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Standing Conference of Towns and Municipalities

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Program podrške opštinama

Referendum and Civil Initiative
Referendum i građanska inicijativa

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FOREWORD

The right of citizens to have access to referendum and initiative is crucial for democracy. It allows them to participate in the decision-making and decision-shaping of a country. Genuine democratic rights are essential for citizens' commitment, and their active contribution in fostering democratic values.

Rule of law and democratic principles are furthermore bridges and guarantors for successful transitions. By providing citizens with the crucial democratic instruments, politics ceases to be a monopoly of political elites, and the wisdom of the people becomes the guide showing the way into the future. The introduction of real democratic instruments is also one of the essential pre-requisites for Serbia's European integration.

Citizens' initiative and referendum have for a long been time unique characteristics of Switzerland. The history of direct democracy in this context is fascinating. The roots of the Swiss direct democratic instruments reach back to many centuries ago, to the so called "Landsgemeinden", which functioned as general assemblies of male citizens to settle law. This political concept influenced Rousseau and consequently the French revolutionaries who wrote the Constitution of August 1793, containing a clause for citizen-initiated referendums. But this legal document has never come into effect. In Switzerland, however, after 1830 referendums became common at the cantonal level. Then, by the end of the last century initiatives and referendums became quite popular all over Europe.

Today Switzerland can share its experience in the field of initiative and referendum with partners from all over the world. Of course, every country has to work out its own model and methods, adapted to its needs. In Serbia, the Swiss government contributes to the process by the Municipal Support Programme (MSP), an implementing partner of the Swiss Agency for Development and Cooperation (SDC).

This very brochure is the result of joint efforts of experts from Switzerland and Serbia, supported by the Standing Conference of Towns and Municipalities (SCTM) as well as representatives of the MSP partner municipalities — Arilje, Čačak, Čajetina, Kraljevo, Požega and Užice. The two legal teams have been led by Professor Walter Kälin of the University of Bern and Professor Stevan Lilić of the University of Belgrade.

The wish to involve citizens in decision making and to secure grounds for direct democracy was at the origin of the process for improving the municipal legal framework for citizens' initiative and referendum. The "Model Municipal Decision on Citizens Initiative and Referendum" is based on the Serbian "Law on Local Self-Government". It was elaborated in the light of the Swiss experience and adapted to the specific Serbian context.

With this valuable booklet on the "Model Municipal Decision on Citizens Initiative and Referendum" the Swiss Municipal Support Programme and its partner municipalities contribute again[1] to a key issue in local governance. The brochure will be made available to all municipalities in Serbia through dissemination by the SCTM, a crucial partner of the project. I am sure that the ideas in the booklet will be helpful to the Serbian Municipalities for their legal work concerning direct citizens' participation.

Wilhelm Meier
Ambassador of Switzerland, Belgrade

[1] The first booklet, published in 2004, is titled „Review of Municipal Statutes"

PREDGOVOR

Pravo građana na referendum i inicijativu je jedan od suštinskih vidova demokratije. Ovo pravo im omogućava da učestvuju u formulisanju i donošenju odluka u svojoj zemlji. Suštinska demokratska prava su osnov predanosti građana demokratskim vrednostima i njihovog aktivnog zalaganja za ostvarivanje tih vrednosti.

Vladavina prava i demokratski principi su, osim toga, mostovi i garanti uspešne tranzicije. Kada se za građane obezbede suštinski demokratski instrumenti, onda politika prestaje da znači monopol političkih elita, a mudrost naroda postaje vodilja koja pokazuje put u budućnost. Uvođenje stvarnih demokratskih instrumenata je i jedan od osnovnih preduslova za integrisanje Srbije u Evropu.

Građanska inicijativa i referendum su dugo bili kategorije karakteristične samo za Švajcarsku. Istorija neposredne demokratije u tom okruženju je fascinantna. Koreni neposrednih demokratskih instrumenata u Švajcarskoj sežu mnogo vekova unatrag, sve do tzv. „Landsgemeinden" (zbor, na otvorenom, svih građana muškog pola starijih od 18 godina) na kojem se raspravljalo i glasanjem odlučivalo i koji je funkcionisao kao generalna skupština muškaraca za regulisanje pravnih pitanja. Ovaj politički koncept je uticao i na Rusoa, pa tako i na francuske revolucionare koji su napisali Ustav od avgusta 1793. sa klauzulom o referendumima na inicijativu građana. Međutim, taj pravni dokument nikada nije stupio na snagu. U Švajcarskoj, pak, posle 1830, referendum na nivou kantona postaje uobičajen. A onda, krajem prošlog veka, inicijative i referendumi postaju popularni širom Evrope.

Danas Švajcarska svoje iskustvo sa inicijativom i referendumom može da prenosi partnerima širom sveta. Svaka zemlja, naravno, mora da izradi sopstveni model i metode prilagođene svojim potrebama. U Srbiji, vlada Švajcarske pomaže ovaj proces kroz Program podrške opštinama — MSP koji finansira Švajcarska agencija za razvoj i saradnju — SDC.

Ova konkretna brošura je rezultat zajedničkog rada stručnjaka iz Švajcarske i Srbije, uz pomoć Stalne konferencije gradova i opština — SKGO i predstavnika partnerskih opština MSP-a, a to su Arilje, Čačak, Čajetina, Kraljevo, Požega i Užice. Na čelu dva pomenuta pravna tima su bili profesor Walter Kälin sa Univerziteta Bern i profesor Stevan Lilić sa Univerziteta Beograd.

U začetku procesa unapređivanja pravnog okvira za građansku inicijativu i referendum bila je želja da se građani uključe u donošenje odluka i da se obezbede osnove za neposrednu demokratiju. Brošura „Model opštinske odluke o građanskoj inicijativi i referendumu" se zasniva na *Zakonu o lokalnoj samoupravi* Republike Srbije. Izrađena je prema švajcarskom iskustvu i prilagođena specifičnim uslovima u Srbiji.

Ovom vrednom knjižicom — „Model opštinske odluke o građanskoj inicijativi i referendumu" švajcarski MSP i njegove partnerske opštine daju još jedan[1] doprinos jednoj značajnoj oblasti lokalne uprave. Brošura će, preko SKGO, kao glavnog partnera na ovom projektu, biti dostavljena svim opštinama u Srbiji. Siguran sam da će ideje iz ove brošure biti od koristi opštinama u Srbiji za pravno regulisanje neposrednog učešća građana u lokalnoj samoupravi.

Wilhelm Meier
Ambasador Švajcarske, Beograd

[1] Prva brošura, pod naslovom „Pregled opštinskih statuta", objavljena je 2004.

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2 CONSTITUTIONAL AND STATUTORY PROVISIONS ON REFERENDUM AND SOME OPEN QUESTIONS REGARDING THE LOCAL REFERENDUM

Prof. Dr. Stevan Lilić

2.1 Rule of Law

The concepts of the *legal state* and the *rule of law* are distinguished achievements of European and world civilization[12]. In relation to state government, particular implications of the principle of the rule of law are the requirement of legality for decisions adopted by state organs and agencies. Without the rule of law, no modern legal state can be imagined. A modern state, including local communities, can no longer be observed as a mere instrument of repressive power, but as an organization politically and professionally oriented to the development of general welfare (*bono pubico*) of a society and the improvement of the quality of life of its citizens. The main object of democratic and accountable governments, including those at the local level is to *render public services to its citizens and to protect their rights and freedoms*. An important aspect of this responsibility is to enable citizens to exercise their right of *referendum* and other forms of *direct participation*. The situation in referendum exercising in a certain country usually reflects best the situation of existing legislation in this area.

2.2 Referendum in the Serbian Constitution

The Constitution of the Republic of Serbia[13] mentions referendum and other forms of direct citizens' participation. According to the Constitution:

- Sovereignty belongs to all citizens of the Republic of Serbia. Citizens achieve their *sovereignty through referendum*, civil initiative, and through their freely elected representatives (Article 2).
- The territory of the Republic of Serbia is integrated and is unchallengeable. *By way of referendum*, citizens decide about the *change of borders* of the Republic of Serbia (Article 4).
- The National Assembly (...) 8 organizes the *republic referendum* (...) (Article 73).
- The National Assembly can decide that some issues within its competence may be decided by citizens on a *republic referendum*. The National

[12] Lord Lloyd of Hampstead, M.D.A.Freedman, *Lloyd's Introduction to Jurisprudence*, Ste-vens Carswell, London/Toronto, 1985.

[13] *The Constitution of the Republic of Serbia*, Official Gazette of the Republic of Serbia, No. 1/90.

2 USTAVNE I ZAKONSKE ODREDBE O REFERENDUMU I NEKA OTVORENA PITANJA LOKALNOG REFERENDUMA

Prof. dr Stevan Lilić

2.1 Vladavina prava

Koncept *pravne države* i princip *vladavine prava* (rule of law) velike su tekovine evropske i svetske civilizacije.[12] U odnosu na državu, poseban značaj principa vladavine prava je u tome što obezbeđuje legalitet (zakonitost) odluka državnih organa. Bez principa vladavine prava nezamisliva je i svaka savremena pravna država. Ni savremena država, ni lokalne zajednice ne mogu se više posmatrati kao instrumenti vlasti, već kao organizacije koje su politički i stručno orijentisane ka razvoju i opštem blagostanju društva (bono pubico) i poboljšanju kvaliteta života, *pružanju javnih usluga svojim građanima i zašiti njihovih prava*. Kako se ističe, demokratske i odgovorne vlasti imaju dužnost da svojim građanima pružaju javne usluge. Bitan aspekt ove dužnosti je i omogućiti građanima ostvarivanje prava na *referendum* i drugim oblicima *neposrednog izjašnjavanja građana*. Stanje u oblasti ostvarivanja referenduma u određenoj zemlji obično najbolje reflektuje stanje postojećeg zakonodavstva o ovim pitanjima.

2.2 O referendumu u Ustavu Srbije

Ustav Republike Srbije[13] na više mesta spominje referendum i druge oblike neposrednog izjašnjavanja građana. Tako, prema Ustavu:

- Suverenost pripada svim građanima Republike Srbije. Građani ostvaruju *suverenost referendumom*, narodnom inicijativom i preko svojih slobodno izabranih predstavnika (čl. 2).
- Teritorija Republike Srbije je jedinstvena i neotuđiva. O *promeni granice* Republike Srbije odlučuju građani *referendumom* (čl. 4).
- Narodna skupština: (...) 8. raspisuje *republički referendum*; (...) (čl. 73).
- Narodna skupština može odlučiti da o pojedinim pitanjima iz njene nadležnosti odluku donesu građani *republičkim referendumom*. Narodna skupština je dužna da odluči o zahtevu za raspisivanje republičkog referenduma koji podnese najmanje *100.000 birača*. (čl. 81).

[12] Lord Lloyd of Hampstead, M.D.A. Freedman, *Lloyd's Introduction to Jurisprudence*, Stevens Carswell, London/Toronto, 1985.

[13] Ustav Republike Srbije, Službeni glasnik Republike Srbije, br. 1/90.

Assembly shall decide on a motion to call for a republic referendum if a request is submitted by a minimum of *100,000* voters (Article 81).

- *Municipal* affairs are decided by citizens on a *referendum* and through their representatives in the municipal assembly. The municipal assembly consists of representatives directly elected by secret ballot (Article 116).
- The National Assembly shall adopt an *act to amend the Constitution* by a two-thirds majority of the total number of National Assembly members and shall put it on a *republic referendum* for confirmation. An act amending the Constitution is considered finally adopted if endorsed by more than one half of the total number of voters on a republic referendum. An amendment to the Constitution is pronounced by the National Assembly (Article 113).

2.3 Legal Provisions on Referendum

In Serbia, the issue of referendum is regulated by the special *Law on Referendum and People's Initiative* (1994)[14] which prescribes the procedure of direct voting concerning decisions of the citizens taken by referendum or by people's initiative.

According to this Law, the citizens may decide by *referendum* on issues which are defined by the Constitution and by law. These include issues within the competence of the National Assembly, the assemblies of the autonomous provinces, and the assemblies of the municipalities and cities, as well as on issues that are so designated by these assemblies. A referendum may be called either for getting *prior support* for a decision that is to be taken by a government authority or as an act of *confirming an already adopted decision*. For issues defined by the statutes of autonomous provinces, municipalities or cities, the referendum is conducted according to the procedure defined by this Law, unless otherwise prescribed.

This Law provides that citizens may, by means of a *people's initiative*, submit a motion for amending the Constitution, a particular law, as well as other regulations and general acts of the National Assembly, the assemblies of the autonomous provinces, municipalities or cities. Citizens may also submit a *motion for a referendum* on other issues, as well as submit other motions, as provided by the Constitution, respective law or statute.

A call for a referendum on issues within the competence of the autonomous province, municipality or city is taken by the respective assemblies in accordance with the respective statutes. The time period from the day when the referendum is called for, to the day it is conducted may not be shorter than 15 days, or longer than 90 days.

[14] *Law on Referendum and People's Initiative*, Official Gazette of the Republic of Serbia, No. 48/94, 11/98.

- poslovima *opštine* građani odlučuju *referendumom* i preko svojih predstavnika u skupštini opštine. Skupštinu opštine čine odbornici izabrani na neposrednim izborima, tajnim glasanjem (čl. 116).
- Narodna skupština usvaja *akt o promeni Ustava* dvotrećinskom većinom od ukupnog broja narodnih poslanika i stavlja ga na republički referendum radi potvrđivanja. Akt o promeni Ustava smatra se konačno usvojenim ako se za njega na *republičkom referendumu* izjasni više od polovine ukupnog broja birača. Akt o promeni Ustava proglašava Narodna skupština. (čl. 113).

2.3 Zakonske odredbe o referendumu

Pitanje referneduma reguliše poseban *Zakon o referndumu i narodnoj inicijativi* (1994)[14], koji uređuje način neposrednog izjašnjavanja, odnosno odlučivanja građana referendumom i način ostvarivanja narodne inicijative.

Prema ovom Zakonu, *referendumom* građani odlučuju o pitanjima za koja je to Ustavom i zakonom određeno i o pitanjima iz nadležnosti Narodne skupštine, odnosno skupštine autonomne pokrajine, opštine i grada za koja skupština to odluči. Referendum se može raspisati i radi *prethodnog izjašnjavanja*, odnosno radi *potvrđivanja akta* koji je doneo nadležni organ. O pitanjima određenim statutom autonomne pokrajine, opštine ili grada, odnosno o drugim pitanjima iz njihove nadležnosti referendum se sprovodi na način i po postupku utvrđenim ovim Zakonom, ako nekim drugim zakonom nije drukčije određeno.

Na način utvrđen ovim Zakonom građani putem *narodne inicijative predlažu* promenu Ustava, zakona, drugih propisa i opštih akata iz nadležnosti Narodne skupštine, odnosno skupštine autonomne pokrajine, opštine ili grada, *raspisivanje referenduma* o određenom pitanju i podnose druge predloge u skladu s Ustavom, zakonom i statutom.

Akt o raspisivanju referenduma o pitanjima iz nadležnosti autonomne pokrajine, opštine i grada donosi skupština autonomne pokrajine, odnosno opštine ili grada u skladu sa statutom. Od dana raspisivanja do dana sprovođenja referenduma ne može proteći manje od 15 ni više od 90 dana.

Građani s dela teritorije Republike, odnosno autonomne pokrajine, opštine ili grada mogu odlučiti na referendumu o pitanjima koja su od značaja za te građane.

Organi za sprovođenje referenduma su *komisija i glasački odbor*. Komisije u opštinama obrazuje republička komisija kad se referendum raspisuje za teritoriju Republike ili njen deo, pokrajinska kad se referendum raspisuje za

[14] Zakon o referndumu i narodnoj inicijativi, Službeni glasnik Republike Srbije, br. 48/94, 11/98.

Citizens from a part of the territory of the Republic, autonomous province, municipality or city may decide by referendum on particular issues only relevant to them.

The authorities charged with conducting a referendum are the *commission* and the *voting committee*. The commissions in the municipalities are formed by Republic Commission when a referendum is called for the territory of the Republic or its part, by the autonomous province when a referendum is called for the territory of the province or its part and the city when referendum is called for the territory of the city or its part. The tasks of the respective commissions are defined by the act of their establishment.

A referendum is authenticated *if the majority of registered citizens with the right to vote; vote in accordance with this Law*. A decision subject to the referendum is considered valid if endorsed by the majority of citizens that voted, unless a higher number is required by the Constitution, law or statute.

A decision confirmed by referendum is *promulgated* according to the Constitution, law or statute. A decision confirmed by a referendum is binding. When citizens have expressed their will on a certain issue, the authority to which the decision is related is obliged adopt and implement it in accordance with the will of citizens expressed in the referendum, before the date designated in the decision calling for the referendum, and not later than 60 days from the day when referendum took place. If the citizens in the referendum voted for the confirmation of a decision, that decision is adopted on the day of referendum or on the day the decision is promulgated. If a decision is not confirmed by citizens in the referendum, *the decision is considered not adopted*.

If citizens do not confirm a decision in the referendum, i.e. if they do not vote for the issue which is the subject of the referendum, a repeated referendum concerning the same issue may not be conducted before the expiration of a six-month period, as of the day of when the previous referendum took place.

A citizen has the right to, within 24 hours from the moment the decision was adopted, or an action done or omission made, submit a complaint to the commission conducting the referendum, if he or she believes that irregularities have occurred in the referendum procedure.

The Law on Referendum and People's Initiative also regulates the *people's initiative* procedure. For the procedure of people's initiative, citizens form an *initiative committee* consisting of a minimum of three members having the right to vote. The initiative committee may form additional committees for collecting signatures at designated locations.

The wording of the motion for amending or adopting a decision, as well as for other proposals that fall under the peoples' initiative procedure, has to be formulated in way that *alternatives are made clear*, including clear options as to which the relevant authority must decide upon. The motion shall be signed by the members of the initiative committee.

teritoriju autonomne pokrajine ili njen deo, a gradska kad se referendum raspisuje za teritoriju grada ili njen deo. Aktom o obrazovanju organa za sprovođenje referenduma u autonomnoj pokrajini, opštini i gradu utvrđuju se njihovi zadaci.

Referendum je *punovažan ako je na njemu glasala većina građana koji imaju biračko pravo i koji su upisani u birački spisak* u skladu s ovim Zakonom. Odluka o pitanju koje je bilo predmet izjašnjavanja na referendumu smatra se donetom ukoliko je za nju glasala većina građana, ako Ustavom, zakonom ili statutom nije za to predviđen veći broj.

Akt koji je potvrđen na referendumu *proglašava* se u skladu s Ustavom, zakonom i statutom. Odluka doneta na referendumu obavezna je. Kad su se građani referendumom prethodno izjasnili o određenom pitanju, organ koji donosi akt kojim se uređuje to pitanje dužan je da ga donese u skladu s voljom građana izraženom na referendumu, u roku određenom aktom o raspisivanju referenduma, a najkasnije u roku od 60 dana od dana od održavanja referenduma. Ako su se građani referendumom izjasnili za potvrđivanje akta, akt je usvojen danom održavanja referenduma, odnosno danom proglašavanja tog akta. Ako građani referendumom nisu potvrdili akt, *smatra se da taj akt nije ni donet*.

Ako građani referendumom nisu potvrdili akt, odnosno nisu se izjasnili za pitanje koje je bilo predmet izjašnjavanja, o tom aktu, odnosno pitanju ne može se ponovo odlučivati na referendumu u roku kraćem od šest meseci od dana glasanja na referendumu.

Građanin ima pravo, u roku od 24 sata od trenutka kad je doneta odluka, odnosno izvršena radnja ili je učinjen propust, da podnese *prigovor* komisiji za sprovođenje referenduma ako smatra da su time učinjene nepravilnosti u sprovođenju referenduma.

Zakon o referendumu i narodnoj inicijativi takođe uređuje način ostvarivanja *narodne inicijative.* Tako građani, radi ostvarivanja narodne inicijative, obrazuju *inicijativni odbor* od najmanje tri člana koji imaju biračko pravo. Inicijativni odbor može obrazovati posebne odbore za prikupljanje potpisa na pojedinim mestima.

Predlog za promenu ili donošenje odgovarajućeg akta, odnosno drugi predlog obuhvaćen narodnom inicijativom mora biti sačinjen tako da se iz njega *jasno vide pravci promena,* odnosno rešenja o kojima nadležni organ treba da se izjasni. Ovaj predlog potpisuju članovi inicijativnog odbora.

Inicijativni odbor dostavlja predlog organu nadležnom za donošenje akta, odnosno za rešavanje o pitanju na koji se predlog odnosi radi obaveštenja da se za taj predlog *prikupljaju potpisi*. Inicijativni odbor prijavljuje prikupljanje potpisa Ministarstvu unutrašnjih poslova — organizacionoj jedinici u opštini na čijoj će se teritoriji prikupljati potpisi.

The initiative committee submits the motion to the authority responsible for adopting the decision and informs it that signatures for the motion are *being collected*. The initiative committee shall also inform the Ministry of Internal Affairs of the territorial unit in the municipality where the signatures are being collected.

2.4 Legal Provisions on Local Referendum

The Law on Local Self-Government (2002)[15] contains a separate chapter on direct citizens' participation in local self-government. They include the following modalities: a) civil initiative, b) public meetings, and c) referendum.

By means of a *civil initiative*, citizens propose to a local assembly to adopt a decision that regulates certain issue from its initial competence, amend the statute and other acts or call for a referendum in accordance with the law and statute. On such motions, the assembly must open a debate and give a consistent answer to the citizens not later than 60 days from the day the motion was received. The statute of the local self-government unit shall define the number of citizens' signatures required for a valid civil initiative procedure. This number may not be less than 10% of the registered voters.

A public meeting may be organized for a part of statute-defined local self-government territorial unit. Citizens in public meetings debate and make motions regarding local issues. Public meetings, by a majority vote of the present, may adopt requests and motions and present them to the assembly or other authority or department of the local self-government unit. The authorities and departments of a local self-government unit must consider citizens' requests and motions and take an opinion on them, adopt a decision or measure, within 60 days from the day the request or motion was received, and inform the citizens about this. The procedure for holding public meetings and related issues is regulated by statute or a decision of the municipal assembly.

The local self-government assembly *may, on its own initiative*, call for a *referendum* on issues from its scope of competence.

However, the local self-government assembly *shall call for a referendum* on an issue from its scope of its competence upon the request of the citizens of a local community, in accordance with the procedure defined by law and statute.

A decision by referendum is considered adopted if endorsed by a majority of votes cast, provided the turn out is more than half of the registered voters.

[15] *Law on Local Self-Government*, Official Gazette of the Republic of Serbia, No. 9/02.

2.4 Zakonske odredbe o lokalnom referendumu

Zakon o lokalnoj samoupravi (2002)[15] sadrži posebnu glavu o neposrednom učešću građana u ostvarivanju lokalne samouprave u okviru koje su predviđeni sledeći modaliteti: a) građanska inicijativa, b) zbor građana i c) referendum.

Građani putem *građanske inicijative* predlažu skupštini jedinice lokalne samouprave donošenje akta kojim će se urediti određeno pitanje iz izvornog delokruga, promenu statuta ili drugih akata i raspisivanje referenduma u skladu sa zakonom i statutom. O ovom predlogu, skupština je dužna da održi raspravu i da dostavi obrazložen odgovor građanima u roku od 60 dana od dobijanja predloga. Statutom jedinice lokalne samouprave utvrđuje se broj potpisa građana potreban za punovažno pokretanje građanske inicijative, koji ne može da bude manji od 10% birača.

Zbor građana se saziva za deo teritorije jedinice lokalne samouprave utvrđen statutom. Zbor građana raspravlja i daje predloge o pitanjima iz nadležnosti organa jedinice lokalne samouprave. Zbor građana većinom glasova prisutnih usvaja zahteve i predloge i upućuje ih skupštini ili pojedinim organima i službama jedinice lokalne samouprave. Organi i službe jedinice lokalne samouprave dužni su da, u roku od 60 dana od održavanja zbora građana, razmotre zahteve i predloge građana i o njima zauzmu stav, odnosno donesu odgovarajuću odluku ili meru i o tome obaveste građane. Način sazivanja zbora građana, njegov rad, kao i način utvrđivanja stavova zbora uređuje se statutom i odlukom skupštine opštine.

Skupština jedinice lokalne samouprave *može na sopstvenu inicijativu* da raspiše *referendum* o pitanjima iz svoga delokruga.

Skupština jedinice lokalne samouprave *dužna je da raspiše referendum* o pitanju iz svoga delokruga na zahtev građana u jedinici lokalne samouprave, na način utvrđen zakonom i statutom.

Odluka putem referenduma doneta je ako se za nju izjasnila većina građana koja je glasala, pod uslovom da je glasalo više od polovine ukupnog broja građana.

Skupština jedinice lokalne samouprave dužna je da raspiše referendum na delu svoje teritorije prave o pitanju koje se odnosi na potrebe, odnosno interese stanovništva toga dela teritorije, na način utvrđen zakonom i statutom.

[15] Zakon o lokalnoj samoupravi, Službeni glasnik Republike Srbije, br. 9/02.

The local self-government assembly shall call for a referendum on part of the local territory on issues related to the citizens of that particular area, if conditions provided by law and statute are fulfilled.

2.5 Conclusion

Regarding the mentioned constitutional and statutory law provisions on referendum and people's, i.e. civil initiatives, on this occasion, we would like to highlight some open questions regarding local referendum.

- *Referendum — Plebiscite*. The Law on Local Self-Government foresees this kind of local referendum (Swiss term "Plebiscite") for cases when the municipal assembly calls for a referendum on its own initiative in order to get citizens' support.
- *Referendum on motion from the citizens*. The Law on Local Self-Government foresees this kind of local referendum for cases when the municipal assembly calls for a referendum on motion from the citizens.
- *Referendum based on initiative of citizens.* According to the Law on Local Self-Government, this kind of local referendum may come as a consequence of citizens' initiative.
- *Relation between the Law on Referendum and People's Initiative and the Law on Local Self-Government* is based on the principle of relations between a substantial (material) and a procedural law.
- *The Law on Local Self-Government is a substantive law* and does not include provisions on referendum procedures.
- *The Law on Referendum and People's Initiative* is a procedural law which includes provision regarding the way a referendum conducted, provided that other statutory law provisions do not exclude them.

2.5 Zaključak

Imajući u vidu navedene ustavne i zakonske odredbe o referendumu i narodnoj, odnosno građanskoj inicijativi, ovom prilikom ukazaćemo na neka otvorena pitanja u vezi sa lokalnim referendumom.

- *Referendum — Plebiscit.* Zakon o lokalnoj samoupravi predviđa ovu vrstu lokalnog referenduma (u švajcarskoj terminologiji „plebiscit") u slučaju kada opštinska skupština raspisuje referendum po sopstvenoj inicijativi radi sticanja podrške građana.
- *Referendum na zahtev građana*. Zakon o lokalnoj samoupravi, predviđa ovu vrstu obaveznog lokalnog referenduma u slučaju kada opštinska skupština raspisuje referendum po zahtevu građana.
- *Referendum na osnovu inicijative građana*. Na osnovu Zakona o lokalnoj samoupravi, proizilazi da ova vrsta lokalnog referenduma može uslediti kao posledica inicijative građana.
- *Odnos Zakona o referendumu i narodnoj inicijativi i Zakona o lokalnoj samoupravi* zasniva se na principu odnosa materijalnog i procesnog zakona.
- *Zakon o lokalnoj samoupravi je materijalni zakon* i ne sadrži odredbe o procedurama referenduma.
- *Zakon o referendumu i narodnoj inicijativi je procesni zakon* koji sadrži odredbe o načinu sprovođenja referenduma, ukoliko nije drugačije regulisano.