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Referendum and Civil Initiative Referendum i građanska inicijativa



DEZA DIREKTION FÜR ENTWICKLUNG UND ZUSAMMENARBEIT
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DSC DIREZIONE DELLO SVILUPPO E DELLA COOPERAZIONE
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4 MODEL DECISION ON REFERENDUM AND CIVIL INITIATIVE (WITH COMMENTS)

4.1 Importance of Citizens' Participation in Decision-Making at the Local Level

One of the first conditions of local democracy is the participation of citizens at the local level. Although the Constitution of Serbia (Official Gazette of the Republic of Serbia, No. 1/90) contains general provisions on referendum and citizens' initiative, the Serbian Law on Referendum and People's Initiative (Official Gazette of the Republic of Serbia, No. 48/94, 11/98), the Law on Local Self-Government (Official Gazette of the Republic of Serbia, No. 9/02), as well as the internal municipal legal acts (statutes and other acts), do not provide appropriate provisions to enable a more active citizens' participation in local decision-making.

Forms of citizens' participation stipulated by the Law on Local Self-Government in Serbia consist in referendum, citizens' initiative and citizens' meetings. Serbian and Swiss legal teams set up a model of decision on referendum and citizens' initiative which contributes to the improvement of legal instruments that would increase citizens' participation at the local level.

This model decision represents a transitional solution in the reform of the legal system toward a legally more detailed citizens' participation on the local level.

Provisions of this model decision are the results of joint work of the Swiss legal team: Professor Walter Kälin, Mirjam Strecker and Mengistu Arefaine and the Serbian legal team: Professor Stevan Lilić, Professor Predrag Dimitrijević and Dragan Vujčić.

The comments of the provisions, made by the Serbian legal team, represent one of the possible propositions in legal regulation of referendum and citizens' initiative, which we can offer to local authorities in Serbia.

4.2 Model Decision on Referendum and Citizens' Initiative

The Assembly of the Municipality of [insert name], on the basis of Art. [insert relevant article]²⁰ of the Statute of the Municipality of [insert name] (Official Gazette of the Municipality of [name], No. [insert number], in accordance with articles 66 and 68 of the Law on Local Self-Government (OGRS 9/02) and in accordance with the Law on Referendum and People's Initiative (OGRS 48/98 and 11/98) enacts the following decision:

I GENERAL PROVISIONS

Art. 1 Content of this decision

¹This decision regulates the details for exercising referendum and citizens' initiative in the Municipality of [insert name].

The Law on Local Self-Government (OGRS 9/2002), contains substantive (material) law in this area as it defines forms of direct citizens' participation in local decision-making and practice of local democracy. On the other hand, the Law on Referendum and Peoples Initiative (OGSR 48/94, 11/98) regulates the referendum and citizens' initiative procedure that is to be conducted at the local level. This law is by its legal nature a procedural law and as such has to be complementarily implemented with the Law on Local Self-Government. Based on these laws, the local authorities elaborate procedures of direct citizens' participation in their statutes and decisions. Referendum and citizens' initiative procedures are to be regulated by a special decision adopted by the local assemblies.

Art. 2 Commission on Referendum and Citizens' Initiative of the Municipality

¹For the purposes of conducting the procedure of the referendum and the citizens' initiative, the municipal assembly establishes the Commission for referendum and citizens' initiatives (Commission) and elects its members.

²The mandate of the Commission shall be four years.

³The Commission consists of 5 to 9 members who shall not be at the same time members of the municipal assembly.

⁴The president and the deputy president of the Commission must be lawyers by profession.

⁵The Commission performs the tasks set out in this decision.

²⁰ Model Statute provision (in case the Statute needs to be amended):

¹ "Forms of direct participation of citizens in local self-government are the following: the referendum, citizens' initiative and citizens' meeting.

² The manner in which these forms of direct participation of citizens are realized as well as the establishment of the body for conducting the procedure of the referendum and the citizens' initiative shall be determined by decision of the municipal assembly."

For the legal and efficient implementation of referendum and citizens' initiative procedures, and for the legal protection of all participants in the procedure, the municipal assembly forms a separate commission as its working body. The assembly is entrusted with activities related to the referendum and for that purpose it forms a separate commission by its decision. The scope of responsibility and working procedure of the commission is defined by this decision. The commission members' mandate is linked to the duration of the assembly mandate. Due to the nature of activities of the commission, its president and deputy should be graduated lawyers with experience in these electoral matters. The commission is chosen by a majority of votes of the members of the municipal assembly present. Issues related to the nomination and election procedures are defined in the municipal statute.

Art. 3 Assistance of Municipal Administration

¹The municipal administration shall provide professional and administrative-technical assistance in all matters related to the referendum and citizens' initiative, particularly in formulating citizens' initiatives.

The municipal administration is a professional service of the local government. It can be organized differently, either as a unified service or divided into secretariats, divisions and units, depending on the size and activities of the local unit. The head of the municipal administration (or its unit) designates the persons or departments that will provide professional assistance (e.g. keeping of voters registers) related to conducting the referendum or citizens' initiative. The municipal administration provides professional assistance not only to citizens (e.g. the citizens' initiative committee), but also to the referendum commission. Relations between the commission and the municipal administration should be those of cooperation and mutual assistance.

II THE REFERENDUM

Art. 4 The referendum

¹By referendum, citizens approve or reject a decision of the municipal assembly.

The referendum is an instrument by which citizens directly express their will in regard to a decision of the municipal assembly. Only decisions of the municipal assembly, and not of the municipal council, administration or other organs or units of the municipality may be subject to referendum. The main reason why only decisions of the municipal assembly may be subject to the referendum is that the referendum slows down the process of decision-making considerably (suspension of entry into force of decision subject to referendum, obligation to publish all decisions subject to referendum, etc.). It is not appropriate to allow this for all decisions taken by any municipal organ.

Referendum issues are thus confined and related only to decisions of the local assembly. The referendum implies the formal existence of a municipal assembly decision on which citizens' vote. The outcome of the citizens' vote, regarding the already formulated assembly decision, can be the acceptance or rejection of that decision. If citizens accept the municipal decision in the referendum, that decision enters into force, and if they reject it — it is considered void.

Art. 5 Municipal referendum

¹The municipal assembly may on its own initiative call a referendum on one of its decisions.

The Law on Local Self-Government, in its Article 68, defines the right of an assembly to call for a referendum on its own initiative pertinent to issues within its field of competence. The aim of such a referendum is to obtain support of the citizens for an assembly decision. In such cases, for an issue to become subject of a referendum, collecting signatures is not required. It is the municipal assembly that decides to call a referendum, i.e. to ask its citizens to directly decide *pro* or *contra* on a certain municipal assembly decision.

As these decisions have special significance in the life and work of the citizens, legitimacy requires direct participation of citizens in their adoption and implementation. On the other hand, in this way the local authorities can transfer responsibility for major decisions directly to the citizens. These would most frequently be decisions on issues on which opinions are split and that the majority of population would have to implement (e.g. large investments, changing the status of the local community, etc.).

The referendum in part of the territory (article 69 LSG) is not covered by this model decision

Art. 6 People's referendum

¹The municipal assembly shall call a referendum on one of its decisions, if at least 10% of the citizens registered as voters in the municipality demand it by their signatures within a time period of 60 days after the decision has been published in the official gazette of the municipality.

²Together with the decision, citizens shall be informed in the official gazette of the municipality of the possibility of a referendum against that decision, the date until which the referendum board has to be established in accordance with Articles 8, paragraph 2 and 9 of this Decision, the absolute number of signatures required as well as the beginning and the end of the time available for collecting signatures.

This referendum is initiated by citizens themselves by demanding that a decision that has been adopted by the municipal assembly shall be put to a

citizens' vote. To have such a demand legally valid, signatures of a minimum of 10% of the registered voters of the municipality are required. The significance of the people's referendum is that the citizens of the municipality can control the actions of the municipal assembly. In accordance with the principle of transparency citizens must — first of all — be informed about all decisions against which they can introduce a referendum, if they want to do so. The publication of decisions that may be subject to a people's referendum is of fundamental importance. If citizens do not know about the decisions that have been adopted by the assembly, their right to introduce a people's referendum cannot be realized.

Moreover, for facilitating citizens' participation, the citizens should receive all information necessary for starting the procedure of the people's referendum (all decisions related to and containing conditions and procedures for holding such a referendum; date until which the referendum board has to be established; absolute number of signatures required as well as time period available for collecting signatures). All these kinds of information shall be published together with every decision of the municipal assembly against which a people's referendum is possible.

Art. 7 Decisions excluded from the referendum

¹The following decisions shall never be subject to a municipal or people's referendum:

- a. Decisions that are predetermined by higher-ranking legislation with no discretion for the municipality;**
- b. Elections and appointments made by the municipal assembly;**
- c. The budget;**
- d. Disciplinary decisions by the municipal assembly; or**
- e. Internal procedural regulations of the municipal assembly.**

Although, as a rule, all issues within the competence of the municipal assembly may be subject to referendum, there are reasons to make certain exceptions, i.e. to specifically define and stipulate the issues that are not subject to referendum. This means that it is necessary to precisely define which assembly decisions shall never be put on a referendum, regardless of the kind of referendum. The significance of this negative numeration is the preservation of legality, as it provides for an efficient functioning of the assembly and local governance. These are decisions related to the budget, elections and nominations, individual measures or decisions regulating internal procedural matters of the assembly, etc. Citizens are deprived of a chance to express their will regarding these issues through direct forms of democracy as this would slow down the activities of the assembly or open possibilities of decision-making on issues and measures beyond the competence of the assembly. On all these issues, however, citizens can decide indirectly (e.g. through their local assembly representatives).

In the following, the reasons for excluding the mentioned categories of decisions are shortly explained:

Decisions that are predetermined by higher-ranking legislation (point a): In some cases, the municipality has no discretion when enacting a decision because a higher legislation has already predetermined the content of the decision. In this case, i.e. where the municipal assembly has no discretion, the citizens cannot intervene, because higher legislation is binding also on them.

Elections and appointments made by the municipal assembly (point b): the Law on local elections, the LSG and the Statute regulate who is competent for electing or appointing whom. For some elections, citizens are competent according to these Laws. For others, the legislation has declared the municipal assembly as the competent body. If one would allow a referendum against the decisions of the municipal assembly electing e.g. members to its commissions or appointing staff of the municipal administration, this would result in a change of the system of competences and of accountabilities that have been introduced by the legal framework.

Budget (point c): Time is often too short even for the assembly to adopt the budget on time, because it can only be adopted after the Republic has issued its own budget; it is therefore not appropriate to additionally slow down the process of the adoption of the budget by introducing a possibility of referendum.

Disciplinary decisions (point d): Disciplinary procedures aim at assuring the lawful and proper functioning of the municipal administration. They should be based on evidence and legal arguments, not — or at least not only — on political considerations. Therefore, such decisions should not be taken by the citizens.

Internal procedural regulations of the municipal assembly (point e): The regulation of the internal functioning of the work of the municipal assembly is in its own responsibility, this is why citizens should not have a possibility to intervene in this domain.

Art. 8 Suspension of entry into force of decisions subject to the referendum

¹Decisions of the municipal assembly subject to referendum shall not enter into force during the period available for collecting signatures or, if enough signatures have been collected, before the citizen's vote has taken place.

²Decisions of the municipal assembly subject to referendum shall enter into force if within a period of 8 days since the publication of the decision in the official gazette of the municipality no referendum board has been established in accordance with article 9 of this decision and submitted the records of the meeting establishing such board to the Commission.

The significance of this provision is to prevent legal insecurity, i.e. the possibility of assembly decisions derogation during the referendum procedure. The time limit of eight days from publication is sufficient for the referendum board to announce the procedure for signature collecting and submitting the records of the meeting establishing such board to the Commission. In case the referendum board announces the procedure for a referendum within the given time limit and a sufficient number of signatures is collected before the referendum takes place, the decision of local assembly will not come to force during this whole period. If the decision of the local assembly is rejected in the referendum, it shall be considered void.

III SIGNATURES

Art. 9 Referendum board

¹For a people's referendum, at least 1% of the citizens registered to vote in the municipality but not more than 100 such voters, shall form a referendum board.

²The records of the meeting establishing the referendum board must contain:

- **a list of the names of the board members,**
- **their personal identification number,**
- **their address and their signatures verified by the competent body.**

³These records must be submitted to the Commission before the collection of signatures starts.

The Referendum Board is an ad-hoc body consisting of a minimum of 1% citizens of the municipality that are registered to vote. But this number should not exceed maximum of 100 persons having the right to vote and living on the local territory. The board members are the authorized and responsible persons for collecting signatures. The results of the actions of the board members; the fact that they constitute themselves as a referendum board together with the information provided for in para 2 of this provision, are recorded in a protocol, which is forwarded to the relevant commission.

Art. 10 The people's referendum list

¹The referendum board shall present a referendum list to the Commission before starting to collect signatures.

²The people's referendum list shall contain:

- a. The text: "With my signature, I support a people's referendum on the following decision: [insert title and date of the decision]";**

- b. The following data to be filled in by citizens who sign the referendum list:**
 - o name;
 - o address;
 - o personal identification number;
 - o signature;
 - o date of signing.
- c. The names of all members of the referendum board;**
- d. Signatures of all members of the referendum board;**
- e. The beginning and the end of the time available for collecting signatures.**

The Referendum Commission is a body established to evaluate whether the actions prescribed were undertaken in accordance with the law. The commission checks the referendum list before signature collecting begins. This is preventive control intended to provide for lawful and proper referendum procedures.

The regulation of the content (Para 2) is important for reasons of transparency. Citizens must know what they are signing (i.e. they must know the content of the decision at stake) and they should also know who is actually the driving force of the signature collection (i.e. who is member of the referendum board); because this may encourage or discourage them to give their own signatures.

Art. 11 Approval of the referendum list

¹The Commission, within 24 hours, shall approve the referendum list if it is in conformity with the requirements set out in article 10.

The commission has a tight time limit of 24 hours to check the list in order to prevent possible manipulation and secure referendum procedure efficiency. The time limit is short because citizens have 60 days to collect their signatures and should not be blocked for a too long time.

The approval of the referendum list also serves the interests of the referendum board: once the list is approved, the Commission cannot come back to this decision. The referendum board collecting signatures on approved lists can therefore be sure that what they do is in accordance with the law.

Art. 12 Collection of signatures

¹Signatures shall be collected by members of the citizens' referendum board and they are responsible for checking the identity of those who sign.

²A voter registered in the municipality may sign the referendum list only once. When signing the identity of the voter is checked.

³Upon the expiration of the period available for collecting signatures, the referendum board shall submit the completed referendum lists to the Commission.

The referendum board is responsible for the process of collecting the signatures and for checking the identity of those who sign. It can send various persons to various places where citizens are asked whether they would like to sign the referendum list. The referendum board has its own interest in checking the identity of the voters: it should make sure that all collected signatures are valid in order to know how many signatures remain to be collected to attain the required number. The referendum board decides how it is checking the identity of the voters and their voting rights (e.g. permanent and temporary residence from IDs or other relevant documents).

Upon the expiration of the deadline set in Article 10, point e, the referendum board forwards the final referendum list to the commission.

Art. 13 Decision on validity of the signature collection

¹If the Commission, after having checked the validity of the signatures, concludes that the number of signatures required by article 6 paragraph 1 is reached, it shall state, within 15 days since the deposition of the completed referendum lists, that the signature collection is valid and confirm this in writing to the referendum board.

²If the Commission, after having checked the validity of signatures, concludes that the number of signatures required by article 6 is not reached, it invites the referendum board to submit the required number of signatures within 48 hours. If after this delay, the required number of signatures is still not reached, the Commission shall state that the signature collection is not valid and shall give detailed reasons in writing to the referendum board.

³Decisions adopted by the Commission in accordance with this article shall be published in the official gazette of the municipality.

After the commission receives the filled in referendum lists, it checks whether those who have signed are actually entitled to vote in the municipality and if nobody has signed more than one time. It then informs the board about the results of the signature check. The checking procedure has to be prompt and the commission is given a 15-day time limit for this work. After the expiration of this delay, the commission informs the board on the outcome of the check. If the referendum list is incomplete as to the number of signatures or other formal elements, the board will be asked to complete the list within an additional time limit of 48 hours. The consequence of missing this deadline leads to the announcement that not enough signatures of citizens have been collected and that no referendum will be held (i.e. that the signature collection is not valid). Such a decision has to be thoroughly explained, in order to prevent possible misuse or manipulation and in order to allow a legal

verification of the reasons that have led to the decision of the commission. Since all persons that have signed the list — and even those that have refused to sign it — have an interest to know whether enough signatures have been gathered or not, the decision of the commission shall be officially published.

IV VOTE ON THE REFERENDUM

Art. 14 Decision on the announcement of the municipal referendum

¹If the municipal assembly decides, on its own initiative, to call a referendum on one of its decisions, it shall announce the citizens' vote.

²This announcement shall contain:

- the territory where the citizens' vote is to be held;**
- the wording of the decision the citizens decide upon in the citizens' vote;**
- the question put to the citizens: "Do you accept the decision [insert title and date of the decision] — yes or no?"**
- the date the citizens' vote will be held and the time determined for voting.**

³The period between the announcement of the date of the citizens' vote and the date of holding it cannot be less than 15 and not more than 60 days.

⁴The decision on the announcement of the municipal referendum shall be published in the official gazette of the municipality.

In the case of a municipal referendum when the local assembly wants to attain legitimacy on a decision from its field of competence, it shall inform the citizens in due time and precisely about its intention. It shall also announce to the citizens its intention for calling a referendum and make the text of decision available and accessible to the citizens. In that respect, the decision to call a referendum has to contain the relevant information.

In order to inform the public timely about the referendum, the decision on the announcement of the municipal referendum has to be officially published. Publishing the referendum decision is important for it is with its publication, that the time limit starts to count. Each municipality should define in its decision a concrete date for holding the citizens' vote. This date may not be earlier than 15, nor later than 60 days after the publication of the decision announcing the municipal referendum. Publishing the decision is intended to give citizens sufficient time to form and express their will regarding the decision. The time limits should depend on the size of the municipal territory, the number of inhabitants, the complexity of the topic, the agenda of the municipality, holidays etc. The date for the vote should be set so that a

maximum of citizens can take part (e.g. on a regular weekend, not during holidays). Publication of the decision is of constitutive character, meaning that the decision is not valid unless it is published.

Art. 15 Decision on the announcement of the people's referendum

¹If the Commission declares the signature collection valid, it shall announce the citizens' vote.

²This announcement shall contain:

- the territory where the citizens' vote is to be held;
- the wording of the decision the citizens decide upon in the citizens' vote;
- the question put to the citizens: "Do you accept the decision [insert title and date of the decision] – yes or no?";
- the date the citizens' vote will be held and the time determined for voting.

³The period between the announcement of the date of the citizens' vote and the date of holding it cannot be less than 15 and not more than 60 days.

⁴The decision on the announcement of the citizens' vote shall be published in the official gazette of the municipality.

Comments related to Article 14 are also applicable to Article 15 of this model decision. The difference is that in case of a people's referendum, the referendum commission, after checking and confirming the correctness of the collected signatures, adopts a decision by which it announces (publishes) the call for a people's referendum.

Art. 16 Citizens' vote

¹The citizens' vote on the decision of the municipal assembly subject to the referendum shall be held on the date fixed in the decision announcing it.

²This vote shall be conducted according to the provisions of the legislation regulating the procedure of referendum.

³The Commission shall certify the results of the vote.

⁴If the decision of the municipal assembly subject to the referendum is approved by a majority of the votes cast, provided that more than half of the total number of voters registered in the Municipality have voted, it shall enter into force 8 days after the certified results of the vote are published in the official gazette of the municipality.

⁵If the required majority for approval is not reached, the decision of the municipal assembly subject to the referendum shall be considered null and void.

⁶The decision of the Commission certifying the results of the citizens' vote shall be published in the official gazette of the municipality.

The voting procedure is carried out in accordance with the Law on Local Self-Government (OGRS 9/2002), the Law on Referendum and People's Initiative (OGRS 48/94, 11/98), the municipal statute, the municipal decision on referendum and citizens' initiative (i.e. the model decision, once it is adopted) and the decision to call for a referendum (according to art. 15 of the model decision). The commission confirms the voting results and its decision has to be published. If more than half of registered voters voted for the assembly decision, it enters into force within 8 days from the confirmation of the voting results. If the decision did not obtain a sufficient number of votes, the commission, by its decision on voting results, declares the referendum unsuccessful and the decision is considered void.

Art. 17 Modification of decisions

¹The decision approved or rejected by the citizens' vote cannot be placed on the agenda of the municipal assembly within 18 months from the date of the citizens' vote.

The decision that was subject to referendum may not be replaced by another decision during a defined time for reasons of legal security and respect of the will of the citizens expressed directly in the referendum. Moreover, an identical or similar decision cannot be considered or put on assembly session agenda during the same period. However, taking into account circumstances of reality, and that the needs and interests of both the citizens and the local community may change, the rule that referendum results may not be changed is confined to an 18 months period. Upon expiration of this period, the decision which was accepted or rejected on referendum may be included on assembly session agenda and decided on by the assembly; it may again be subject to a referendum.

V THE CITIZENS' INITIATIVE

Art. 18 Citizens' initiative

¹By citizens' initiative, citizens propose to the municipal assembly to amend or modify the statute or to adopt, amend or repeal any other general act within the jurisdiction of the municipal assembly.

²The citizens' initiative shall be signed by at least 10% of the citizens registered as voters in the municipality within a period of 60 days from the starting date of the collection of signatures.

The initiative is a legal instrument by which citizens make direct changes in the normative regulations at the local level.

The motion for an initiative comes from the citizens themselves, unlike the referendum which is based on a formal, already legally and technically prepared, shaped and published assembly decision that citizens express their will about.

The scope and content of an initiative proposal is, however, limited. Not every issue of local significance and relating to the local needs and interests of citizens may be subject to an initiative. By means of an initiative, the citizens can only express their will regarding issues that lie in the competence of the local assembly, and not another local organ. Furthermore, only general acts, not an individual decision of the local assembly can be proposed. If the subject of an initiative were to be extended to all decisions and general acts of all local organs, the initiative procedure would be complicated and legal security at the local level would be jeopardized. By means of an initiative, the citizens may propose changes, meaning the adoption of a general act from the competence of the local assembly. The adoption of the statute, as it is the main legal act of the local self-government, cannot be the subject of initiative of citizens. However, its alteration and amendment can subject of citizens' initiative [see Art.19 (2) (a) of this decision]. All other general acts within the competence of the assembly can be modified, amended and adopted by means of an initiative.

To have an initiative procedure legally and properly started and conducted, including signature collecting it is necessary to fulfil certain formal conditions, such as: the voters' census (10% of registered voters), signature collection, time limits (60 days), etc.

Art. 19 Initiative proposal

¹The content of the citizens' initiative is the initiative proposal. The initiative proposal shall be limited to a single issue within the jurisdiction of the municipal assembly.

²The initiative proposal can relate to the following:

- a) Modification or amendment of the statute; or**
- b) Adoption of a general act in the form of a new decision or**
- c) Modification of and/or amendment to an existing general act in the form of a decision; and/or**
- d) Repeal of a general act in the form of a decision.**

³The initiative proposal has to contain clear and concrete text in the form of a draft decision.

From the beginning, a citizens' initiative proposal must contain a legally and technically clearly formulated decision, in the form of a draft decision, which,

if accepted, will be implemented. To inform citizens clearly on what they will be expressing their will, to avoid uncertainty, ambiguity, and division of votes, the draft of the future decision must be confined to one question only. E.g. the same initiative proposal cannot propose that the main street is closed for motorized traffic, that shops are open until 6 p.m. and restaurants are closed at 11 p.m. Such proposals can bring citizens in favour for one proposal but who disagree with another proposal in a dilemma: in such cases, it is not possible for them to express their will with a single yes or no. Thus, a proposal should relate to only one question from the local assembly competence and must not be a combination of several topics or ideas, as to avoid the splitting of opinions. A combination of different questions in one proposal is only exceptionally allowed, when the different questions concern the same topic and are inherently linked (as, e.g., a proposal that the main street be closed for motorized traffic and at the same time another street be opened up for motorized traffic in order to avoid congestion).

The law prescribes what can be the subject of the citizens' initiative. The Law on Local Self-Government *ex lege* excludes some decisions from being subjects of citizens' initiative. Thus, a statute cannot be adopted by means of a citizens' initiative. All other general acts of the local assembly may be the subject of citizens' initiative.

VI CITIZENS' INITIATIVE COMMITTEE AND COLLECTION OF SIGNATURES

Art. 20 Citizens' initiative committee

¹For a citizens' initiative, 1% of the citizens registered to vote in the municipality but not more than 100 such voters shall form a citizens' initiative committee.

²The records of the meeting establishing the citizens' initiative committee must contain:

- a list of the names of the committee members,
- their personal identification number,
- their address and their signatures verified by the competent body.

³These records must be submitted to the Commission before the collection of signatures starts.

For the precise legal regulation of the citizens' initiative procedure, one of the basic issues to be defined is *who can start an initiative*. It is true that initiative belongs to the *citizens* and that they are entitled to start it, but they do this by means of a special body – the citizens' initiative committee which initiates the procedure. The committee consists of at least 1% but not more than 100 voters from the municipality. This minimum number of persons is to guarantee seriousness of the initiative proposal and proper procedure initiation. In this respect, a protocol from the meeting establishing the committee must contain detailed data on the committee members. A protocol form (model) should be made available. The committee shall forward this

protocol to the referendum and citizens' initiative commission, before starting to collect signatures. The commission examines the protocol.

Art. 21 The citizens' initiative list

¹The citizens' initiative committee shall present a citizens' initiative list to the Commission before starting to collect signatures.

²The citizens' initiative list shall contain:

- a. **The text: "With my signature, I support the following proposal: [insert name, date and wording of the proposed draft decision]";**
- b. **The following data to be filled in by citizens who sign the citizens' initiative list:**
 - o **Name;**
 - o **Address;**
 - o **Personal identification number;**
 - o **Signature;**
 - o **Date of signing.**
- c. **The names of all members of the citizens' initiative committee;**
- d. **Signatures of all members of the citizens' initiative committee;**
- e. **The beginning and the end of the time available for collecting signatures; and**
- f. **A clause authorizing the citizens' initiative committee to withdraw the initiative proposal in case the municipal assembly adopts a decision with the same or similar content.**

It is very important to regulate the initiative initiation and signature collecting procedure. There is, however, a preliminary procedure of checking by the commission, prior to the start of signature collecting. Before starting to collect signatures with which citizens express their opinion regarding the draft decision, the initiative committee shall submit a list of signatures for the initiative to the commission. The commission checks the formal correctness of the citizens' initiative list. Due to the significance and legal consequences of a citizens' initiative, the list has a strict form with predefined elements. The strict form is to guarantee that the draft decision that the citizens are going to express their opinion will be unambiguously clear and precise, that citizens know who the driving force of the proposal is, and that any manipulation is prevented. The signature collecting period must be known in advance, and the committee members guarantee the procedure regularity and lawfulness. As it is possible that the municipal assembly, during the period of signature gathering, enacts a decision with the same or similar content as the one proposed with the initiative, the committee should enable itself to stop the process of signature-gathering in this case. Therefore, the list must contain a clause of withdrawal.

Art. 22 Decision on admissibility of the citizens' initiative

¹The Commission shall verify that

- a. the initiative proposal meets the requirements of articles 18 paragraph 1 and 19 of this Decision;**
- b. the initiative committee has submitted its records to the Commission in accordance with article 20 of this Decision;**
- c. the citizens' initiative list meets the requirements of article 21 of this Decision;**
- d. the initiative proposal is not in violation of higher-ranking legislation and**
- e. the initiative proposal or the initiative list do not instigate violence nor incite racial, linguistic, ethnic, or religious hatred.**

²The Commission, within 15 days of receiving the citizens' initiative list, shall

- a. confirm in writing to the citizens' initiative committee that the citizens' initiative list and initiative proposal are admissible in accordance with the requirements of this article; and**
- b. inform in writing the citizens' initiative committee about the absolute number of signatures required as well as the beginning and the end of the time available for collecting signatures.**

³Once the text of the initiative proposal has been confirmed by the Commission, it may not be changed any more.

⁴If the Commission concludes that the citizens' initiative is inadmissible, it shall give detailed reasons in writing to the citizens' initiative committee.

⁵Decisions adopted by the Commission in accordance with this article shall be published in the official gazette of the municipality.

Subject to preliminary control procedures and examination by the commission is not only the formal correctness of the citizens' initiative list, but also formal and substantial elements of the initiative proposal (i.e. of the potential future decision that will have legal effects if supported by the majority of the citizens). The commission checks the content and form of the proposal to see if the subject of the initiative is *ex lege* permitted or not. Also, the draft is checked as to whether it fulfils the formal conditions of precision and clarity and if it is related to only one single issue. The commission only decides whether the proposal is admissible, i.e. if it meets all the requirements set out in articles 18-21 of this decision. This involves in no way a political judgment whether the initiative should be accepted or rejected.

The procedure of preliminary control by the commission is limited in time to 15 days from the day the initiative list is received. The nature and significance of this preliminary control require efficiency of the commission, as the list cannot be controlled endlessly, thus delaying the initiative procedure.

There are two possible outcomes of the preliminary procedure. The commission can take a decision of admissibility or of inadmissibility of the citizens' initiative. In the first case, the commission must issue a written confirmation to the committee that the list and draft proposal are accepted together with the information about the number of signatures needed to be collected and the deadline. The draft decision once confirmed by the commission may not be altered. Only in the confirmed formulation may it be subject to the opinion of the citizens. In the second case, if the commission concludes that the citizens' initiative is inadmissible, it takes a written decision containing detailed explanation of reasons for not admitting the citizens' initiative.

Regardless of the kind of the commission decision (admissibility or inadmissibility), the principle of transparency requires its decision be published in the official gazette of the municipality, in order to inform the public on the initiative proposal outcome and in order to enable any citizen or the initiative committee to introduce legal proceedings against the decision of the commission.

Art. 23 Collection of signatures

¹Signatures shall be collected by members of the citizen's initiative committee and they are responsible for checking the identity of those who sign.

²A voter registered in the municipality may sign the citizens' initiative list only once. When signing, the identity of the voter is checked.

³The citizens' initiative committee shall submit the completed citizens' initiative lists to the Commission not later than on the last day of the period available for collecting signatures.

The procedure of signature collecting is an important element of the process of citizens' initiative implementation. In fact, it is — besides the citizens' vote — the central procedural segment, as citizens with their signatures directly express their will related to the concrete decision proposal. During signature collecting numerous abuses are possible. This is why it requires attentive legal regulation and definition of the rights and duties of all participants in the procedure. Signatories can only be persons with the right to vote, i.e. registered voters on the territory of the local self-government unit. There can be only one signature per person regarding a concrete draft decision.

The persons collecting signatures must check each signatory's identity. The way of doing this is not defined, but in practice it is done by checking the person's identification card (passport, etc). If a citizen is personally known by

the person checking signature identities, the identity does not need to be double-checked. It is in the proper interest of the initiative committee to check the identity and the right to vote of those signing the initiative list. This is because if many signatures are being detected as invalid by the commission, it runs the risk that it does not reach the required number of signatures.

Upon expiration of the deadline for signature collecting, the committee shall forward the finalized and concluded citizens' initiative list to the commission for verification.

Art. 24 Decision on validity of the citizens' initiative

¹If the Commission, after having checked the validity of signatures, concludes that the number of signatures required by article 18 paragraph 2 is reached, it shall state, within 15 days since the deposition of the completed citizens' initiative lists, that the initiative is valid and confirm this in writing to the citizens' initiative committee.

²If the Commission, after having checked the validity of signatures, concludes that the number of signatures required by article 18 paragraph 2 is not reached, it invites the citizens' initiative committee to submit the required number of signatures within 48 hours. If after this delay, the required number of signatures is still not reached, the Commission shall state that the initiative is not valid and shall give detailed reasons in writing to the citizens' initiative committee.

³Decisions adopted by the Commission in accordance with this article shall be published in the official gazette of the municipality.

Following the signature collecting procedure, a verification sequence of the collected signatures takes place. Verification or confirmation of lists is done by the commission. Its task is to check whether the required number of signatures was collected and whether the signatures are formally correct, i.e. whether those who signed are actually entitled to vote in the municipality and whether no person has signed more than one time. If the commission finds that the required number of valid signatures has been collected, it will inform the citizens' initiative committee accordingly in writing.

If the commission finds that the required number of signatures has not been collected, it shall request the committee to collect additional signatures that are required, and set a new deadline of 48 hours. If the committee fails to collect the additional required number of signatures within the additional 48 hours, the commission declares that the initiative is not valid and informs the committee in writing.

The principle of transparency requires that all decisions made by the commission be published in the municipal official gazette. The publication opens up the way for legal remedies against the decision of the commission.

VII VOTE ON THE INITIATIVE PROPOSAL

Art. 25 Decision of the municipal assembly on the initiative proposal

¹If the required number of signatures is obtained, the initiative proposal shall be discussed and the proposed decision submitted to a vote in the municipal assembly within 60 days from the date of the publication of the decision according to art. 24 paragraph 1.

²If the proposed decision is adopted, the municipal assembly shall inform the citizens' initiative committee as well as the Commission in writing.

After the commission has declared the initiative valid and published its respective decision (art. 24), a vote takes place in the municipal assembly. This is the first time the proposal is discussed on a *political*, not legal basis. The municipal assembly discusses and votes on the citizens' initiative proposal. Again, the model decision provides for a time limit: The discussion and the vote in the municipal assembly shall be held no later than 60 days from the day of the publication of the decision on validity of the citizens' initiative by the commission. Note that art. 26 para 2 provides that in case the municipal assembly does not take its decision within the time period of 60 days, the commission announces the citizens' vote on the proposal.

There can be two possible outcomes of the voting in the municipal assembly. The assembly may accept, or the assembly may reject the initiative proposal.

If the municipal assembly accepts the initiative proposal, it shall inform the citizens' initiative committee and the commission. In this way, an initiative of the citizens, which involved efforts for signature collecting, becomes a normative, legally binding and valid decision, substantiated by the members of the assembly by vote, without a citizens' vote being held. In this case the citizens' initiative becomes successful.

Art. 26 Decision on announcement of citizens' vote

¹If the municipal assembly rejects the initiative proposal, the Commission shall, within 15 days from the date of this decision, inform the citizens' initiative committee about it and announce the citizens' vote on the initiative proposal.²¹

²If the assembly fails to take a decision within the period required by Article 25 paragraph 1, the Commission shall, within 15 days after the end of this period, announce the citizens' vote on the initiative proposal.

²¹ In the Law on Local Self-Government it is foreseen that the decision on announcing a referendum at the request of the citizens is made by the municipal assembly. This and the following article go a step further and propose a possible solution in the case the answer of the assembly is negative.

³This announcement shall contain:

- **the territory where the citizens' vote is to be held;**
- **the wording of the initiative proposal the citizens decide upon in the vote;**
- **the question put to the citizens: "Do you accept the following proposal [insert wording of the proposal] – yes or no?";**
- **the date the citizens' vote will be held and the time determined for voting.**

⁴The period between the announcement of the date of the citizens' vote about the initiative proposal and the date of holding it cannot be less than 15 and not more than 60 days.

⁵The decision on the announcement of the citizens' vote shall be published in the official gazette of the municipality.

Even if a sufficient number of citizens' signatures can be collected for the initiative proposal of the citizens' initiative, and on this fact the commission declares the citizens' initiative valid, the municipal assembly can reject such an initiative proposal. If the assembly rejects the initiative proposal of the citizens' initiative by not endorsing it with a sufficient number of votes (*negative decision*), the commission shall announce, within 15 days from the day of the assembly's negative decision, that a citizens' vote will be held on the initiative proposal and inform the citizens' initiative committee.

In case the municipal assembly does not act at all during the period of 60 days (i.e. it issues neither a positive, nor a negative decision), the commission announces, within 15 days, that a citizens' vote will be held on the initiative proposal. This is to make sure the assembly cannot block the whole process.

Thus, if the assembly rejects the proposal or does not take a decision on it within the defined time limit, the citizens may vote on that initiative proposal directly.

In such cases, the citizens' initiative has a genuine effect regarding the realization of the local democracy process. The citizens can propose and adopt new legal regulations at the local level even if the majority of the assembly is not endorsing their proposal. This is then a "real" initiative, since the proposal of the citizens' decision that meets all formal and material conditions cannot be stopped, neither by an insufficient number of assembly votes nor by the assembly's "silence". In this way, the initiative proposal of the citizens' initiative that has not been approved by the assembly goes directly to the citizens' vote and is subject to direct voting of all the citizens of the municipality. By citizens' vote, the majority of the citizens can overrule the majority of the assembly.

The Law on Local Self-Government does not prescribe the introduction of such a "real" initiative, since it obliges the municipal assembly only to give a "reasoned reply" to the initiative proposal coming from the citizens (see art. 66 para 2). However, para. 3 of the same article providing that signatures of

at least 10% of the electorate are needed for an initiative would not make much sense if one interprets the citizens' initiative in such a soft way. Bearing in mind that to collect signatures of 10% of the citizens requires considerable efforts, it is unlikely that citizens would use this instrument if they could expect only a reasoned reply from the municipal assembly. The model decision therefore proposes to shape the citizens' initiative as a real initiative, i.e. to provide for a citizens' vote in case the municipal assembly does not accept the initiative proposal.

The decision on the announcement of the citizens' vote must contain all vital elements informing the citizens what, where and when they are voting about. The time from announcing the vote to the actual time of vote cannot be shorter than 15, nor longer than 60 days (as with the referendum the duration of the period will depend on the size of the municipal territory, the number of inhabitants, the complexity of the topic, the agenda, holidays, etc.). As it is intended to inform the citizens of the municipality at large, the decision on announcing the vote has to be published in the municipal official gazette (transparency principle).

Art. 27 Withdrawal of an initiative

¹The citizens' initiative committee may withdraw the initiative as long as the date for the vote is not fixed.

In the case when the municipal assembly places on its agenda and votes to adopt a decision that is similar or identical to the initiative proposal from the citizens' initiative, the procedure of direct voting on the initiative proposal in a citizens' vote becomes meaningless (as a similar or identical decision is to be adopted by the municipal assembly). In this situation the committee decides on the withdrawal of the initiative proposal decision, since the assembly, on its own initiative adopts such a decision.

The initiative proposal can also be withdrawn for other reasons, but only before setting the date on which the citizens are to vote. The voting day is set in the decision on the announcement of the citizens' vote. After the day of vote is set, and as the public is already informed, the committee may not withdraw the initiative proposal.

Art. 28 Citizens' vote

¹The citizens' vote on the initiative proposal shall be held on the date fixed in the decision announcing it.

²This vote shall be conducted according to the provisions of the legislation regulating the procedure of referendum.

³The Commission shall certify the results of the vote.

⁴If the initiative proposal is approved by a majority of the votes cast, provided that more than half of the total number of voters registered in the Municipality have voted, it shall enter into force eight days

after certification of the result of the vote by the Commission. If the required majority for approval is not reached, the initiative is rejected.

⁵The decision of the Commission certifying the results of the citizens' vote shall be published in the official gazette of the municipality.

There are two possible outcomes of the citizens' vote on the initiative proposal, as the citizens can, by majority of votes, confirm or reject the initiative proposal. If the citizens, by directly expressing their will by a majority of votes, confirm the initiative proposal from the initiative, the initiative proposal becomes final and enters into force on the fifteenth day following the confirmation of the voting results by a decision of the commission. The imperative condition being that the initiative proposal is supported by more than half of the registered voters in the municipality.

On the other hand, if the required majority is not obtained for the initiative proposal, the commission will declare, in its decision certifying the results of the citizens' vote, that the initiative has been rejected. The required majority in this case is a simple majority of the total number of registered voters in the municipality. Such an outcome of the vote shows that the initiative proposal formulated in the citizens' initiative (and not accepted by the assembly) did not obtain wider support of citizens in the referendum, and as such is definitely rejected.

Art. 29 Modification of decisions

¹The decision accepted by the citizens' vote cannot be placed on the agenda of the municipal assembly within 18 months from the date of the citizens' vote.

The direct expression of the will of the citizens has to be respected and this expressed will may not be modified in any way, not even by decisions of the assembly (as a form of indirect democracy). Modification of decision may not be made and decisions may not be put on assembly session agenda within 18 months from the day it was subject to vote and accepted by the citizens. It is prohibited to place this issue in assembly procedure for a period of 18 months, as of the day when it was explicitly accepted by the citizens. The direct expression of the will of the citizens must be respected, as this reflects a serious attitude towards democracy.

However, decisions made directly by citizens are not indefinitely unchangeable, although they must remain unchanged for at least 18 months. The reason for this is that after a certain time the circumstances that existed at the time the decision were taken may change. However, such conditions should not be left without a possibility for future change, although because of political efficiency the local authorities would be reluctant to change an adopted decision without good reason.

VIII LEGAL REMEDIES

Art. 30 Objection against the results of a citizens' vote

¹Each voter registered in the municipality, the citizens' referendum board or the citizen's initiative committee shall have the right to submit, within 24 hours after the official publication of the results of a citizens' vote on a referendum or initiative proposal in the official gazette of the municipality, an objection against the certification of the results of a citizens' vote regarding irregularities in the conduct of the citizens' vote.

²Such objection shall be submitted to the Commission.

³The Commission shall reach a decision within 48 hours of the receipt of the objection.

⁴Against the decision of the Commission or if it does not decide within the given deadline, an appeal may be submitted to the Supreme Court by the person whose objection was rejected.

⁵The decision of the Supreme Court is final.

The objection regulated in this article is *only* against the decision of the commission certifying the results of a citizens' vote and it is *only* about irregularities in the conduct of the citizens' vote. Since the commission is not conducting itself the citizens' vote, it is appropriate that it can act as a first-instance judicial body here, with the possibility of an appeal to the Supreme Court as a second instance. In all other cases (irregularities in the commission's monitoring/controlling work), it is not appropriate that the commission acts as a judge on its own deeds. Therefore, complaints against acts of the commission go directly to the Supreme Court (see article 31).

Note that, besides the referendum board or the citizens' initiative committee, *every single voter* is entitled to file an objection. This is because it is in the interest of every single voter that the process of decision-making, in which he or she plays his/her part, is conducted lawfully and in a fair manner. Every single voter has the right to ensure that no result of a citizens' vote is certified which does not reflect the real will of the citizens.

According to the Law on Referendum and People's Initiative (article 27), the time limit for submitting a complaint is calculated from the time when the decision has been adopted. This formulation is not precise, as it is not clear whether it is the moment when the polling stations were closed, the moment of confirmation or the moment of the announcement of the decision. The moment when the results are announced, as the beginning of this short time limit, is the clearest formulation, as it is considered that only from that moment the results are known to the citizens.

Due to the legal nature and political significance of the referendum and citizens' initiative issues, legal protection in this area must be exceptionally efficient. Objection procedure is urgent: the objection must be filed within 24

hours after the publication of the results of the citizens' vote in the official gazette, and the Commission shall consider the objection and pass its decision within 48 hours the time the objection has been received

Art. 31 Complaint against acts of the Commission

¹If a voter registered in the municipality, the referendum board or the citizens' initiative committee thinks that the Commission acted incorrectly when performing its tasks according to articles 11, 13, 22 and 24 of this decision, a complaint may, within 48 hours from having received the decision of the Commission], be submitted to the Supreme Court of the Republic of Serbia.

²The Supreme Court shall decide on the complaint within 48 hours of its receipt.

³The decision of the Supreme Court is final.

The commission for referendum and citizens' initiative has a very significant control function in the referendum and citizens' initiative procedure. The basic function of the commission, besides monitoring referendum procedure, is the control of various proceedings (e.g. committee protocols and referendum list checking). In a procedure of checking the correctness of the collected signatures, the commission adopts a decision verifying the collected signatures. Due to this concentration of monitoring and control powers, legal means must be provided for the protection against irregularities in the work of the commission when performing its monitoring and control functions. Irregularities in the work of the commission can have the form of various violations of the law, breach of legal interests, transgressions and abuse of authority.

The legal remedy here is a complaint which can be submitted by any citizen having the right to vote in the municipality, and/or by the referendum board or the citizens' initiative committee. The subject of the complaint is the irregularity of the work of the commission when carrying out its functions under art. 11 (approval of the referendum list), art. 13 (decision on validity of the signature collection), art. 22 (decision on admissibility of the citizens' initiative) or art. 24 (decision on validity of the citizens' initiative) of the model decision.

The time limit for submitting a complaint is 48 hours from having received the respective decision of the commission. The decision of the Supreme Court is final.

Note that a separate solution is provided for the legal verification of the decision of the Commission certifying the results of a citizens' vote (article 30) and that the respective time limit for submitting an objection is different (24 hours).

Art. 32 Entry into Force

¹This Decision enters into force 8 days after being published in the official gazette of the municipality of [name of municipality].