu</a>
<b>Association of Journalists of Serbia</b>	<a href="http://www.unsonline.org">www.unsonline.org</a>

**The regulations relevant to local  
self-government in Serbia are available at:**

<http://www.drzavnauprava.sr.gov.yu/pages/documents.php?id=21>

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