

# Good Governance at Local Level

Experiences  
from Serbia







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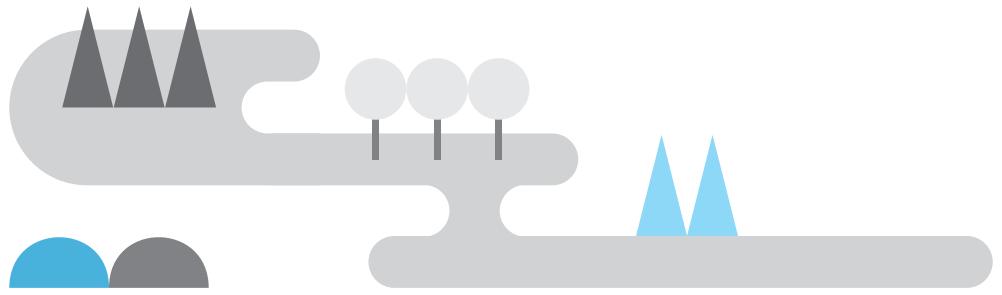
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## Abbreviations

|        |   |
|--------|---|
| Agency | Anti-Corruption Agency                          |
| CC     | Constitutional Court                            |
| CPE    | Commissioner for the Protection of Equality     |
| CSO    | Civil Society Organisation                      |
| EU     | European Union                                  |
| HR     | Human Resources                                 |
| ICT    | Information-Communication Technologies          |
| LAP    | Local Action Plan                               |
| LED    | Local Economic Development                      |
| LLSG   | Law on Local Self-Government                    |
| LSG    | Local Self-Government                           |
| MA     | Municipal Administration                        |
| MoI    | Ministry of Interior                            |
| PPP    | Public-Private Partnership                      |
| RS     | Republic of Serbia                              |
| SAI    | State Audit Institution                         |
| SCTM   | Standing Conference of Towns and Municipalities |
| SDC    | Swiss Agency for Development and Cooperation    |
| UNOPS  | United Nations Office for Project Services      |

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## Foreword

When our programme started to discuss 'Good Governance' some seven years ago with local governments, donors and programme partners, we soon realised that it really is a perception with the definition illusive and sometimes overly conceptual for the needs of our programme and our partners. We therefore decided first to define good governance in understandable terms before setting on the journey of introducing those principles into the everyday practices of local governments. During the initial meetings with the municipalities, when we debated about the need for increasing accountability of local administrations towards citizens, about the necessity of introducing mechanisms to ensure greater citizens' participation in local policy and decision-making, some were pessimistic that progress could be made. We knew then that we had to bring the conceptual discussion to a concrete project level as well as to understand ourselves that good governance is not something that can be transplanted but an on-going, time consuming process that takes courage and the genuine commitment of all stakeholders.

Concepts, such as how to increase transparency of local administration and officials in discharging their public duties and tasks, how to improve efficiency and effectiveness of the public sector in service provision to the citizens, how to ensure respect of the rights of vulnerable and marginalised, were a part of our discourse with the municipal representatives. We decided on small steps linking the concepts to our larger infrastructure projects especially; it soon transpired that these steps were crucial actions toward changing the mind-sets and approaches in serving the public interest.

Over time we elevated the discussion with our local self-government partners to include local governance reforms, and the appointments of permanent focal points. These appointees were capacitated to become a true resource for advising on good governance principles and a reliable asset of local governments in

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improving accountability and responsiveness to citizens. The municipalities' reaction was positive and heartening. As the result, we have focal points in 34 municipalities in the South and the South West Serbia.

This publication is a testimony to the hard work and competencies of the local experts that were part of this capacity development process. It is also a tool, with real examples, on how somewhat abstract good governance principles can be translated into the local context and applied in the everyday work of the local administrations.

On behalf of all participants and their respective local governments, I would like to express European PROGRES' gratitude to the donors of the Programme, the European Union and the Government of Switzerland. The Swiss Agency for Development and Cooperation (SDC) especially has provided vital support to this important process, by seconding Swiss experts for good governance to lead and assist us on this journey. We hope that the knowledge and experiences gained during seven years can be replicated throughout Serbia as ongoing process that must be continuously worked on for the next four years and beyond.

Last, but not the least, I would also like to thank the Mayors and other decision makers from the participating municipalities for their support and dedication to the process, without which this endeavour wouldn't have been so successful.

**Graeme Tyndall**  
Programme Manager  
European PROGRES

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## Introduction

This publication is the result of a seven-year working process with 34 local governments in the South and South West Serbia on attaining understanding of what good governance means and how its principles can be applied, in a very concrete manner, to everyday functioning of administrations.

During the first phase of the Programme, from 2010–2014, we started with quite a simple approach – when we implemented local infrastructure projects we also worked on introducing the good governance principles, and 'translating' them into relevant local policies. This contributed to increased accountability of public-functions holders towards the citizens, and more transparency of what they were doing on behalf of the public, and ultimately into higher trust in local public officials.<sup>1</sup>

As the need to continue with such approach was confirmed by local governments, we started thinking how to make the transferred know-how a permanent resource and an actual asset of the municipalities for their future design and implementation of local socio-economic development. So, at the start of the European PROGRES Programme, in 2014, we produced a plan for feasible, further development of local capacities that would have its apogee in initialisation of good governance competence focal points within local administration.

It was essential that this new expertise became a permanent resource of local governments. We can say today that finding a joint good solution wasn't easy. But together, the Programme and the municipalities, succeeded in this effort beyond our both initial expectations. At the end of the Programme, we are proud to report that there are 22 local governments that institutionalised good governance competence focal points.

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<sup>1</sup> For more information see the Citizens Satisfaction Survey, December 2013, available at <http://www.euprogres.org/biblioteka.php?id=46>

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The next stage in capacity development lasted for almost two years (2015–2017). We organised and delivered five intensive workshops,<sup>2</sup> one on each of the five good governance principles - accountability, transparency, participation, efficiency and non-discrimination. With the support from the good governance expert from Switzerland, the participants learned not only about the Swiss policies and practises in governance, but were also able to contrast them with prevailing situation in Serbia and particularly in their environment.

The topic-specific papers the participants were required to develop and elaborate at sessions, contributed to the hands-on approach of the entire process. The final written test, which required analysis of and concrete good governance suggestions for real-life cases, only appeared to reinvigorate even further the participants' commitment to the overall endeavour. The crown jewel of the learning process was a study visit to Switzerland, to the Canton of Bern and surrounding municipalities, when the participants had an opportunity to learn first-hand about the Swiss practices in governance.

This publication reflects the participants' understanding of the concept of good governance in Serbia today in the form of excerpts from their home assignments on good governance principles developed within this process. It represents a valuable resource, which will be elaborated further into a toolkit for all those interested in working on the improvement of governance and thus contribute to successful local reforms in Serbia.

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<sup>2</sup> Each one lasting two-and-a-half-days

PART 1

# Accountability



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## 1.1 Definition of the Principle

Accountability relates to a series of mechanisms ensuring the use of (public) powers in the **interest of the citizens**. This principle is transversal to the entire concept of good governance and has numerous aspects.

In a democratic system, the role of power holders is gained at elections, at which the citizens who have the right to vote transfer onto them their sovereign will in part, giving them the right to represent their interests and make decisions of public interest, on their behalf. In return, each level of government is obligated to execute its mandate in the public interest and be responsible and **accountable** to citizens who have elected them.

In a good state, the citizens keep some rights in their own hands: they will expect from elected officials to **inform** them and **justify** the use of public power to them, and will also want the opportunity to sanction officials that do not meet their expectations (that is, they keep the right to call them to account, for example, in elections, but also through mechanisms such as judicial review).<sup>3</sup>

The principle of accountability may be said to include the following elements:

- The allocation and funding of tasks (distribution of responsibilities on the local level);
- LSG bodies and their responsibilities (distribution of responsibilities at the local level);
- Transparency (see Part 2);
- Sanctions (political and legal).

### On “power”

The term “power” is most often used by political scientists both to denote authority and power. Power as a social fact, affects individuals correctively, i.e. forcibly. Power is primarily a political category, having in mind that it primarily denotes the complex relation between government institutions and the civil society as whole. In this sense, it represents a social relation in which one party (power holder) can influence the behaviour and activity of the other party (subordinate), with the help of real or potential use of organised force. This includes: organised and legal use of sanctions as means to extort, submit, institutionalise power, based on a normative order which is the basis for the constitution of power. Wherever there is power, there are also established relations of rights and duties of its holders, but also those subordinated to it. Power is therefore institutionally limited and never means complete control, but is diffused and often goes beyond institutional frameworks.

Marija Cvetković  
LSG Gadžin Han

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<sup>3</sup> Making Good Governance Tangible, United Nations Office for Project Services (UNOPS), 2014, Belgrade, p. 9

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## 1.2 The Allocation and Funding of Tasks

Accountability on the local level means to implement tasks that are within the original competence of the local self-government (LSG) and tasks delegated from the central level. As the fulfilment of tasks is inseparable from funding of these tasks, local self-governments generate a share of the necessary funds themselves, and another share of the funds is provided by state budget transfers.

### 1.2.1 The local self-government as a tier of government in its own right

Local self-government units in the Republic of Serbia (RS) are municipalities, towns and the City of Belgrade. Local self-government, or the citizens' right to local self-government is provided in the Serbian Constitution and can only be subject to the control of constitutionality and legality<sup>4</sup>. Also, the Constitution gives LSGs the status of legal entity, regulating in principle the delegation and delineation of authorities, as well as the right to autonomous establishment of bodies and assemblies<sup>5</sup>. However, the Venice Commission<sup>6</sup> found upon the analysis of the Serbian Constitution<sup>7</sup>, that the Constitution does make this right concrete, but leaves it to the legislator to regulate this issue.

The local authority in Serbia is unitary, there is no other tier of authority between the local and central governments. There are several administrative districts, but they are the extensions of the central government, and their being dislocated from the centre is called deconcentration. On the other hand, there is the possibility of community self-government – it is obligatory in rural but facultative in urban areas.

#### The main characteristics of local self-government in the Republic of Serbia

Probably the most important characteristic of the local self-government in Serbia is the size of towns and municipalities as LSG units. In relation to the population size and the area covered by the municipalities, LSG units in Serbia are among the largest in Europe. The effects of this situation are multiple. First, the local government is farther away from the citizens than in the majority of other countries. The second effect is that the capacities of the local self-government are at a higher level than it is the case in other countries of similar level of development, in which LSG units are much smaller. This effect is the result of another important characteristic of the local self-government system in Serbia, which is not directly related to local, but to regional authorities – more precisely the

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4 The Republic of Serbia Constitution, Official Gazette RS, No. 98/2006 (Article 12)

5 The Republic of Serbia Constitution, Official Gazette RS, No. 98/2006 (Articles 176-181)

6 The Venice Commission's findings are not binding to RS.

7 Opinion No. 405/2006, European Commission for Democracy through Law (the Venice Commission), Opinion on the Constitution of Serbia adopted by the Commission on its 70th plenary session (Venice, 17-18 March 2007).

lack of. Due to the lack of regional authorities, many competences (from water supply and solid waste removal to promoting economic development and addressing unemployment), for which some inter-municipal entities or higher levels of power are in charge, in Serbia are exercised by almost exclusively each LSG for its own territory.

Another important characteristic of the local self-government system in Serbia is that there is a single type thereof. Until recently, the competences and structure of bodies were equal both for municipalities and for towns, so there was no significant difference, even among the smallest towns and largest municipalities.

Nenad Ostračanin  
LSG Raška

Local self-government representatives who participated in the European PROGRES Programme identified some of the key issues in the functioning of the local self-government as a separate level of authority in Serbia, but in relation to other levels of authority:

#### **Key issues in the functioning of local self-government as a special tier of authority**

- Lack of functional middle level of authority, although there are 29 administrative districts.
- Essential lack of decentralisation (political, administrative and fiscal).
- High influence of local political parties on the local public administration.
- Insufficient involvement of the local community in the decision-making process.
- The local self-government is in practice not able to influence the first three issues, but it can establish mechanisms to enhance citizen participation in decision-making processes and improve the functioning of the LSG.
- Lack of the middle level of authority is one of the reasons for much stronger influence of the central level on LSGs in Serbia, which is in clear contrast to the functioning of LSGs in Switzerland.

Milinko Šaponjić  
LSG Nova Varoš

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## 1.2.2 Which tasks are proper to the local self-government

There is no strict division of tasks that are proper to the LSG, since its adoption is a part of the political process and it may change depending on the specific context.

Republic of Serbia is the signatory of the European Charter of Local Self-Government<sup>8</sup>, multilateral legal act defining and protecting local self-government autonomy. The Charter does not determine the desirable local self-government model, nor the structure or powers, but has the aim to set the standards in the functioning and protection of the local level of authority as the level closest to the citizens, and to provide political, administrative and financial independence. This Charter advocates for the principle of subsidiarity (performing the tasks by those authorities closest to the citizens), and that the transfer of competences to higher levels is possible only if it is assessed as more efficient or more economical. Another principle should play a key role in the division of competences, which is the principle of fiscal equity, meaning that the interests or those financing and those using must coincide.

## 1.2.3 How the tasks of local self-government are defined

Local self-governments in Serbia perform a wide range of tasks, including:

- Competences, including original or own tasks and
- Delegated responsibilities, which are tasks delegated by a higher level with the aim of more efficient and rational fulfilment of rights and responsibilities of the citizens.

The Law on Local Self-Government (LLSG)<sup>9</sup> stipulates the main **competences of local self-government**.

**Public responsibilities, or the discharge of delegated powers** are tasks under the competences of the Republic of Serbia delegated to LSGs through special laws (the so-called sector laws).

Statute is the highest legal act of a LSG unit. The Statute regulates rights and obligations of the LSG, as well as the manner of exercising them, the number of councillors (the lowest and highest number must be within the limits set by the law), organisation and work of different bodies and services, the manner of managing citizens' affairs that are under LSG jurisdiction, establishing and functioning of all forms of community self-government, and ways to realise direct self-government of the citizens.

Although LSG has the autonomy in carrying out original tasks, it is mostly determined on the national level

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8 The Law on Ratifying the European Charter of Local Self-Government (Official Gazette RS – International Agreements, No. 70/2007)

9 Law on Local Self-Government (Official Gazette RS, No. 129/2007, 83/2014, 101/2016 – other law)

how these tasks will be fulfilled. Additionally, tasks delegated to LSG have been increasing over the years, both in number and in scope. Local self-governments often selectively implement the so-called sector laws, which is mainly the result of a lack of skilled professionals<sup>10</sup> and inadequate financing of these tasks. This is particularly the case with smaller local self-governments units. The lack of LSG capacities could be overcome by engaging external resources (see Part 5).

Local self-governments have unequal capacities to carry out delegated tasks, so smaller LSGs are faced with great financial and human resource problems. How can a small LSG carry out the tasks delegated through the laws on property, legalisation of buildings, energy efficiency?

Ivan Kostić  
LSG Medveda

#### **1.2.4 How the tasks of local self-government are funded**

Local self-government has several types of revenues (Section 5.3), as well as the freedom to define rates for original revenues, but within the framework set by the central level of authority (the state sets the lowest or highest allowed amount).

The central level of authority is obligated to secure, for each transfer or delegation of tasks, the funds or source of funding, necessary for carrying out these tasks (guarantee of sufficient revenue). Although the obligation exists, LSG units are often faced with inadequate fulfilment of this obligation by the central level.

#### **1.2.5 How local self-government can defend itself against threats to its existence and interference in its areas of responsibility**

The Constitution of the Republic of Serbia guarantees the existence of the local self-government – government authority is limited by the citizens' right to local self-government. Although its existence is guaranteed by the Constitution, the right to local self-government is subject to control of constitutionality and legality.

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<sup>10</sup> The amendments to the Budget System Law (there have been several so far), a ban on new employment is currently in power until the end of 2017

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The mechanisms of protection of the rights to local self-government are, in accordance with the Republic of Serbia Constitution, under the jurisdiction of the Constitutional Court. The LSG body, may:<sup>11</sup>

- Initiate the procedure to determine the constitutionality or legality of a general act of the Republic of Serbia violating the right to local self-government;
- Submit a complaint directly to the Constitutional Court, against a single act or action of a government body, or other LSG, if it impedes the execution of LSG competences.

Additionally, the Constitutional Court decides also on the conflict of jurisdictions that can exist between one LSG and another LSG, Autonomous Province or the Republic of Serbia bodies. The database of the Constitutional Court contains a small number of court proceedings related to this mechanism of protection.

The way in which a municipality can defend itself from threats directed at its existence and the central government's interference in its area of competences is defined by a strict rule stipulated in the provision of Article 193 of the Constitution of the Republic of Serbia. The said provision lays down that the body determined by the LSG Statutes have the right to complain to the Constitutional Court if an individual act or action of the government body or body prevents the execution of the LSG competences. The body determined by the LSG Statutes can initiate the procedure to determine constitutionality or legality of the law or other general act of the Republic of Serbia or Autonomous Province violating the right to local self-government.

Jasmina Lapčević  
LSG Blace

## 1.3 Local Self-Government Bodies and Their Responsibilities

The principle of division of power to legislative, executive and judicial is a key principle of government authority. This division contributes to an independence in performing the basic functions of each branch of authority and reduces the possibility for abuse because it establishes mutual limitations and control between the different branches of authority.

### 1.3.1 Bodies of the local self-government

Local self-government bodies are:

- Assembly,
- Mayor,

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<sup>11</sup> See Law on Local Self-Government (Official Gazette RS, No. 129/2007 and 83/2014 – other law), Articles 95 and 96.

- Municipal Council and
- Municipal Administration.

Similar to the principle of division of power on the central level, the local level also distinguishes representative and legislative power from executive power. Municipal Administration is a special operational body and can be placed under the executive power.

### On local self-government bodies

- The Municipal Assembly is the highest legislative authority holding the main local authority functions.
- Mayor is the highest executive body, issuing orders and executing budget expenditures, proposing solutions to issues on which then the Assembly decides, supervising directly the work of the Municipal Administration.
- Municipal Council is a collegial executive body with the authority to propose acts to be adopted by the Assembly and directly execute decisions adopted, supervises their implementation, monitors the implementation of delegated tasks and tasks from the municipality's original scope of competence.
- Municipal administration is organised as a single body with organisational units carrying out administrative and professional tasks for all municipal bodies.
- The organisation and the competences must be defined in accordance with the Constitution and the law and in this respect the municipality is not authorised to establish its bodies, but only regulate their organisation and competences.

Jasmina Lapčević  
LSG Blace

### Working bodies at local level

The Municipal Assembly has standing and *ad hoc* working bodies to review matters under its purview. These bodies are different in different LSGs, in terms of number and tasks. Sometimes these bodies do not have a clearly defined scope of work, and this should be improved, or more precisely defined, in order to avoid inconsistencies or different interpretations of the scope of work. Special attention should be paid on the expertise of members of these bodies, and whether they are qualified to be on them.

Muhamed Abdullahu  
LSG Preševo

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### **1.3.2 Incompatibility, ineligibility of family members, and obligations to withdraw**

The Constitution of the Republic of Serbia includes the prohibition of the conflict of interest among its main principles. The mechanisms used by the Republic of Serbia are primarily set out in the Law on Anti-Corruption Agency<sup>12</sup> although various laws contain provisions also related to the prevention and sanctioning of corruption and conflict of interest.

#### **The importance of anti-corruption actions**

The accountability and integrity of officials and employees in LSGs are of key importance for the principle of accountability in discharging public authority. Corruption is, *inter alia*, abuse of position by a person holding a public function with the aim to acquire personal gain, which may but need not be material (for example, doing a service). It can be said with certainty that there is no country in which there is no corruption, but it is a question of level or degree of pervasion of corruption in a society.

At first glance already, we can apply reverse reciprocity – the higher the rule of law and legal security for citizens the lower the level of corruption, i.e. the weaker the government institutions the higher the level of corruption and the more is overall societal development compromised.

The following interesting formula<sup>13</sup> explains corruption mathematically:

$$\text{(Monopoly + Discretion)} - \text{(Accountability + Integrity + Transparency)} = \text{CORRUPTION}$$

Therefore, it is very important that discretionary powers in decision making are as little as possible and that simultaneously clear rules exist to determine individual accountability. In relation to this, it is important to have rules, or mechanisms, with the aim to disable the accumulation of powers by one person and prevent that action or lack of, of this person is predominantly marked by private interests.

#### **Incompatibility**

The term “incompatibility” in the context of good governance means not being allowed to bring together (“accrue”) two or more functions by one person. This term is in direct connection with the constitutional

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12 By entering into force of The Law on Anti-Corruption Agency (Official Gazette RS, No. 97/2008, 53/2010, 66/2011 – CC decision, 67/2013 – CC decision, 112/2013 – authentic interpretation and 8/2015 – CC decision) the Law on the Prevention of Conflict of Interest in Discharging Public Authorities expired.

13 The formula was designed by Klitgaard (1988) and UNDP complemented it with the *integrity* and *transparency* elements.

principle of the division of power, which serves to maintain a balance and mutual control between different branches of power.

In the context of incompatibility, the most important **part** of the Law on Anti-Corruption Agency is the one **on the conflict of interest**, which stipulates that an official may only hold one public function (exceptions are possible, but they must be enabled by the law or other regulation, or with approval of the Anti-Corruption Agency).

### Examples from the practice of the Anti-Corruption Agency (Agency)

**Example A:** Person A holds the function of **Head of Municipal Administration**, to which they were nominated by the Municipal Council. After this, the same person A is by the Assembly appointed as Secretary of the **Municipal Electoral Commission**. Considering that standing members of municipal electoral commissions are considered officials in accordance with the law and the Agency's practice, person A is in a situation of holding two functions simultaneously. As they were not elected by the citizens to either of these functions, they had to ask approval from the Agency to hold both functions simultaneously. Acting upon the request, **the Agency approved the person A to be able to hold both functions simultaneously**. The view of the Agency was that simultaneous holding of the said functions in itself was not a conflict of interest, considering there were no interdependencies, superiority or control between them.

**Example B:** However, in a different case, person B was holding the function of **Municipal Assembly Secretary**, and it was appointed **Deputy Chair of the Municipal Electoral Commission**. In this case **the Agency decided that the said functions were incompatible**, and the Municipal Assembly had to dismiss person B from the function of Deputy Chair of the Municipal Electoral Commission, as the more recent function. The view of the Agency in this case was that holding the function of Municipal Assembly Secretary may impact the impartiality of the discharge of function of Deputy Chair of Electoral Commission, having in mind that the future composition of the Assembly depends on the outcome of the electoral process, and the Assembly nominates the Secretary.

Ivan Kostić  
LSG Medveda

### Ineligibility of family members

The Law on Anti-Corruption Agency very broadly defines "associated persons", so they are not only family members – in addition to the spouse or common-law partner, these are lineal blood relative of the official, lateral blood relative to the second degree of kinship, adoptive parent or adoptee of the official, as well as "*any other legal entity or natural person who may be, on other grounds and under other circumstances reasonably assumed to be associated in interest with the official*". It should be borne in mind that the precondition of the

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overall fight against corruption is for the *local community* to recognise and identify the anomaly, so the question remains of identifying “other grounds and circumstances” that have created the “association”, because of the distribution of power in the society. This solution may be quite impractical in practice, because on one hand there is the insufficiently precise determination of ineligible individuals, and on the other there is great responsibility with individuals to show initiative and recognise potential risks for the accountable discharge of public functions.

### Example from the Anti-Corruption Agency Practice

Person C manages the body, and in accordance with the law makes decisions on the rights and obligations of the employees in that body, and on employing new individuals in the said body. The Manager announces a vacancy. Among other candidates, a person who is the family member of the Manager, representing an “associated person” applies. In accordance with the law, person C withdrew himself from decision-making on the candidate's employment and informed the Anti-Corruption Agency of the case. The body competent to decide on the withdrawal of the official made the decision on the selection of candidates for the specific vacancy, but the person associated with the person C was employed. In the said case, the Anti-Corruption Agency stated that by applying for withdrawal in order to appoint another person to decide on employment did not remove the conflict of interest and that the said situation represented conflict of interest if the associated person was employed with the body managed by person C, regardless that person C withdrew from making the decision on employment.

Ivan Kostić  
LSG Medveda

### The obligation to withdraw

The obligation to withdraw represents a mechanism that serves for persons on official positions within the LSG to avoid being in the situation of conflict of interest, or a situation in which their private interest might compromise public interest. The official is under obligation to report potential conflicts of interest, however in practice this does not happen often, which leads to a *de facto* lack of political accountability.

The obligation for officials to withdraw from making a decision on a specific matter exists in the situation when an official or associated person have private interests that affect, may affect or appear to affect the actions of the official in the discharge of public function that compromises public interest. Legal formulation is quite broad here also, covering even the situation that “appears” as actions of the official compromising public interest, so that the legislator has left it upon the Anti-Corruption Agency to assess in each specific case whether the official did or did not have the obligation to withdraw.

Ivan Kostić  
LSG Medveda

Considering that the Anti-Corruption Agency does not initiate proceedings, it can be said that this system is faulty because it comes to whether a body or an individual recognise potential conflict of interest and report it or not.

Lack of respect for the public recommendation to dismiss a local official due to determined conflict of interest, turns legal accountability into lack of political accountability and damages the integrity of the entire local self-government.

Danijela Petković  
LSG Aleksinac

Measures issued to officials because of the violations of the Anti-Corruption Agency Law are the measures of warning (caution) and measures of public announcement of the recommendation for dismissal, or filing an initiative for dismissal with the body that has elected, appointed or nominated the official. However, although this body has the obligation to notify the Anti-Corruption Agency of measures taken within 60 days of pronouncing the measure, there is no mechanism that would force the body to act on the recommendation. More precisely, there is no mechanism to implement sanctions, so recommendations of the Anti-Corruption Agency, even when there are "public recommendations for the dismissal of the official" issued, as the most severe measure, are not implemented.

### On the obligation to withdraw

So far, the efforts in legislation and other regulations have mainly focused on officials, that is, appointed, nominated or elected individuals. Before the adoption of the Law on Employees in Autonomous Provinces and Local Self-Government Units<sup>14</sup>, local civil servants have almost entirely been left out of the framework for regulating this matter, because the Law on Civil Servants, which in some way deals with the conflict of interest of the civil servants, was not implemented on the local level.

If an officer who had to be excluded because of the conflict of interest participated in the adoption of a single act, this act shall be repealed upon request or *ex officio*. If the officer who participated in the adoption of the act reported the conflict of interest, and it was not possible to designate another individual to participate in the adoption of the act, the act shall not be repealed. The obligation to withdraw on the local level primarily relates to the implementation of the public procurement procedure. Associated individuals here are interpreted more broadly than in the procedures related to the conflict of interest in the discharge of public functions, which has already been mentioned above.

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<sup>14</sup> This part of the publication was written before the implementation of the Law on Employees in Autonomous Provinces and Local Self-Government Units (Official Gazette RS, No. 21/2016).

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The protection in these procedures has been established with very precise listing of the situations and mechanisms for preventing and reporting the conflict of interest and protecting the integrity of the procedure.

Danijela Petković  
LSG Aleksinac

### 1.3.3 How the responsibilities amongst local self-government bodies are distributed

As mentioned above, LSG bodies have competences in different areas, so it can be said that the Assembly has legislative power, while the Mayor and the Municipal Council have executive power. The Administration is classified under the executive part, although there are tendencies (e.g. in the American system) to consider the Administration a fourth branch of power, in addition to legislative, executive and judicial.

#### Local self-government bodies and their duties

**Municipal Assembly (MA)** is the highest authority. It performs the basic local authority functions, the legislative function. It is a representative body. Municipal Assembly (MA) has a President and a Vice-President, who should not be confused with the Mayor and Deputy Mayor, also selected by the MA. Between 19 and 75 (90 in towns and 110 in the City of Belgrade) councillors are elected directly, under a proportional electoral system.

The Municipal Assembly, as legislative body of the LSG adopts the Statutes and Rules of Procedure of the Municipality, Decision on the Budget and the LSG Annual Financial Statement, development plans, LSG strategies and urban planning documents, regulations and other general acts. The Municipal Assembly also calls referenda and decides upon proposals contained in civic initiatives (as forms of direct participation of citizens in the execution of the LSG) and drafts the decision on the self-imposed local tax, establishes public enterprises, institutions and organisations, appoints and dismisses the members of the supervisory boards and directors, approves Statutes and similar, sets the rates for original municipal revenues, municipal taxes, fees and other local income that belong to the LSG according to the law, adopts the act on LSG borrowing and implements other tasks set out in the law.

**Mayor** is, in addition to the Municipal Council, the executive authority of the LSG. He/she may have a Deputy, selected by the MA. Mayor is the President of the Municipal Council. He/she is elected indirectly, by the MA, from among the councillors, to a period of four years, by a secret vote, with a majority of votes of the total number of councillors. Mayor, as singular executive body: represents and acts on behalf of the municipality, proposes the ways to address issues decided upon by the LSG

Assembly, gives orders for budget execution, directs the work of the Municipal Administration, adopts single acts for which he/she is authorized by the Law, Statutes and general acts of the LSG unit.

**Municipal Council** is one of the two executive bodies of the municipality. Formed by the Mayor, Deputy Mayor and up to 11 members elected by the MA, with a majority vote of the total number of councillors, at the proposal of candidate for Mayor. As a collective executive body, it proposes the Statutes, budget and other general acts adopted by the Assembly, executes directly the decisions of the Assembly, makes the decision on temporary financing, controls the work of the Municipal Administration, makes decisions in the second-degree administrative procedure.

**Municipal Administration** is the holder of the administrative functions in the municipality. The Head of the Municipal Administration is appointed by the Municipal Council, after a public call, on a period of five years. The organisation of the administration is determined by the Municipal Assembly. The law stipulates only that the Municipal Administration shall be organised as a **single administration** and that in larger municipalities (over 50,000 inhabitants), **several administrations for some areas** can be established. Municipal Administration is usually divided in Departments – e.g. for economy and finance, for social affairs, for general administration, and similar. Assistant Mayors are part of the Municipal Administration. They launch initiatives, propose projects and draft opinions on issues of importance in certain areas (e.g. economic development, urban planning, primary health care, environmental protection, agriculture). There may be a maximum of three assistants in municipalities and five in towns. They are appointed by the Mayor of the municipality or town.

The Municipal Administration prepares draft regulations adopted by the Assembly, Mayor and Municipal Council, executes decisions of the Assembly, Mayor and Municipal Council, makes decisions in the first-degree administrative procedure, implements supervisory tasks over the execution of municipal regulations, implements laws and other regulations delegated to the municipality, implements expert and other tasks required by the Assembly, Mayor and Municipal Council.

**Marija Jelenković**  
LSG Knjaževac

**Marinko Đorđević**  
LSG Vlasotince

**Saša Dodić**  
LSG Bojnik



### **1.3.4 Administrative organisation**

The Administration is established as one body, and the decision on the administration's organisation is left to the LSG Assembly. The Head of the Municipal (or Town) Administration is appointed by the Council, after a public announcement, to manage the Municipal Administration for the duration of the five-year mandate.

### **1.3.5 How the compliance with the jurisdictional order can be legally enforced**

The compliance with the jurisdictional order is essential for the division of power principle, and depends on its consistent implementation. However, if the citizens feel that the jurisdictional order has been disturbed, they may file submissions and complaints with government bodies – directly to the body, or to supervisory or higher-level bodies (e.g. if they feel there are deficiencies in relation to their access to rights and freedoms, personal or property-related interests).

The LLSG stipulates that the LSG must enable everyone to submit complaints on its work and on irregular treatment by employees, as well as that LSG bodies and services must respond within 30 days, if the applicant demands a response. The conclusion from the discussions with LSG representatives that participated in the European PROGRES Programme, many LSGs are quite diligent on this issue, regularly responding to citizens' complaints, which are more or less frequent in different local self-governments.

Also, citizens may direct complaints to independent government bodies: the Ombudsman, Commissioner for the Protection of Equality and Commissioner for Information of Public Importance and Personal Data Protection.

## 1.4 Information / Transparency

Transparency is the *precondition* for accountability, and it is important for all levels of authority, including the LSG, to work transparently. This entails the availability of all relevant data on LSG functioning in an orderly, systematic and timely manner. Considering this is also one of the principles of Good Governance, more will be said about transparency in Part 2.

## 1.5 Sanctions

In terms of sanctions, it is not enough for those discharging a public function to carry out their work transparently – it is also necessary to ensure mechanisms to hold them accountable for their actions and they bear the consequences of their actions. Sanctions may be political or legal. Both are necessary so as to ensure accountable governance.

Sanctions may be divided into those directed against persons and those directed against measures (agreements, decisions, laws).

The accountability principle is significantly reflected in reporting, both towards the superiors and toward the citizens. However, this practice in Serbia is still not on a satisfactory level.

One of the problems encountered more often today is the insufficient reporting on the work of certain services and bodies. This leaves much room for different schemes and irregularities in the organisation itself, because the superior services, through *lack of accountability*, do not implement the final part of various procedures, which is reporting.

Nikola Ivanović  
LSG Ivanjica

### 1.5.1 How the political sanctions are set up

Political sanctions are broadly set, and they relate to the electorate's decision-making on whether someone responsible did their work in a good way or not. However, political sanctions do not refer only to (the lack of) accountability or violation of a norm – it may happen that the electorate vote for someone again, regardless of the violation of the norm or lack of accountability demonstrated. The opposite may also occur, the electorate may not vote for someone, even if they have discharged authority in an accountable manner and in accordance with the law. The value of political sanctions is reduced if the institutions of the system are weak, and if the citizens do not exert pressure from below. On the other hand, political sanctions are essential for political accountability and for linking the state and its citizens.

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## On political sanctions

One of the essential elements of establishing and promoting the accountability principle are, or should be, political sanctions. The establishment and practice of political sanctions is a problem in itself, also in the countries with long-standing democratic tradition. In the countries that are in the process of building a democratically stable society, such as Serbia is, the problem is much bigger and more complex.

The existing electoral system in Serbia based on the principle of proportionate representation hinders strengthening accountability and the possibility to impose political sanctions. The majority system or combination between the majority and the proportional systems both on the national level, and especially on the level of LSG territorial units, would increase the possibility of strengthening accountability of the selected holders of political functions.

Unfortunately, the existing practices in Serbia, compared to the practice of democratic systems, apply political sanctions to the category of servants in the public administration and LSG, to whom, as a rule, they should not apply.

In the existing regulations, accountability with hints of political sanctions can be found in the provisions of the LLSG (Chapter III, Direct participation of citizens in exercising local self-government).

Maida Kasumović  
LSG Sjenica

**Political sanctions against individuals** are primarily enabled by the elections. There is also the institute of dismissal, so, for example, a mayor may be dismissed in the same way he/she was elected – on the proposal of at least one-third of councillors and the majority of votes of the total number of councillors. At the local level in Serbia, the proportional election system is implemented<sup>15</sup>, which results in a sort of impersonalisation, in which the accountability of individual candidates is reduced. This situation has a direct effect on the quality of governance and accountability, but also weaker territorial representation, or the representation of elected candidates (for example, the majority of candidates from a list may be from the urban areas of the LSG although there are more citizens in rural parts).

**Political sanctions against acts** include the possibility to influence the outcome of a decision made – for example to put a veto on it. The LLSG provides several ways, *but the referendum is actually the only way in which citizens may directly influence the LSG*. However, all the conditions that must be met for a referendum are rather demanding and discourage citizen participation.

**Civic initiative** includes a proposal to the municipal assembly to adopt an act that would regulate a certain issue within the LSG purview, change the statutes or another act and hold a referendum, in accordance

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<sup>15</sup> Except in AP Vojvodina, where a combination of the majority and proportional systems is used.

with the law and the statutes, and the **citizens' assembly** is organised for a part of the territory as defined in the Statutes to discuss issues and give proposals within LSG purview. Municipal assembly may also **hold a referendum** on own initiative, but if there is a proposal by at least 10% of the electorate, the municipal assembly **must hold a referendum** (see Section 3.3).

The importance of political sanctions could be greater if the **reach of direct participation of citizens in exercising local self-government was expanded**, if the character of their participation were to become legally binding and if the conditions for direct citizen participation were less demanding.

The impact of political parties is powerful, at the expense of weak institutions, therefore the authorities often go over their institutional limitations, without being sanctioned, with a low degree of accountability.

### On the impact of political parties

In Serbia, politics play a significant role in citizens' lives. Politics are present everywhere, it is very important to be politically suitable both when seeking employment, and at work. The result of this is insufficient expertise and professionalism in the administration, as well as frequent changes in offices (sanctions), based on the principles of political affiliation and loyalty.

Almir Kecap  
LSG Novi Pazar

Direct citizen participation is lacking primarily because citizens' proposals are not given the necessary power, as they are not mandatory.

The change of the electoral system would considerably increase the level of accountability, because otherwise the candidates are depersonalised. Also, this change would bring about improvements in the territorial distribution of the representatives.

The key to address political sanctions, as an important segment of accountability principle, lies within the changes of the electoral system, but also of the social awareness of citizens in the future democratisation processes.

Maida Kasumović  
LSG Sjenica

## 1.5.2 How the legal sanctions are set up

Sanction is a legally determined consequence that should befall any one whose behaviour is contrary to a proscribed norm. The main aim of sanctions is to prevent the violation of a norm, or to motivate obedience. Legal sanctions could be directed **against individuals**, both physical and legal entities, and may be criminal,

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civil or misdemeanour. Legal sanctions may also be directed **against acts**, making them invalid or revoked.

### On legal sanctions

Sanctions may be directed against persons, but also against decisions. For not respecting the provisions on incompatibility, responsible persons can face financial charges, but can also be issued measures of warning and publishing the recommendation for dismissal, which can result in political sanctions for the responsible official.

Sanctions against decisions consist of the fact that in the case of election to a different public function, contrary to legal provisions, the more recent function shall cease by the force of law. The decision on the cessation of function shall be made by the body that elected the official to the more recent function within eight days of the day of receiving the decision of the Anti-Corruption Agency determining that the official was elected contrary to the provisions of the law.

Ivan Kostić  
LSG Medveda

#### a Legal sanctions against persons

Employees in LSG and members of their bodies have several types of responsibilities.

- **Disciplinary accountability**

According to the Law on Employees in Autonomous Provinces and Local Self-Government Units, an employee has disciplinary accountability for the violations of labour-related duties, which may be minor or major. If criminal proceedings have been initiated because of an offence committed at work or in relation to work or disciplinary proceedings for a major violation of duties<sup>16</sup>, the individual may be removed from work until the finalisation of the criminal proceedings or disciplinary procedure. Criminal liability, or accountability for misdemeanour, does not relieve the employee of disciplinary accountability should that action also represent violation of labour-related duties.

- **Liability for damage**

This type of accountability is in relation primarily to financial liability in case of damage caused to third party or employer.

- **Criminal liability**

The Criminal Code<sup>17</sup> also provides for criminal offences against official duty.

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<sup>16</sup> The list of major violations is rather long, but includes failure to perform, or unconscious, untimely or incomplete performance of tasks or orders issued by a superior, unlawful activities, or unlawful development of official documentation, violation of the impartiality or political neutrality principles, disclosure of information defined as secret information by special regulations, not reporting interests that an employee or an associated person may have in relation to a decision of the body he/she participates in making, etc.

<sup>17</sup> Official Gazette RS, No. 85/2005, 88/2005-corr., 107/2005 – corr., 72/2009, 121/2012, 104/2013, 108/2014 and 94/2016

When an official or responsible person in any way abuses their function or public authority in the performance of official duty and thus causes severe consequences for the service, this is considered offence against official duty.

Maja Milosavljević  
LSG Merošina

## b Legal sanctions against acts

All acts adopted by the LSG, in accordance with the rule of law, should be adopted in accordance with the Constitution and the laws, and it is necessary also to enable the possibility to assess their constitutionality and legality. As mentioned above, LLSG stipulates the duty of the LSG to enable everyone to submit complaints on its work and irregular treatment by employees, as well as that LSG bodies and services have the duty to respond within 30 days if the applicant so requests.

**Serbian government bodies supervise the legality of the work and the acts of the LSGs**, so the competent body therein has the obligation to submit to the government body information, files and documents (this is the responsibility of the Chairperson or Secretary of the Assembly, if the work and acts of the LSG unit assembly are supervised).

Republic of Serbia bodies, primarily the Government and line ministries, control the work and acts of the LSGs, controlling their constitutionality and legality, both in accordance with the general legal LSG acts and with individual acts which are not protected by the courts.

As for the **general legal acts of LSG**, the Government's duty is to revoke any act it finds not in accordance with the Constitution, with a decision published in the official paper. However, if the Government does not initiate proceedings to determine constitutionality and legality before the Constitutional Court within five days of the publishing of the decision, it ceases to be valid. It can be concluded that the Government in this case is the submitter, and the Constitutional Court decides on the faith of the said act. If the Constitutional Court determines the general act is not in accordance with the Constitution or the Law, the act ceases to be valid on the date of the publishing of the Constitutional Court's Decision.

**As for individual acts of LSGs for which no court protection is provided** before regular courts (for example, act on selection of an official), the ministry in charge of LSG affairs, proposes to the LSG to cancel or void this act, and if the LSG does not do so in a provided timeframe, the relevant ministry will cancel or void the act itself.

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Additionally, in case the municipal assembly has not been in session for over three months, or if it does not elect executive bodies in due time, or does not adopt the statutes or the budget in due time, the Government may, or may not, dissolve the municipal assembly and appoint a temporary body to perform current and urgent business, until a new composition of the municipal assembly is constituted.

It can be concluded from the above, that in their attempt to perform the control of legality, government mechanisms for control and supervision of the work of the LSG actually interfere in its competences.

### On mechanisms of control and supervision over the work of the local self-government

The mechanisms of control and supervision over the work of the LSG unit, set by the state, put them in the position of maximum and unnecessary dependence on state. The state interferes in the work of the LSGs, which is contrary to the main purpose of their existence, which should be able to define their own tasks and competences in accordance with their own needs and function freely. In this case, the government influence should only come down to the necessary supervision and legal control of the work of the local self-government unit.

Jasmina Lapčević  
LSG Blace

An **Ombudsman** may also be established in the LSG, authorised to control the respect for the rights of citizens, find violations incurred by acts, actions or lack of action of LSG authorities and public services.

**Judicial control of the administration** includes the forms of control over the work of the administration bodies by the courts. This control is exercised on formal request by authorised entities and on the subject matter of legality, which means that the court does not assess expediency of decisions or measures. While general jurisdiction courts decide on the criminal liability of officials, the Constitutional Court controls the constitutionality and legality of general legal acts of the administrative bodies (rulebooks, instructions). There is also a special procedure with the Constitutional Court on constitutional complaints, for violation or deprivation of rights (e.g. human or minority rights) by a certain act or action, if there is no legal means provided for their protection.

There is also the procedure of complaint in administrative proceedings, which means that an administrative act may be appealed on in the administrative proceeding because it is illegal or if a regulation is not applied or it is irregularly applied in the act, if the act was adopted by a body not competent for this, if the procedure of adoption did not follow the rules of procedure, if all the facts are not known or are incorrect, if an incorrect conclusion has been drawn, and so on.

If decisions are not made in accordance with the law, or there is conflict of interest, each citizen and interested party in the procedure have the right to initiate proceedings to determine the legality of the decision made. Administrative Court deals exclusively with procedural issues, adherence to the provisions of the Law on General Administrative Procedure, which regulates the manner in which decisions are made. If it is determined that a decision was not made in accordance with the Law, the Administrative Court shall repeal the decision and send it back to be decided on again.

Danijela Petković  
LSG Aleksinac

It can be concluded about the principle of accountability that it is important to apply this principle in all LSG tasks. However, it is of particular importance for the tasks that entail managing finances and public property. The reasons for this are obvious: the management of public finance and public property touches the "pockets" of all citizens, these are categories of primary interest for citizens, regardless of their present ability, interest and power to influence the disposal and distribution thereof.

Additionally, LSGs can strengthen the integrity and accountability of their representatives and employees by adopting acts and establishing mechanisms to implement and supervise (code of conduct for officials, code of conduct for staff, integrity plan, rulebook on disciplinary and financial accountability of employees, rulebook on internal whistle-blowing in the municipal administration, by establishing local ombudsmen independently or together with other LSGs and through other mechanisms).

## 1.6 Conclusions and Recommendations

Regarding the principle of accountability, it can be concluded that LSGs have met certain standards, but that there is still considerable room for improvement. The process of decentralisation also means strengthening the principle of accountability, which entails that transfer of competences to LSGs should be accepted and implemented consistently. It is upon LSGs to regulate and establish different internal mechanisms of prevention, which would be effective in calling to account all those that do not act in accordance with good governance.

Key conclusions and recommendations for the improvement of this area are presented below.

- The division of functions both between the central and the local levels of government, and between different bodies within the LSG should be more clearly defined.

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- There is a great misbalance between LSG capacities (resources, size) to fulfil all original and delegated tasks, which impedes their functioning. In terms of original LSG tasks, it would be good to establish a standard at the central level, to avoid differences in the quality of services provided by different LSGs, as well as to provide support to those LSGs that have issues with insufficient capacities.
  - The legislation related to local elections undermines the independence and accountability of local candidates by depersonalising the process, which has a direct impact on the quality of governance, as well as balanced territorial representation of elected representatives.
  - Partocracy leads to exclusive influence of political parties at the local level, at the expense of strengthening institutions.
  - The participation of citizens is negligible, primarily because of the weaknesses of existing participation mechanisms, and high demands for using the mechanisms, or because of their weak impact (e.g. facultative or advisory opinion, which is not binding), and citizen participation could greatly enhance the effects of political sanctions.
  - Mandatory cooperation in the vertical hierarchy should be improved and regulated, in the process of preparation, planning and implementation of public policies and regulations of interest for LSGs.
  - Criteria for incompatibility, bans on family members / withdrawal must be established and defined not only based on elementary identification, but also on the provision of a clear and realistic description of circumstances and relationships.
  - Mechanisms for liability in cases of conflict of interest must be implemented at the local level and guaranteed by local acts in order to ensure consistent compliance with the Law.
  - The system is still marked by reluctance to implement sanctions and high levels of tolerance to illegalities, because only cases of severe legal violations are responded to. One of the reasons for this also lies in the difficulties of interpreting a variety of norms related to accountability dispersed in various acts. This refers to the level of administration, but also to officials. Therefore, mechanisms should be implemented with same guidelines, that is, the same effects and outcomes, that would be predefined in an existing procedure.
  - Considering that depolitisation and professionalism are important elements in the reform of the entire administration, and so the LSG too, political sanctions should not apply to their employees.

PART 2

# Transparency



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## 2.1 Definition of the Principle

The principle of transparency can be defined in more than one way. Transparency means timely provision of official, accurate and complete information of public importance and interest to all stakeholders. Transparency also means that, according to a defined procedure, stakeholders may access relevant official documents containing information on the public decision-making process and their implementation. The importance of the principle of transparency is such, that accountability cannot be established without transparency.

Transparency also needs to be achieved at the local level of authority (between executive bodies, between executive and legislative bodies and towards the electorate), but also toward the central government. In this respect, we are referring to the horizontal dimension (local government – citizens, voters) and vertical dimension of transparency (the relationship between the local and the central governments).

Various aspects of the principle of transparency will be explained further in the text:

- Transparent organisation and processes
- Public access to state activities
- Flows of information between municipal bodies
- Flow of information between municipalities and the central state

In today's world, information is considered to be oxygen to democracy. Accessibility, but also regular flow and update of information by the LSG is the main mechanism to establish and maintain the transparency both towards the citizens and toward the central government. In relation to ensuring information flow between LSG bodies and towards the central state (see Sections 2.4 and 2.5), the information may be divided into the following categories:

- Standard information (information the LSGs themselves have the duty to deliver);
- Research instruments (information that must be provided according to appropriate request, i.e. there is duty to obtain);
- Fire alarms, or mechanisms used by third parties to secure flow of information.

Information disseminated by local authorities need to be relevant, clear, timely and in line with the existing rules and regulations, thus enabling citizens to follow the tasks fulfilled by local authorities. The essence of the principle of transparency is in the logical assumption that **information already belongs to citizens** and information in possession of the LSG must as a rule be available to the citizens.

## The notion of transparency

The notion of transparency entails timely, reliable, clear and relevant public reporting by a certain organisation (municipality, public services) about its status, mandate, strategy, activities, financial management, tasks and performance. There is also an obligation to inform the public about audit reports and conclusions made by auditors, as well as provide information to the public about the organisation.

Marinko Đorđević  
LSG Vlasotince

### 2.1.1 Additional remarks – links to the principle of participation

Transparency implies that local authorities make and implement decisions in line with the existing regulations and pre-defined rules, and that information regarding those decisions are accessible to all in accordance with normative acts in the area of data protection and information.<sup>18</sup>

The purpose of the accessibility of information is to provide the citizens with knowledge about the most important steps of the decision-making process, shaping local public policies, but also for them to learn about the results of implemented policies. When it comes to citizens, transparency of local authorities has two main functions - participatory and supervisory. This means that on one hand, open and transparent LSGs will encourage citizens to participate in their work, which also leads to strengthening their influence on local policy-making and implementation, and on the other, enable them to monitor and supervise the work of local authorities.

**The Strategy of the Public Administration Reform in the Republic of Serbia**<sup>19</sup> addresses the principle of transparency as one of the five key public administration reform's objectives in Serbia, defining it as *strengthened transparency, ethical approach and accountability in the work of public administration*. Transparency is one of the key public administration reform principles that should improve the participation of citizens in the work of the public administration.

Serbia lacks the framework for regulating the right of public participation in the work of the administration and basis for the protection of public interests in the administration's fulfilment of tasks, as well as transparency of the administration in general.

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<sup>18</sup> Law on Personal Data protection (Official Gazette RS, No. 97/2008, 104/2009 – other law, 68/2012 – CC decision and 107/2012), Law on Free Access to Information of Public Importance (Official Gazette RS, No. 120/2004, 54/2007, 104/2009 and 36/2010), Law on Protection of Whistle-blowers (Official Gazette RS, No. 128/2014), Law on Data Confidentiality (Official Gazette RS, No. 104/2009).

<sup>19</sup> Strategy of the Reform of Public Administration in Serbia (Official Gazette RS, No. 9/2014 and 42/2014)

## 2.2 Transparent Organisation, Processes and Procedures

The assumption of consistent implementation of the principle of transparency is clear division of responsibilities between different levels of government, but also among the institutions and bodies at the local level. In general, transparency will only be established if authorities are well organised and institutional processes and procedures are well defined. In Serbia, the principle of transparency of local authorities is directly and indirectly, introduced through the implementation of several legal acts, the most relevant of which are:

- **Law on Free Access to Information of Public Importance** – this law represents the foundation for the establishment of an open LSG. The law stipulates rules regarding the access itself, as well as instruments that can be proactively used by LSGs – issuance of an Information Booklet on LSG's yearly tasks, and the appointment of the Commissioner in charge of issuing instructions for the development and publication of the booklet.<sup>20</sup>
- **Law on Local Self-Government** – LSG bodies have an obligation to inform the public about their work and to provide needed data, information and explanations to the citizens, in order for them to be able to fulfil their rights.
- **Law on Public Procurement**<sup>21</sup> – defines the principle of transparency in the public procurement proceedings, where it is mandatory to publish tender documentation for both small and big procurements, organise transparent electronic auctions and use public resources in an efficient and transparent way during all public procurement proceedings. All this data represents an integral part of the above-mentioned booklet on municipalities' tasks.

The Law on Personal Data Protection<sup>22</sup> protects an individual's right to privacy which may be violated due to irresponsible or reckless steps sometimes taken by local authorities. There are certain inconsistencies in the implementation of the Law on Free Access to Information of Public Importance and Law on Personal Data Protection, so LSGs need to be as transparent as possible without disregarding privacy.

The Commissioner for Information of Public Importance and Personal Data Protection, as an independent government body, acts upon complaints, but can also conduct independent assessments. The Commissioner is not mandated to conduct misdemeanour proceedings and issue fines, but it adopts decisions, which are binding, final and enforceable.

The Law on Protection of Whistle-blowers as the former is founded on the fact that information is

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20 Manual for formulation and publication of Information Booklet on state institution activities, Official Gazette RS, No. 68/2010

21 Official Gazette RS, No. 124/2012, 14/2015 and 68/2015

22 Official Gazette RS, No. 97/2008, 104/2009 – other law, 68/2012 - CC decision and 107/2012

accessible to the public, thus allowing for the possibility of whistleblowing – pointing at violation of rules and human rights, misuse of office and actions endangering public health, safety and environment.

The Law on Publication of Laws and Other Regulations and Enactments<sup>23</sup>, entails informing the public about legal acts.

### **2.2.1 The clear allocation of responsibilities**

In order to implement the principle of transparency in a consistent way, it is necessary to have a transparent organisation of power and clearly defined division of responsibilities, both between different levels of power (vertically) and between different institutions on the local level (horizontally).

#### **Vertical interactions**

In terms of vertical interactions, this area is regulated by the Constitution of the Republic of Serbia<sup>24</sup> that recognises three levels: republic (central), provincial and level of LSG. Regulations define a general division of responsibilities, while the situation is more complicated in concrete implementation because of numerous regulations in force in different areas. Regarding the relationship with the central level of authority, the division of responsibilities depends on whether it is an issue of original or delegated tasks. The LSG is fully responsible and competent for the original tasks, while central government is responsible to control constitutionality and legality. The central government retains the right of full control of delegated tasks, and regulations apply for certain areas that are normally implemented at the central level. Such division of responsibilities is not sufficient for a clear delineation between the local and central governments and the implementation of the principle of transparency.

#### **Horizontal interactions**

Local self-governments independently stipulate the organisation and competences of their bodies and public services. In this respect, the statutes<sup>25</sup> define rights and obligations of LSG units, so it is particularly important in the implementation of the principle of transparency. The LSGs are obligated to make their internal organisation transparent, but often do not do this regularly (e.g. by not updating the Information Booklet).



23 Official Gazette RS, No. 45/2013

24 Republic of Serbia Constitution (Official Gazette RS, No. 98/2006)

25 Statutes, unlike other countries, such as Switzerland, are not subject to the process of approval by the central level, but they are subject to control of the constitutionality and legality of the Statutes.

### About the division of responsibilities

Clear division of responsibilities on vertical (local and central) and horizontal (within public services and municipality bodies) level is very important for transparency. The Law on Local Self-Government defines the competencies of LSGs, thus drawing the line between competencies, rights and obligations of local self-governments and authorities on a state level (Government of the Republic of Serbia, ministries, agencies and other public services). The Statute of the Municipality of Knjaževac (Official Gazette of Knjaževac Municipality, No. 4/09 and 10/2015) define in more detail the competencies of municipal bodies, in line with the LLSG and other positive regulations.

Marija Jelenković  
LSG Knjaževac

Related to the horizontal interactions, there are no clear regulations that would define the division of responsibilities. There are no monitoring systems at local level, nor rules of communication and transfer of information between institutions. The Code of Conduct for Public Officials in Serbia<sup>26</sup> stipulates that the work of officials must be public, but its implementation is challenging due to the lack of monitoring mechanisms.

### About the division of responsibilities

Real transparency can only be achieved when there is full clarity regarding who is accountable for what, who is responsible, who delegates specific tasks, what the expected results are and the sanctions for not performing the delegated tasks adequately, in accordance with the Law.

Nenad Petković  
LSG Surdulica

## 2.2.2 Transparent processes and procedures

The manner of implementing processes and procedures is the basis of transparency, primarily through the development and implementation of different rulebooks (for example, the rules of procedure of the municipal council, rules of procedure of the municipal assembly and similar), which need to develop provisions related to the implementation of the principle of transparency, because these documents regulate in detail the relationships and official procedures for adopting and implementing decisions.

The transparency of the processes and procedures within LSG units is also influenced by the e-government, which, in addition to going hand in hand with the modernisation of society that uses information and communication technologies (ICT), also responds to public needs for accessible and

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<sup>26</sup> [www.skgo.org/upload/files/fck/File/Eticky\\_Kodeks.doc](http://www.skgo.org/upload/files/fck/File/Eticky_Kodeks.doc)

transparent information and services. Although the unified law regulating this particular issue does not exist in Serbia (draft law is still under public debate), there is a number of other laws currently regulating this area.<sup>27</sup> Another step linked to e-government and administration modernisation in Serbia is the *open data policy*, which is emerging as practice in Serbia. Open data policy advocates the widest possible accessibility of data under the purview of the institutions, which are today mainly used for scientific or research purposes, with the aim to spread the knowledge on the issues that concrete data relate to. Much information owned by LSGs could be used for the analyses of social and economic circumstances that could prove to be useful for potential investors. There is also the *Open Government Partnership*, an initiative with the purpose to “secure support and engagement of world governments in order to raise public authorities' integrity, transparency, efficiency and accountability through building public trust, cooperation with civil society organisations, strengthening the role of citizens in management, fighting corruption, opening access to information and use of new technologies, all of this with the objective of having local authorities perform their work in a more efficient and accountable way”<sup>28</sup>. The Ministry for State Administration and Local Self-Government participates in this initiative.

In context of processes, procedures and transparency, it is necessary to mention a negative practise well known to local politicians and identified in the Strategy for Public Administration Reform in the Republic of Serbia – non-transparent employment in government bodies. The selection criteria are not clearly defined, the burning problem being the employment procedure for high level officials, which is also described the European Commission's Report on the Progress of Serbia towards the EU for 2016: *Political influence plays a key role in filling the highest management positions, while more than 60% high-ranking state officials are not employed in line with rules and regulations.*<sup>29</sup> On the other hand, the new Law on Employees in Autonomous Provinces and Local Self-government Units<sup>30</sup> (March 2016) is expected to help establish more transparent procedures for employment and dismissal.

### About transparent processes and procedures

Achieving administrative transparency is a process that asks for the continuous and systematic investment of effort, adoption of relevant decisions, implementation of adopted procedures and fulfilment of conditions (both regarding HR and technical equipment) to be able to reach a certain level of transparency. However, regardless of the trend of continuous rise regarding the quality of work and transparency levels, it is very important not to amend too often the basic procedures and practices that have already proven to be positive and useful, in order to keep the trust of citizens in the administration's work.

**Marija Jelenković**  
LSG Knjaževac

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27 Law on Electronic Signature, Law on Electronic Communications, Law on Confirmation of Convention of Personal Protection in regard to Automatic Processing of Personal Data

28 Action Plan for Implementation of the Initiative Partnership for Open Administration in the Republic of Serbia for 2016 and 2017

29 European Commission (2016). Serbia 2016 Report, Brussels: European Commission, p. 12.

30 Law on Employees in Autonomous Provinces and Local Self-Government Units (Official Gazette RS, No. 21/2016).

## 2.3 Public Access to State Activities

Public access to information was regulated back in 2004 by the Law on Free Access to Information of Public Importance, when the institution of the Commissioner for Information of Public Importance and Personal Data Protection was established for the first time. Public access to information on state activities is primarily regulated by the above-mentioned law, as well as by the LLSG and by LSG statutes that define the public nature of official activities, that is, the provision of public access.

The most common instruments for information-sharing are:

- Publication of Information Booklets;
- Publication of brochures/newsletters;
- Posting content on the Internet (decisions, public calls, invitations, news);
- Posting information on info-boards;
- Cooperation with the media (broadcasting public sessions of the assembly);
- Organising public hearings;
- Publishing legal acts in local official gazettes;
- Responding to demands for access to public information.

It has already been mentioned that LSGs often do not act adequately when it comes to posting information on their internet pages. Sometimes the reason is negligence, lack of interest, lack of sanctions, but also in the lack of capacities – both related to human resources, and to expertise or training provided to them. One must bear in mind, though, that the majority of the population still gets informed about local authorities' activities through conventional media – namely, printed media, or the information posted on the info-boards, which is in particular the case in economically less developed LSGs with an aging population. In situations like this, it is very important to consider *all mechanisms* that would help include the public in the activities of the LSG.

### Example

In the Municipality of Babušnica the official source of information is the Assembly's Newsletter and the Information Booklet posted on the municipality's website. All Assembly's decisions and all other relevant documents are published in the Assembly's Newsletter. However, because there is a limited number of employees, it happens that the website is not updated in time, and this delay influences the publication of the Assembly's Newsletter. On the territory of the Babušnica municipality there are no

official media sources. The average population age is 50 and older than 50, hence the majority of inhabitants does not have access to internet and cannot monitor municipality's work electronically. In addition to the website, the information about the municipality's work is posted also on social networks.

Milan Iskrenov  
LSG Babušnica

The public nature of the work of LSG units can be achieved directly and indirectly, depending on whether information reaches the public in no other way interpreted by third parties (e.g. participation in the sessions of the assembly open to the public), which is when we talk about *direct publication of information*, or the information reaches the public indirectly, when we talk about *indirect publication*.

In this respect, indirect publication may be divided into active information sharing, through active role of authorities and passive information sharing, through a passive role of authorities, in response to a request for information.

### 2.3.1 Direct transparency

Direct publication of relevant information and documents that are within the competencies of LSG units entails mechanisms that enable citizens to directly read documents and monitor procedures, decisions and local public policies. Statutes, as well as other acts (decision on organisation of municipal/town administration, municipal/town assembly's rules of procedure, municipal/town council's rules of procedure) define, *inter alia*, standard procedures for publishing information in between local authorities (horizontal dimension of transparency). Direct publishing is also done through public participation in LSG assembly sessions, which may also be closed to the public (for security reasons).

LSG assembly sessions are published in cooperation with the local media, broadcasting these sessions, directly or *post festum*. Apart from the broadcasts, there are other factors need to be taken into account: the way information on planned and scheduled sessions is disseminated, the timely nature of this information, the media sources that get to be involved, the question if the topics of said session are included in disseminated information (agenda). All these elements help distinguish between real and declarative transparency of local government.

#### Examples of direct publicity

Municipal Assembly sessions are open to the public. Media outlets get the invitation and the session

agenda. Sessions are broadcasted live on the radio, and both journalists and other interested parties are free to be present at the assembly sessions.

Ivan Kostić  
LSG Medveda

### 2.3.2 Indirect transparency – active information

The public is included in the work of local authorities indirectly, too, through receiving the information disseminated by LSG bodies and services, which is when we speak of active information sharing by local authorities, or **proactive transparency**.

Unlike municipal assembly sessions, the sessions of the municipal council are not open to the public, but need to publish their work indirectly. The sessions of the municipal council are not accessible to media either, but the rules of procedure provide that the information is published through press conferences, press releases, reports, which leads us to the domain of **indirect information sharing through active approach of the local self-government**.

#### Examples of indirect publicity through active information sharing

As for the sessions of the town council – the executive branch of municipal power – sessions are held in the absence of media. After every session, though, a press conference is held where a designated council member reports to representatives of media and the public on the conclusions and decisions passed by the council, offering the media the possibility to ask questions and demand clarifications related to decisions made. There is also a website (*Town News*) where each session of the council is announced.

Boban Stanković  
LSG Vranje

Active information dissemination entails regular information publication by the LSG:

- On local authorities' past activities (retroactively);
- On local authorities' planned activities;
- On rights that citizens access with LSG and its bodies;
- On information of public importance (Information Booklet).

The most important instruments, channels and methods used for active flow of information are LSG websites, media broadcasts, publication of rules and regulations in local official gazettes and journals, printing of brochures and bulletins, press conferences, special telephone lines, boxes for comments and

suggestions and e-mail communication channels; social networks can also be used as a tool for active information sharing. There is the possibility to provide media plans, offering a timely insight into all local authorities' media activities and becoming an important source of information about future conferences, events and meetings.

Although all of the above listed channels offer plenty of possibility for active flow of information, practical experiences point to some obstacles to active information-sharing.

### Obstacles to active information sharing

- In the organisation structure of municipal administration **there is no department and no employees qualified to deal with public relations**. The info released on behalf of municipality management are composed by the Head of Administration or other employees who are often not well informed about all the necessary details.
- By publishing their decision in the Official Gazette, local authorities fulfil their legal obligation, thus making it possible for a certain decision or a rule to come into force, but the citizens are not given a real chance to get informed about the content of said decision or rule because **the Gazette is not distributed among the public, but only among LSG services**. Third parties cannot be subscribed to the Official Gazette if they are interested.
- **On a website, decisions are not posted in a consistent way**, except in the case of public calls, advertisements and job posts.
- **Local radio signal does not cover the entire territory of the municipality**, so the inhabitants of remote settlements cannot get information in this way.

Ivan Kostić  
LSG Medveda

In Serbian context, we can talk about local **two transparency types** for LSGs mentioned in the Law on Free Access to Information of Public Importance and related to a time framework needed for the information to be obtained/delivered:

- **Proactive transparency**: entails information publication before the request is submitted by the individual citizen or the public.
- **Reactive transparency**: entails accessibility, i.e. information publication after the request is submitted by the individual citizen or the public, meaning that in that case an applicant submits a request for free access to information of public importance.

While in terms of reactive transparency we can talk only about clear provision of information upon request, the situation with proactivity may differ.

For example, LSGs may publish and update information unselectively and/or irregularly, or this information may be difficult to access (poorly marked or titled). Regular publishing and update of information with the possibility of easy search of published information leads to full respect of the principle of proactive transparency (active information sharing), which simultaneously reduces the need for reactive transparency.

For the moment, there is no obligation for LSGs to develop and maintain websites, whereas simultaneously they are bound by different sector laws and by-laws to publish and update certain information. *Guidelines for designing web pages for state administration bodies, territorial autonomy bodies and LSG units*<sup>31</sup> emphasise particularly the importance to offer easy access and simple browsing tools.

The publication of information booklets is viewed as the **main instrument** of the **proactive transparency principle**. A 2015 research by the Belgrade Open School (BOS) covering 169 Serbian municipalities focusing on the analysis of municipal Information Booklets (four municipalities had never even published such a booklet), reports the following:

*Information Booklets often lack the most pertinent information, for example: information on budget (in 54% cases), public procurement (in 70% cases) and state aid (accessible in Information Booklets of only 22 municipalities, or in 13% cases). There is a considerable number of municipalities that publish less than 50% of the prescribed information – even 94 municipalities, out of 165*<sup>32</sup>

Experiences of the Commissioner regarding the implementation of the Law on Free Access to Information of Public Importance, can be found in the regular reports<sup>33</sup>, together with the suggestions on better enforcement and better understanding of the Law. In these reports, the Commissioner also offers explanations related to securing the requested documents:

- An **Information Booklet** that has not been updated for longer than one month as such is no longer a reliable source of information about the tasks of the local authorities.
- If in its **response to application** the official body informs the applicant that the requested information can be found on its official website without stating the website address or the time and the place of information publication, it is considered that such a response is not in line with the law.

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31 Directorate for E-Government (2014), available at: [http://www.deu.gov.rs/doc/Smernice\\_5\\_0.pdf](http://www.deu.gov.rs/doc/Smernice_5_0.pdf)

32 Gajić, Mihajlo and Nasevski, Sanja (2016). Proaktivna transparentnost lokalnih samouprava u Srbiji: u raskoraku izmedu propisa i praksi, Beograd: Belgrade Open School (BOS)

33 Free access to information: Positions and opinions of the Commissioner, publication no. 5 (2016.) - <http://www.poverenik.rs/images/stories/dokumentacija-nova/prirucnik/Publikacija5/5publikacija.pdf>

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- Information presented during a municipality session is not considered generally accessible, even if there is a possibility to follow the sessions live on municipality/town website.

If we want to raise transparency, we need to change the Information Booklet's format in order to make the information it contains more accessible, and quality of websites needs to be enhanced as 64% of Serbian households has internet access. By amending the Information Booklet's format, it can be transformed into a unified central data base that would be updated by those mandated to do so, and used by all citizens.

Maida Kasumović  
LSG Sjenica

While some municipalities do not have financial resources to, for example, print brochures for information purposes or there are no local media, other LSGs have taken full advantage of ICT, thus fulfilling more than those basic demands for transparency.

#### Mobile telephone application as a tool for information dissemination

The Municipality of Priboj has an Android application that provides push information notifications and has an integrated mobile System 48 that offers citizens a possibility to address municipal authorities with different requests with the deadline for answering of 48 hours. This application has been in use for two years, making the LSG's tasks more transparent.

Saša Vasilić  
LSG Priboj

### 2.3.3 The particular obligation to provide objective, factual information

Transparency of local authorities entails the publishing of relevant, true and objective information. Local self-governments may impact the publishing of information in many ways – for example, by their selective publication, which can obscure the factual situation. Truthfulness and objectivity of information is particularly important during local election campaigns. This is when the public becomes the *electorate*, so the fact that the government is the main source of information, if abused, may provide a powerful tool to the ruling party during the campaign.

## About information creation and tasks of municipality officials

A municipality has complete control over the official information disseminated in the public – both those originating directly from LSGs and those coming from institutions and organisations founded by the municipality. Information is most often created by executive branch of power, namely the mayor's office (or some municipal department with that particular remit). Hence it is understandable that municipal authorities are eager to show themselves in the best possible light, and the representatives of opposition accept these information with doubts and criticism.

There is also the issue related to **municipal officials talking in public during the election campaign**. At that time it is particularly difficult to draw a clear line between advocating for one's own party and advocating for public authorities. The Law on Anti-Corruption Agency stipulates that a state official may hold a position in a political party and take part in its tasks only if that does not jeopardise his or her functioning at the official level. An official cannot use public resources or gatherings where he or she takes part in their official capacity to promote their political party. In the case where these provisions are breached, the state official may be held liable for misdemeanour and fined.

Ivan Kostić  
LSG Medveda

A challenge with publishing objective and factual information also reaches local media, which in modern democracies, together with the public, are a stronghold for establishing transparency and control of the government. However not all media is the same. Media financed from the local budget does not want to risk its financial resources, so it may display a low level of criticism towards the information. An additional issue is that in small municipalities there is often just one media outlet or no media at all.

### 2.3.4 Indirect transparency – passive information

The Public is included in the work of LSGs through its own initiative too – by submitting a request for access to information of public importance, which is also a signal of elevated level of activity of the public, but also passive information sharing by the LSG. However, responding to the request for access to information of public importance is not the only way in which authorities inform citizens passively – each response to the request submitted by the public represents an example of passive information sharing (responding to telephone calls and questions sent by e-mail, personal contacts between citizens and representatives of local authorities), though in that case the information provided is often not of public importance.

This is why, in terms of openness of the LSG towards the general public, the most important mechanism is the response to requests for access to information of public importance, or the so-called reactive transparency of local authorities. The Law on Free Access to Information of Public Importance stipulates the following limitations in the free access to information: in the case this access can be abused or endanger life, health or security of a person, prevent uncovering of a criminal act, endanger national security, international relations and economic interests of the state, or be in contravention of the Law on Data Confidentiality or Law on Personal Data Protection.

As confirmation of the paradigm information collected by local authorities *a priori* belong to citizens, the applicant does not have to state reasons for submitting the request. The request itself may be submitted both in written and oral form, and the deadline for responding to the request for access to information is up to 40 days. The insight into the document containing the requested information is free. The person requesting information pays the fee for issuing a copy and for referral.

In the case where a LSG does not respond to the applicant's request, the applicant may address the Commissioner, who is mandated to react in case the right to free access to information is breached. Even if LSG bodies do not have in their possession the information needed by the applicant, it is upon them to forward the request to Commissioner and inform both Commissioner and the applicant where, according to their knowledge, this information can be found.

However, one of the issues encountered by the citizens is the so-called **silence of the administration** – when some authority does act upon a request to access information within the legally defined timeframe. According to the Commissioner's Report for 2016, this is the second most common reason why the citizens address the Commissioner, i.e. make complaints (accounting for 36% of all complaints made). The citizens make complaints largely to the (lack of) actions by the central authorities, and to a far lesser extent by LSG bodies, but it is important to note that the bodies and organisations in LSG units are those that to the greatest extent do not act according to the Commissioner's decisions (29%).<sup>34</sup>

Experiences in LSGs vary - there are LSGs that get just a few requests for free access to information, and those that get so many it is difficult to react in a timely manner (there are also examples of abuse, such as frequent submission of requests, repetitions of the same requests, requests for too much information).

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<sup>34</sup> One of the reasons for such a high number of complaints made and lack of action on the Commissioner's decisions is also the uneven functioning of the mechanism regulating the execution of the Commissioner's conclusions after they have been made – namely, according to the Commissioner's Report for 2016, the practice of regular courts is not even in relation to the execution of the Commissioner's conclusions, which means that there are different procedures for collecting or not collecting the fines, as well as the facts that the fines or penalties themselves are not a meaningful sanction, so it is sometimes the case that the authorities rather choose to get penalties, i.e. to pay the fine, than to allow citizens free access to information of public importance.

### Examples from the municipalities of Bujanovac, Babušnica and Priboj

Citizens are mainly passive when it comes to submitting requests for information. In this way they are not very much included in political life and cannot influence the work of authorities. As a solution, the municipality should initiate a campaign that would raise awareness of citizens about their right to access to information of public importance, through different forms – media, billboards, brochures and other.

**Sali Salih**  
LSG Bujanovac

Due to the limited number of employees, municipalities as small as Babušnica have a problem with the delivery of information of public importance. Sometimes they have to deliver information presented in 1,000 pages, thus encumbering the employees' work with this additional, time consuming task. Municipality is obliged to submit the information to the applicant and the applicant does not have to cover the expenses with the advance payment. In the case that the applicant does not pay the requested amount at all, municipality has the right to lodge a complaint, but the proceedings are often time consuming and expensive.

**Milan Iskrenov**  
LSG Babušnica

In the Municipality of Priboj it happened more than once that the employees had to spend a couple of days printing thousands of pages at a citizens' request. A complete transfer to e-government and creation of a thorough database would surely be an appropriate solution, enabling the employees to automatically and easily locate needed documents and mail them to citizens electronically. This job would have to be done by an IT Department established under the municipal administration's umbrella.

**Saša Vasić**  
LSG Priboj

A good indicator of LSG transparency in response to citizen initiative is the issue of whether a municipal service centre, which enables addressing various issues of the citizens in one place (one-stop shop). The service centre fulfils its function by assuming that the local authority is in the service of the citizens. It is very important for the organisation being the service centre to be functional, but also that clear lines of responsibility exist, together with processes and procedures defining them, supporting them and making them effective and efficient in the provision of services to the citizens. In the opposite situation, the existence of the service centre alone is not enough and will not have a major impact on the quality of services provided by the local administration to the citizens.

### 2.3.5 Provision of the documentation of information

The mentioned legal provisions related to providing information to citizens also include the practice of LSG units related to storing and archiving information in different appropriate forms. This issue is defined in different laws in different areas, although a unified law such as the draft Law on Archive Materials and Services,<sup>35</sup> should define public archive materials, as those developed through the activity of government bodies and organisations, autonomous province and LSG bodies, which should be kept in an orderly and safe condition. Also, the Law on Electronic Documents<sup>36</sup> provides for safekeeping of electronic documents by the authorities. This issue is further regulated with by-laws at LSG level. The obligation to keep minutes, for example, of the meetings of the municipal council (that are subsequently approved) is defined in the local rules of procedure of municipal councils. The scope of tasks of the municipal administration organisational units, also includes actions related to safekeeping and storing of information (e.g. keeping original documents, keeping records on sessions held, keeping minutes at meetings held in other LSG bodies).

It is also important to mention the changes in the Law on General Administrative Procedure, related to the **obligation of government authorities to exchange information**, which in practice facilitates daily communication of citizens with the local authorities.

### 2.3.6 The role of the media

Under the circumstances of unequal development (e.g. citizens in certain LSGs do not have Internet access or access to printed documents), we may say that media can reach a large number of people easily, which makes them a very powerful information tool. Media activities are regulated by the Law on Public Information and Media.<sup>37</sup>

The principle of transparency of the local government may be compromised by the level of media (in)dependence. The issue of independence is largely determined by the source of funding of the specific media outlet, as well as how many (and what kind of) media are functioning in the local self-government.

#### About financing local media

The media is obliged to publish or broadcast independent, neutral and truthful information, but it is not always so. Information is often dictated by financial sources. Depending on the source of funding,

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35 Available at: <http://www.paragraf.rs/dnevne-vesti/101214/101214-vest8.html>, accessed on 15 May 2017

36 The Law on Electronic Document (Official Gazette RS, No. 51/2009)

37 Official Gazette RS, No. 83/2014, 58/2015 and 12/2016 - authentic interpretation

the media may create an unrealistic public opinion. For example, if a municipality allocates enough financial resources for media outlets, those outlets will praise local authorities and create a public opinion that is not realistic. Or vice versa, if the municipality does not support media enough, which is not rare, the public could also end up misinformed about local authorities' poor governance and unsatisfactory budget management. That is why there is often a conflict between representatives of the media and local authorities.

**Sali Salihi**  
LSG Bujanovac

Bearing in mind the issue of cost effectiveness, another challenge is that the media is often focused on information which is not of public importance, but still have a positive effect on their financial sustainability. Then the primary goal of the media is no longer the control of accountability and transparency of the LSG.

### About the role of media in practice

In societies where democracy and economy are not well developed, the role of media is undisputed, but often expressed in a negative context. There is a gap between the normative and the real, hence the goal – which is increased circulation or ratings – is attained by unacceptable misinformation and sensationalism.

**Maida Kasumović**  
LSG Sjenica

Still, situations witnessing the distorted role of the media in the society may also represent a resource that can be used. Especially in terms of soft participation of citizens at the local level, media are those that, in cooperation with local authorities, may instigate change. An example of enhanced cooperation with the media is by educating journalists about the areas of public importance, such as the issues of financing and budgeting, especially in the light of Serbia's future accession to the European Union (which will call for programme budgeting). In terms of transparency, the media play an important role in eradicating and uncovering corruption and similar phenomena.

## 2.4 Flows of Information between Different Levels of the Government

Vertical interaction is based on hierarchy, and refers to interactions between LSG units and higher levels of power (provincial and central), as well as with lower levels of power (local communities), whereas horizontal interaction takes place within LSGs (between different bodies, services, organisational units), but also other local self-governments

Flow of information and competencies of local authorities' bodies are defined in municipal statutes, and other acts (such as decisions of the municipal assembly). Flow of information is thus defined in several different documents, which requires good coordination, as well as a thorough knowledge of all documents in order to fulfil the competences regarding the flow of information in its full capacity.

Local self-governments are granted the possibility to found public enterprises, and other forms of organisation, performing tasks in the general interest, and the entities founded by the LSG develop their transparency policies through their statutes (approved by the LSG) and other documents, but have the obligation also to respect the public nature of their work, in accordance with the Law on Public Enterprises.<sup>38</sup> Still, when it comes to the implementation of transparency principles, there are certain difficulties linked to the relationship between LSGs and the organisations they establish.

### Example of the Municipality of Bojnik

Once a year, public companies submit their reports and business plans. Upon the municipal assembly's demand, they may submit quarterly reports, but there is no legal obligation to report weekly or monthly.

Some municipalities introduced weekly meetings (called 'collegiums') where brief progress reports are presented, thus speeding up the flow of information. All directors of municipal companies are present at these meetings, as well as directors of various institutions and schools, heads of municipality administrations and its organisational parts, but no minutes are taken or decisions made that would be binding for the participants. Tasks are delegated orally, and it often happens that those who were not able to fulfil them find the excuse in the fact that there is no written trace of what was said at previous meeting.

Also, another example of poor flow of information are municipal council sessions. They are not public.

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<sup>38</sup> Law on Public Enterprises (Official Gazette RS, No. 15/2016)

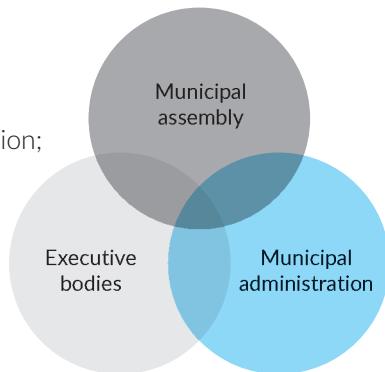
Their conclusions, decisions and other acts are not published, unless the law explicitly binds them to do so. Municipal council transparency is on a very low level, which represents one of the challenges in the communication between municipal bodies.

Saša Dodić  
LSG Bojnik

#### 2.4.1 Standard information processes (duty to deliver)

Standard information dissemination mechanisms in LSG are defined by laws and by-laws. As there are executive bodies in the LSG (mayor and council), the assembly as a representative body (i.e. legislative body adopting general acts within its purview) and administration as a special operational body, we may distinguish between several directions of the flow of information:

- Between the municipal assembly and municipal administration;
- Between the executive municipal bodies and municipal administration;
- Between the municipal assembly and executive bodies.



##### Information flow between municipality bodies

Flow of information in municipality and its bodies must be fully in line with the existing laws and by-laws. Some information must be provided, some not, some are accessible only upon request, and some stay confidential. Different laws and by-laws regulate competencies information wise, as well as the way information is collected and disseminated by LSGs and their bodies. That is why the flow of information principle (transparency) in municipal structures goes hand in hand with the legal definition of municipality's obligations (accountability).

Nikola Ivanović  
LSG Ivanjica

In terms of the flow of information between different local bodies, the LLSG defines this issue through the concept of competencies and responsibilities between bodies.

## Three directions of information processes in the Municipality of Crna Trava

### a) Information flow between municipal administration and executive bodies:

One of the municipal council's competencies is to monitor the work of municipal administration, which is more closely regulated by local acts, most often performance reports. The municipal administration has to submit a report on its performance to the municipal council at least once a year, and the municipal council may ask for reports in-between the regular intervals.

The municipal council can monitor the administration's work through administrative proceedings, as a second instance body.

The information between the municipal administration and municipal council are most frequently exchanged on meetings held between the mayor, the head of the municipal administration and the Heads of organisational units (most often held on a weekly basis), when information on progress is exchanged and new tasks delegated.

The mayor has the right to ask for information and clarifications from the municipal administration.

### b) Flow of information between municipal assembly and municipal administration

A regular route that the municipal administration uses to inform the municipal assembly about its tasks is through a progress report, submitted to the municipal assembly by the municipal administration, at least once a year.

### c) Flow of information between municipal assembly and municipal council

Like the municipal administration, the municipal council also submits a report to the municipal assembly at least once a year, and more often if the assembly asks so.

Aleksandar Nikolić  
LSG Crna Trava

Competences and information sharing processes between local bodies are reflected in the budget development - the municipal council submits the budget proposal, the municipal assembly passes it, along with the final account, and it is up to the mayor to order its enforcement. However, a sensitive issue such as the budget cannot fully be to the benefit of citizens if citizens are in no way included in its formulation, or at least informed about the process of development. There are good practise examples of municipalities that use different ways to make the information on the budget clearer and easier to understand for their citizens.

## Example of the Municipality of Surdulica

In its session held on March 18, 2013, the municipal assembly of Surdulica passed a decision on including citizens in the budgetary process through the following actions of the municipal administration:

1. **Organisation of citizens' surveys**, on budgetary priorities once the work on draft budget starts.
2. **Regular information dissemination in the public**, on all the steps taken during the preparation of the decision on the budget of the Municipality of Surdulica: announcement of the survey, informing the local media, publishing the information on the portal of the Municipality of Surdulica, as well as the presence of LSG representatives in the local media.
3. Organisation of the **Local Budgetary Forum**, where the results of the survey are presented.
4. **Submitting the Local Budgetary Forum conclusions** to the municipal council.
5. The formulation of a final version of the **Citizens' Guide through the budget of the Municipality of Surdulica** that is later posted on the municipal website, and the distribution of its printed version after the municipal council adopts the draft decision on the budget.

Nenad Petković  
LSG Surdulica

Another thing to mention regarding enhancing the flow of information between local authorities' bodies is the distribution of local official gazettes<sup>39</sup>, a tool identified in the Strategy of Public Administration Reform for making the laws and by-laws more accessible to all authorities, organisations, services, institutions and individuals.

### 2.4.2 Investigative instruments (duty to obtain)

The principle of superiority and responsibility also entails, among other things stipulated by different laws and by-laws, reactive informing, where higher authorities are informed about lower authorities' activities upon their request. Upon request, reports are submitted, both on a regular or irregular basis.

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<sup>39</sup> Presented in more detail in the Law on Publication of Laws and Other Regulations and Enactments (Official Gazette RS, No. 45/2013)

## About information upon request of a higher instance

All instances that are obliged to submit reports to higher instances are obliged to do so not only in regular intervals, but also upon request. The municipal administration is obliged to do so upon the request of the municipal council and municipal assembly, while the municipal council is obliged to do so upon the request of the municipal assembly. Apart from the general activity reports, a higher instance may request an early report on concrete issues, expecting concrete answers.

Aleksandar Nikolić  
LSG Crna Trava

Apart from regular reports, an important instrument is also the authorisation of higher instance body (primarily the municipal assembly), to ask for extraordinary reports about the work of subordinate institutions, as well as the possibility to establish working bodies (standing and *ad hoc*) and investigative committees mandated to establish the facts and share factual information. All of these issues are defined in municipal statutes and the municipal assembly rules of procedure.

## About working bodies and investigative committees

**Standing working bodies** are established by a special decision of the municipal assembly that defines their competencies. The mandate of these working groups lasts as long as the mandate of the assembly that established them.

**Ad hoc working bodies** are established with a specific task in mind and their mandate expires as soon as the work is done. It is very often that **investigative committees** are established as ad-hoc working bodies, with the task to discuss specific issues within the competences of the assembly, its bodies, public companies, institutions and other organisations whose founder or majority owner is the local self-government. The investigative committee's tasks and the tools at its disposal are defined in its founding document; the investigative committee can request from state institutions and some organisations to submit data, documents and announcements, and take needed statements from individual persons. After its work is done, the investigative committee submits a report to the assembly, together with the proposed measures that are to be taken, and on the day that the Assembly discusses the report, the investigative committee ceases to exist.

Aleksandar Nikolić  
LSG Crna Trava

An additional instrument with special value in the phrase 'duty to obtain' is the so-called councillor's question. The councillor's question instrument is regulated by rules and regulations of the municipal assembly, offering councillors the possibility to demand certain information from the municipal assembly or

some of its administrative departments. The answer needs to be provided in the period of time established by the rules of procedure. The role of a councillor and the effect of their questions become even more important if the councillors are present in their local offices and in touch with citizens. In this way the citizens themselves, through the councillors, can initiate a discussion in the assembly or raise an issue of importance for the local community. It goes without saying that councillors, like all other citizens, can also request access to information of public importance.

### **2.4.3 Fire alarms**

'Fire alarms' in Serbian context relate to the working groups or institutions with the mandate to identify any type of abuse that could take place at the local level. The Commissioner for Information of Public Importance and Personal Data Protection has the most important function with the mandate to monitor and secure transparency of LSGs and enforcement of the Law on Free Access to Information of Public Importance. Both the Commissioner and the Ombudsman represent independent control institutions. The Commissioner ensures free access to information, more precisely, they respond to the complaints in case an institution does not respond to a citizen's request for information. The Ombudsman is in charge to secure the respect of the good governance principle where the authorities work for the benefit of the citizens, as well as to monitor if the administrative bodies respect the rights of citizens.

While the role of the Commissioner exists only at the central level, the Ombudsman works at the national level, provincial level and the level of LSG units, which is defined by the LLSG and the municipal statutes. Still, the law only stipulates the possibility to establish the role of the local Ombudsman, while two or more LSG units can have a joint Ombudsman; while in practice, there is also the association of local ombudsmen.

Still, as the establishment of an institution of the Ombudsman on a local level is a possibility, but not an obligation, it often happens that municipalities, especially smaller ones, do not have their Ombudsman, but have to address the one on a provincial or national level.

On the other hand, it is up to a mandated person within the LSG unit to delegate the duty of responding to requests for free access to information to one or more officials of the local self-government.

#### **Example of the Municipality of Ivanjica**

Smaller municipalities in our country rarely have their local Ombudsman. The Ombudsman is similar to a whistle-blower; they should serve as a bridge between local authorities and citizens. In the case of Ivanjica Municipality, this job is done by the national Ombudsman. A recommendation would be to focus on mandatory establishment of the local Ombudsman in the municipalities (and opening the

office of the national Ombudsman in the municipality), in order to become more efficient when solving our problems. By defining the competencies and responsibilities of a local Ombudsman, in line with the competencies of the national Ombudsman, a more independent and more efficient transparency system in our municipalities would be ensured. We must bear in mind that those requesting the information expect to get it at a specific time, so that the national Ombudsman lacks the capacity to respond to citizens' complaints in time, or to respond adequately to the issues that arise between municipality services or between local and national authorities.

Nikola Ivanović  
LSG Ivanjica

The functioning of the institutions mentioned above is based on both reactive and proactive principles – they react when a citizen comes for help, but also *ex officio*, at their own initiative. In terms of the reactive principle, extraordinary commissions or investigative committees should also be mentioned (see Section 2.4.2). Irregularities in the work of the local bodies and services may also be reported by individuals, and media are, naturally, a valuable resource too.

#### **2.4.4 Overview of the instruments which serve the flow of information between local self-government bodies**

Based on the above, an overview of all instruments enabling information flow between municipality bodies is possible, that is, information sharing between bodies can be distinguished according to several most important legal grounds:

1. Information flow on the basis of the LLSG and statutes: on the basis of competences, through standing and *ad-hoc* working bodies/committees, through the councillor's question.
2. Information flow on the basis of the Law on Free Access to Information of Public Importance.
3. Information flow on the basis of the Law on Publication of Laws and Other Regulations and Enactments

##### **Information flow**

| on the basis of competencies   | through standing and ad-hoc working groups/committees  | in response to the councillor's question                                  | on the basis of the Law on Free Access to Information of Public Importance  | on the basis of the Law on Publication of Laws and Other Regulations and Enactments    |
|--|--|---|---|--|
| <ul style="list-style-type: none"> <li>• Regular reports on activities</li> <li>• Extraordinary reports on activities</li> </ul> | <ul style="list-style-type: none"> <li>• Working group report</li> <li>• Investigative committee report</li> </ul> | <ul style="list-style-type: none"> <li>• Councillor's question</li> </ul> | <ul style="list-style-type: none"> <li>• Information Booklet</li> <li>• Request for access to information of public importance</li> </ul> | <ul style="list-style-type: none"> <li>• Dissemination of official gazettes</li> </ul> |

Depending on whether these are standard information processes, investigative instruments or fire alarms, the following classification can be made:

|  | Standard information processes   | Investigative instruments (duty to obtain)  | Fire alarms   |
|--|--|---|---|
| Municipal Assembly                             | Regular reporting of municipal bodies<br>Reporting of standing working groups<br>Audit | Extraordinary reporting of municipal bodies<br>Reporting of extraordinary committees or working groups and investigative committees<br>Councillor's questions | Media   |
| Executive bodies (Mayor and Municipal Council) | Regular reporting  | Extraordinary reporting<br>Working committees<br>Investigative committees   | Media<br>Local Ombudsman Offices                    |
| Administrative bodies                          | Regular reporting  | Extraordinary reporting   | Media<br>Whistle-blowers<br>Local Ombudsman Offices |

## 2.5 The Flow of Information between Local Self-Government and the Central Government

Flow of information between LSGs and authorities on central level is indirectly defined in the LLSG, regulating the supremacy of central and provincial authorities over local authorities. In that respect, the highest level of cooperation between central and local powers is realised through communication between LSG with state administration bodies in the same area of expertise (education, health, social protection) – ministries, ministry departments and special agencies, which is when tasks are delegated through special, sector laws. These laws also mainly regulate the flow of information, but also obligations, for example if approval or reporting is required).

With regards to control of the central level towards LSG units, for original tasks it is seen in the control of

the legality of acts adopted and tasks performed, while for delegated tasks the powers of central level is increased and includes more interference in the work of the LSG units through, for example, issuing mandatory instructions, warnings and orders, ex ante or ex post approval, cancellation or revocation of acts, substitution or overtaking of competences and denying the funds to perform the delegated tasks.<sup>40</sup>

Regarding the information flow in its general sense, national bodies and bodies of territorial autonomy should inform bodies and services of LSGs, at their own initiative or upon request, about the measures planned and implemented, about the constitutionality and legality protection and about the fulfilment of the citizens' right to local self-government (but may also request data and information). The fact that in Serbia there is no one law or by-law that defines in a unified manner the communication and flow of information between different levels of power, which represents an aggravating circumstance in regard to consistent implementation of the principle of transparency. Local self-governments themselves often report about practical difficulties related to information flow between local and central powers.

### Communication difficulties of the Finance Department in the Municipality of Aleksinac

1. In the experience of this Department, **informal and intensive telephone communication with the Ministry of Finance, almost on a daily basis**, is a very important and useful communication channel. The strengths of such a communication are directness and speed, while the weaknesses are lack of reliability and (to a certain extent) dependence on interpersonal relations.
2. Another issue with communication with the Ministry of Finance is, in the opinion of this Department, **a lack of satisfactory expertise of the people employed at the central level**, due to a low retention rate of employees (which is the general problem of the public sector in Serbia). However, as the financial sector is a very specific and complex one (it is necessary to know a plethora of rules and regulations and be able to interpret some ambiguous laws), good experts in this area are not made over night; frequent changes of personnel, in addition to natural causes (old age) significantly hurt the overall efficiency of the service.
3. Still, maybe the most serious issue with communication with the authorities on a central level, according to the experiences of this particular Department, is the **lack of harmonisation between the rules and the instructions coming from different ministries and other government bodies** (where ministries act as feuds). Namely, the lack of communication and conflicts between ministries put LSGs in an uncomfortable position, when from various sources they get completely contradictory demands.

Uroš Veličković  
LSG Aleksinac

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40 Source: Milosavljević, B. (2005). *Sistem lokalne samouprave u Srbiji*. Belgrade: Standing Conference of Towns and Municipalities

### **2.5.1 Information flow between municipalities and the Autonomous Province**

Cooperation between municipalities and provincial authorities is set on the same foundations. It is additionally defined by the Law on Competencies of the Autonomous Province of Vojvodina, as well as by other provincial laws in different areas.

## **2.6 Conclusions and Recommendations**

The achievement of the principle of transparency largely depends both on the will of the institutions to open up, as well as on all stakeholders, and particularly citizens, to demand from institutions to work publicly. Everything implemented by public authorities should be available to the public and in this context LSGs alone, or in cooperation with the civil sector and the citizens can and should provide this information always and again, and not only when the public requests it.

Key conclusions and recommendations for the improvement of this area are presented below.

- The principles of transparency and accountability cannot be separated in practice, considering that we cannot speak of accountable actions of local authorities if there is no transparency. Also, the principles of transparency and participation are complementary, so more transparency (direct information sharing) also encourages higher citizen participation.
- Citizens, although they have legal means, do not sufficiently participate in the local authority decision-making processes (e.g. in public hearings), and it is a big issue that should be tackled by continuously building trust between the citizens and institutions.
- Although there are legal grounds for implementing the principle of transparency in LSGs, the problem lies with the irregular or selective implementation of regulations. Also, processes and procedures provided in the laws are often implemented to the extent to which the sanctions are provided and applied.
- Clear division of responsibilities, both horizontal and vertical, is key to achieving a higher level of transparency.

- A decision-making process that is pre-defined and implemented strictly may be a preventive measure to potential manipulations by authorities.
- Provision of objective information on the work of local government is particularly important at the time of local elections. The media have a key role in the provision of information, but conditions for objective reporting should also be created.
- In terms of improving cooperation of the local authorities with the media, LSGs should develop a plan or strategy of cooperation with the media. By initiating the adoption of a plan or a strategy, the local authority would show its “political will” to improve transparency through better and stronger cooperation with the media.
- The practices of local bodies in the implementation of decisions made by the Commissioner should be improved.
- Lack of regulations and sanctions committing LSG units to manage and maintain their websites (provide information) in an adequate and uniform way is, consequently, one of the excuses of the LSG units for a lack of transparent processes. Therefore, unique regulation should be introduced with suitable sanctions from the national level, in order to define this issue more strictly.
- There is tension between demands for transparency and data protection, because of which additional training and professional development of LSG staff is needed.
- Transparency cannot be achieved by using one instrument, which most often refers to the publishing of the Information Booklet or responding to citizens' requests, but a system should be established combining several different instruments that would help unimpeded information flow from the citizens as clients, through the executive to the legislative power (and back to the citizens).
- The flow of information between LSG bodies should be improved, considering that it largely relies on informal communication channels. The development of a local communication strategy would define activities and measures to improve information flows between government bodies more clearly.

PART 3

# Participation

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## 3.1 Definition of the Principle

Citizen participation in the public sphere means their **active engagement in the process of policy formulation, adoption and implementation**. Information sharing and two-way communication (citizens towards LSG and vice-versa) represent preconditions for active citizen participation in the society. Lack of information provided by the government to the citizens may cause a feeling of incompetence among the citizens and result in withdrawal from public life. Therefore, to be able to participate actively, citizens must be given timely access to information. That is, decision makers must work **transparently** so that information may reach citizens in time and they can participate in social life and thus help improve local self-government, and identify and address a variety of issues on the local level they encounter in daily life.

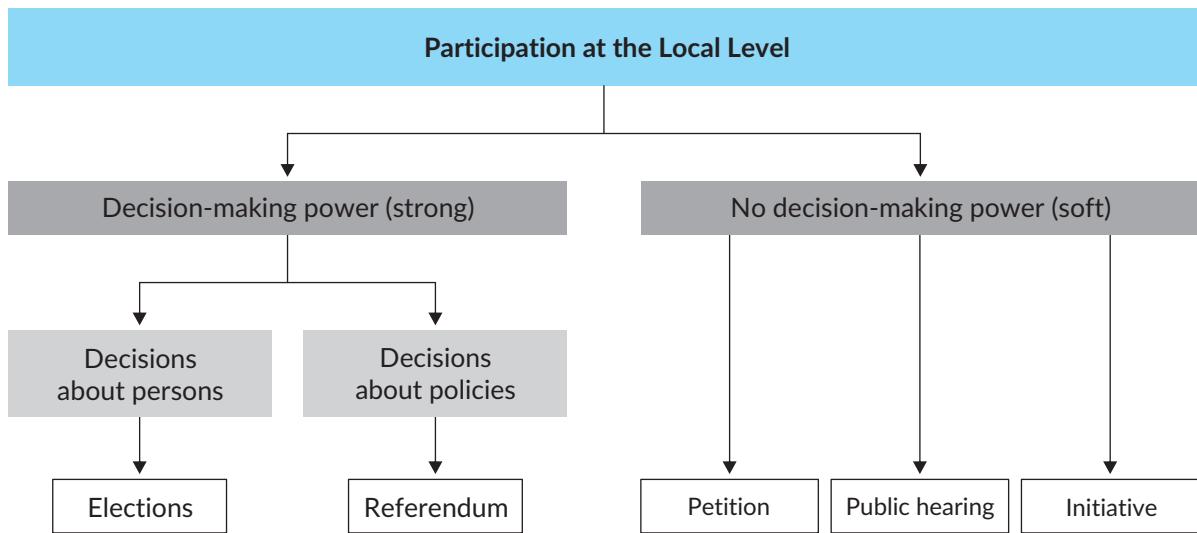
The principle of participation discussed in the sections below, include both forms of participation:

- Participation with decision-making powers (strong participation) and
- Participation without decision-making powers (soft participation).

Participation may refer to **direct decision-making** (strong participation) or the contribution to **decisions made by others** (soft participation).

**Strong participation** represents the ability of the electorate to decide on issues that relate to decisions about persons (related to elections) or policies (initiatives and referenda as instruments of direct democracy). The will of the majority of citizens (with voting right) is binding for all.

**Soft participation** entails processes that are consultative, while stands formulated in these processes are not necessarily stands taken by the LSG. In this case, those that participate may exchange their demands and priorities with the competent bodies, but the body is the one making the final decision and therefore the responsibility stays with the body (e.g. municipal assembly or council or some committee of the council).



## 3.2 Participation with Decision-Making Powers (Strong Participation)

### 3.2.1 Common features

#### a Who has the right to participate in decision-making processes

Serbian Constitution (Article 52) defines that every adult Serbian citizen with legal capacity has the right to elect and stand for election, as well as that the **electoral right is general and equal**, elections free and direct, and voting secret and in person. Also, the LLSG defines that the right to elect councillors belongs to adult, legally competent Serbian citizens, with permanent residence on the territory of the LSG unit in which they are exercising their electoral right, and that citizens elect councillors based on free, general and equal electoral right. Electoral right is exercised directly, by a secret vote. There are no provisions related to the duration of residence for the citizens' legal right to vote, but the LLSG provides that foreign citizens may have certain rights in LSG under the conditions and in the way set out in the Law.

## b Voting rights and the democratic legitimacy of state decisions

The municipal assembly members are elected by the citizens (councillors are elected based on party lists, party coalitions and lists brought forward by groups of citizens). In this process of elections, the voters give legitimacy to bodies by way of exercising their electoral right.

In terms of the electoral will of the voters, if after some time a member of the parliament (or a group of members) leaves an option and moves to a completely different one, then this member may help a shift in the majority coalition, i.e. the government. In such situations the question arises whether this method of voting always guarantees legitimacy and democratic nature of decisions made by the municipal assembly at the level of LSG or the Parliament at the national level.

Maida Kasumović  
LSG Sjenica

## c Legal protection

The Republic of Serbia Constitution guarantees rights and freedoms to citizens. Rule of Law is the main assumption of the Constitution based on unalienable human rights exercised, among other ways, by way of free and direct elections. Political freedoms and citizens' rights (including electoral rights, freedom of organisation, access to information, etc.) enable citizens to participate in politics and make decisions on social issues (directly or through representatives) and its importance is demonstrated by the fact that it is regulated by the highest national legal act.

Exercising their political rights, the citizens participate either in creating the will of the government (electoral right) or expressing their personal opinion on public tasks (freedom of press, assembly, association, petition). The fact that an individual exercising these rights can keep their status of citizen and does not become a body of the government, is the reason why political rights are included under human rights.<sup>41</sup>

### On legal protection

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the so-called Aarhus Convention, ratified in 2009), provides the obligation for all parties to guarantee the right to access information and to public participation in decision-making. This means that the source of legitimacy of government decisions is in the proclaimed participation of citizens in decision-making, on all levels of government. Legal protection, i.e. the

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<sup>41</sup> Marković, Ratko, *Ustavno pravo*, University of Belgrade School of Law, Belgrade 2011

protection of citizens that wish to be actively involved in decision-making, is reflected in the right of each citizen to seek protection before the competent authorities, depending on the subject matter of the law, and in the final instance also before the institution of the Supreme Court of Cassation.

However, even with the existence of positive legislation regulating the principle of participation of citizens in decision-making processes (especially taking into account the obsolescence of regulations related to the referendum and citizens' initiative procedures, short deadlines and insufficient protection of citizens' rights) strong participation of citizens with decision-making powers is very difficult to achieve in practice. It is necessary to adopt new legislation that would provide for this type of participation, and thus enable participatory democracy in the Republic of Serbia.

Jelena Gligorijević  
LSG Crna Trava

In Serbia, citizens' rights in decision-making processes are still somewhat neglected and understood lightly. There are laws, by-laws, but there is no full implementation. This is a major issue, which may result in disrespect of the will of the people and the freedom of thought. There are still no mechanisms on the local level implemented in Serbia that would enable citizens to decide about the most critical issues for their municipalities and local communities.

Nikola Ivanović  
LSG Ivanjica

#### **d The importance of communication rights as a prerequisite for effective participation in the decision-making process**

The protection of electoral right (and electoral right itself) is not enough to ensure that opinions are formed in a democratic manner – it is necessary to ensure a number of political rights and freedoms guaranteed by the Constitution, such as the freedom of organisation, freedom of press and other forms of information sharing, freedom of speech and public assembly, and the right of citizens to criticise the work of government bodies and officials.

The existing legislation is good, the question is whether these rights are always respected in practice. Opening Chapters 23 and 24 in the negotiations of Serbia's access to the EU should help to, through legislation and jurisprudence, fulfil these rights to the highest degree possible, making them unquestionable and a precondition for good organisation and implementation so that each citizen individually and all citizens as a whole can exercise this right properly.

Maida Kasumović  
LSG Sjenica

### 3.2.2 Electoral rights

Elections represent a procedure through which voters entrust the representative body with the discharge of political powers, and thus they represent the sovereign will of the citizens. This is why elections are the most important instrument the electorate has (to call elected authorities/individuals to account).

#### a The right to elect and the right to stand for elections

The right to elect and the right to stand for elections has already been discussed. The authority for organising elections are the LSG Electoral Commission and election committees. They are supposed to be independent and autonomous, acting in accordance with the laws and relevant regulations.<sup>42</sup>

#### b Elections on the municipal level

Councillors are elected based on political party lists, political party coalitions and lists proposed by groups of citizens. Citizens have the right to be equally, timely, truthfully, impartially and fully informed through the media about the election campaigns of all electoral list presenters and candidates on these lists, as well as about other events of importance for the elections. The election campaign includes all public, political, promotional and other activities of electoral list presenters and candidates on these lists.<sup>43</sup>

#### c Majority voting

**A majority electoral system** is when individual members of a representative body are elected between several candidates, the winner being the person that has received the most votes (relative or absolute majority). This system is considered to be a rather simple one, as it does not require complicated mathematical operations. In this way the voters are enabled a stronger connection to the candidate.

##### Majority electoral system

Majority electoral system represents the division of mandates by applying the criterion of the largest number of votes won. The majority system has two main forms, and a combination of the two. The

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42 Law on Local Elections (Official Gazette RS, No. 129/2007, 34/2010 – CC decision and 54/2011)

43 The Law on Election of Members of the Parliament is also important for local elections, because this law applies accordingly to many issues not regulated by the Law on Local Elections (Law on the Election of the Members of Parliament, Official Gazette RS, No. 35/2000, 57/2003 – CCRS decision, 72/2003 - other law, 75/2003 - other law corr., 18/2004, 101/2005 - other law, 85/2005 - other law, 28/2011 - CC decision, 36/2011 and 104/2009 – other law)

first is the absolute majority system, with more than half of majority votes and several rounds of voting. The second is the relative majority system, with less than half of votes and a single round of voting. Finally, there is a combination of the absolute and the relative majority, which is also referred to as the two-rounds voting system.

Majority voting had been the prevailing voting rule until the second half of the 19th century. Under such circumstances, it was more difficult for smaller parties to get seats, especially if the majority system was applied in larger electoral units. By dividing the electorate into smaller electoral units and by awarding special voting rights to voters, this was mitigated, so even smaller political parties could win a certain number of seats. In the second half of the 19th century first an idea was born, followed by a demand, to enable minorities to win seats, in proportion with the number of votes won. Majority voting is still implemented today in over a hundred countries across the world.

**Boban Stanković**  
LSG Vranje

## Proportional voting

In line with the proportional electoral system, implemented in Serbia, an individual candidate is not elected but the method of choosing a list is used. In this way citizens can only decide for one list (there is no way to combine candidates from different lists). Seats won in such a way are distributed in accordance with the percentage of votes won by a list relative to the total sum of all votes (i.e. seats are distributed to the lists in proportion to the number of votes won).

Only lists that have received at least 5% of the total number of votes shall participate in the distribution of seats. There are two exceptions to this rule, one related to national minority parties, and the other to the situation when no party is above census.<sup>44</sup>

Three electoral system models were attempted in Serbia for the election of councillors in municipal and city assemblies: two-round majority system, relative majority system and proportional system with one electoral unit. Since 2003, the proportional electoral system has been in force, under which system, the councillors are elected to a period of four years.

**Milan Iskrenov**  
LSG Babušnica

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<sup>44</sup> Article 82 of the Law on Election of Members of the Parliament

## Proportional electoral system – challenges

In the proportional system, there is the particularly complex issue of how to distribute councillor mandates, and simultaneously meet two requirements: to adhere to the principle of equal electoral right while keeping the share of seats won proportional to their share in the number of votes received. This issue is addressed by applying different methods to achieve the basic principle of proportional representation – principle of awarding seats in proportion to the number of votes received.

There are several different procedures for allocating seats, most common of which is the electoral quotient system (so-called D'Hondt method). Seats are allocated by applying the system of the highest quotient, that is, in proportion to the number of votes won by each individual electoral list.

Boban Stanković  
LSG Vranje

## Example – different applications of the proportional electoral system in Switzerland and in Serbia

The key difference between the proportional electoral system in Switzerland and in Serbia is reflected in the *electoral process* itself. Namely, in the Swiss context the voters fill in voting slips. Each member of the electorate chooses a list (by filling in the number on the voting slip), as well as candidates. The name of each candidate may be written twice on the voting slip (accumulation). It is also allowed to vote for candidates from other lists (swap). If the list on the printed slip is used, names can be entered twice, printed names can be crossed out, and names from other lists entered in. A number can also be crossed out and replaced with a different number. In extreme cases, a voter may vote for the political party by choosing a list, and then enter only candidates of a different party on the slip. The voter puts the filled in voting slip in the ballot box personally. Secrecy of elections must be guaranteed (it is impossible to find out how anyone has voted).

In Serbia, voters may opt for one list only, thus eliminating any possibility for the voter to make his or her own 'best candidate mix' from different lists. This opens the door to a high degree of partocracy, where councillors elected are accountable primarily to their political headquarters, and far less to the voters who formally elected them.

Milinko Šaponjić  
LSG Nova Varoš

## e Protection of minorities in the case of majority voting

National minority political parties and national minority party coalitions participate in the distribution of seats even when they have won less than 5% of the total number of votes. They represent all those parties that have the aim to represent and advocate for the interests of a national minority and protect and promote the rights of national minorities, in accordance with international legal standards.<sup>45</sup>

The Law provides for two exceptions to the rules of distributing seats only to those parties that have reached the census:

1. National minority political parties and
2. The situation when no list has reached the census.

For an electoral list presenter to be considered a national minority political party, three conditions must be met:

- The aims of the political party must be to represent and advocate for the interests of the national minority, as well as to protect and promote the position of the national minority, in accordance with international standards.
- Upon submitting the list, the presenter must submit to the Electoral Commission a written request for the Commission to approve the national minority political party status.
- The Electoral Commission must make the decision by which it approves the national minority political party status. The decision on the political party status is made by reviewing the programme and statutes and political activity of the political party submitting the list.

Milan Iskrenov  
LSG Babušnica

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45 The LSG Electoral Commission decides whether the list presenter is a national minority party or national minority party coalition, based on the proposal of the electoral list presented, made upon submitting the electoral list (Article 40 of the LLSG)

### 3.2.3 Instruments of direct democracy

The Law on Local Self-Government provides for several options for direct citizen participation through: **civic initiative** (as form of proposing decisions within LSG purview), **referendum** (as a form of decision-making) and **citizens' assembly** (as method to define proposals and requests submitted to LSG bodies and services). We should mention that the civic initiative is not easy to implement in Serbia, which makes citizen participation more difficult. The main reason is that there is a minimum number of citizens' votes required for the initiative to be valid, which cannot be less than 5% of voters (in some cases LSGs decide to increase this percentage to even 10%).

In order for these forms (instruments of direct democracy) to be present in a local community, there needs to be political will which would be reflected in the definition of rules that would encourage the citizens to use these instruments rather than to discourage them (the example of raising the percentage of voters required for a valid civic initiative). However, civic activism is often seen by the public as something undesirable and that it is impossible to influence things related to policy/institutions.<sup>46</sup>

The Republic of Serbia Constitution also underlines that sovereignty comes from the citizens through referendum, civic initiative and through their freely elected representatives.<sup>47</sup>

Referendum, as form of direct citizen participation, is the only strong participation tool, because it provides citizens with the opportunity to make decisions that are binding for the local self-government. Therefore, for an instrument to be used as a form of strong participation, it is not sufficient for the form to be defined only through laws/by-laws, but to **essentially give the opportunity to the citizens to make decisions directly**.

Positive regulations have formally provided Serbian citizens with the opportunity to actively participate in the development of their LSG. However, citizen participation in LSG in Serbia is weak, but also not encouraged enough (the share of Serbian citizens who actively participate in making important decisions in local matters, according to different studies, is not over 3%). The role of the citizens is marginalised and there is almost no direct influence on the government. The reasons are partially that all forms of indirect citizen participation are only advisory. Decisions made are mainly not binding to LSG assemblies, so this cannot be considered as real influence. Informing the population about the work of municipal bodies and their plans is the most important requirement for equal citizen participation in decision-making.

Nataša Andrejević  
LSG Merošina

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46 *Neposredno učešće građana u upravljanju lokalnom zajednicom - Problemi, izazovi i preporuke za unapređenje procesa*, OSCE Mission in Serbia (2011).

47 This is regulated in detail by the Law on Referendum and Civic Initiative.

## a Referendum

One of the definitions of the referendum is: "Referendum is the instrument authorising citizens to use their vote to accept or reject a decision made by a municipal body, mainly the assembly. Referendum does not always presume the existence of a decision made by a municipal body".<sup>48</sup>

In principle, the referendum may be:

- Mandatory – if it is stipulated by the law or statutes;
- Popular/civic – if it is the result of an initiative coming from the citizens, in the number defined by the law; and
- Municipal – initiated by the local self-government.

Municipal assembly may hold a referendum on own initiative on matters within its purview. Referendum on these matters must be held on the proposal submitted by at least 10% of voters out of the total electorate in LSG, as laid down in the law and the statutes. The decision made through a referendum is adopted if the majority of voters have supported it, under the condition that more than a half of the total number of citizens have voted. The decision made on the referendum is binding, and municipal assembly may not revoke it, or amend it to change its essence over a period of one year after the decision was made. Having in mind the rather demanding conditions necessary to hold a referendum, and that it is necessary to have over one-half of the total number of votes, as well as the deadlines for collecting signatures, this instrument is practically impossible to use in a way that is stimulating for citizens to participate in this form of decision-making.

### On referendum

Municipal assembly must call a referendum in the part of the municipal territory related to the needs or interests of the population of that part of the territory, if the list of signatories requesting a referendum is compiled in accordance with the Law and if it has been signed by at least 10% of voters according to the latest published decision on electoral roll for the election of municipal assembly representatives, from the part of the territory of the municipality the referendum is requested for.

Sali Salih  
LSG Bujanovac

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48 Lilić, S., Strecker, M. et al. *Referendum i gradanska inicijativa*. Kraljevo: Swiss Agency for Development and Cooperation, Municipal Support Programme, 2006, available at: <http://www.msp.co.rs/biblioteka/Referendum%20i%20gra%C4%91anska%20inicijativa.pdf>.

## b Further instruments

The Law on Local Self-Government provides for local communities and other forms of community self-government in order to meet the needs and interests of the population in rural areas, and these can also be formed in urban settlements. Municipal assembly decides on establishing or closing down community forms of self-government with prior opinion from the citizens. Municipal assembly may issue a decision delegating some LSG tasks to the level of local community.

Local communities have lately transformed from groups of conscientious citizens willing to improve their lives in an area to small assemblies in which only the political option that has won the largest number of seats on the council has influence, wishing that this image of local authority reflect the image of the local parliament, so the influence may extend in the field. We can draw from this that citizens are left with but self-organising to be able to address some issues important for their wellbeing, but they are not acknowledged by the government and the issues are not included among the government's priority activities. The form of organisation may be as a formal group assembled in order to address a specific issue and later on extend the scope and function as non-governmental organisation in a specific sphere, or as an informal group of citizens gathering in order to address a specific common issue and as such does not transform into a formal group of citizens, but takes action periodically or after the issue around which it has formed is addressed, the group dissolves.

Nenad Ostračanin  
LSG Raška

### 3.2.4 Participation in local self-government working bodies

Municipal assembly may establish standing or ad hoc working bodies in order to review issues under its purview. Working bodies issue opinions on draft regulations and decisions adopted by the municipal assembly and carry out other tasks set out in the municipal statutes. The number of working bodies, rights and duties of working body chairs and members are set out in the municipal statutes and rules of procedure of the assembly. The assembly may establish special working bodies, which may also be established by other bodies of the municipality/town, as well as the heads of the LSG bodies.

#### Example

The Statute of the City of Vranje<sup>49</sup> provide for:

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49 Statute of the City of Vranje (Official Gazette of the Pčinjski District, No. 17/2008 and 30/2008 – corr.).

- Standing working bodies of the assembly (councils and committees), members of which come from among councillors and citizens. Members of standing working bodies are appointed with the mandate of four years. Standing working bodies have a chair, deputy chair and seven members. The City of Vranje has seven councils and five committees.
- Special working bodies of the city assembly, there are six of which (including the Gender Equality Committee, Youth Council, Council for Monitoring the Implementation of the Code of Ethics).
- Ad-hoc working bodies, committees, working groups, investigative committees and other ad-hoc working bodies.

The report of the State Audit Institution (SAI) on the justification of forming committees and other standing and ad-hoc bodies in the public sector (from 2016) demonstrated that it is necessary to additionally regulate the issue of forming municipal committees and working bodies, with clearer definition of objectives, tasks, compensation levels and reporting.

### 3.3 Participation without Decision-Making Powers (Soft Participation)

In this section more will be said about different forms of soft participation, such as petition, public hearing, initiative, citizens' assembly and participation in planning processes.

In addition to formal citizen participation forms, the potential of less traditional methods of participation should be considered, such as establishing **informal citizen alliances** using various places (cafes, restaurants, marketplaces) to give opinion on certain issues related to the local community. **Public protests** are also a form of citizen participation. Also, the **Internet** has increasingly become a powerful tool for the citizens to express their attitudes (both to communicate and approach the government). Local self-governments should find ways to use this tool more efficiently in order to include citizens in the decision-making processes as much as possible, but should also be aware that this form of expressing attitudes (relating to soft participation in general) is not representative, being the opinion of only one group of citizens.

Non-existent or inadequate examination of the needs and attitudes of citizens to formulate priorities based on such findings about end users of services (citizens), may lead to LSG making decisions, or setting as priorities issues that are marginal for the citizens.

### 3.3.1 Who can participate?

Soft participation, unlike strong participation, is open to a wider circle of participants and not just to the electorate. All citizens and legal entities (e.g. private companies) have the opportunity to participate. **Civil society organisations** (CSO) are very important in this process, because their actions aim to achieve common interests (by dealing with certain issues and addressing problems). In societies with insufficiently strong or stable institutions and high level of corruption, it is particularly important to foster the civil sector, because its activity is one of the ways in which citizens may have an indirect influence on strengthening institutions and their accountability.

### 3.3.2 The right to petition

The Republic of Serbia Constitution guarantees everyone with the right to, individually or jointly with others, put forward petitions and other proposals to state bodies, entities exercising public powers, bodies of the autonomous province and LSG units and to receive reply from them if they so request. It is important to underline that the LLSG does not contain provisions on the right to petition, it is unclear what is actually understood under the notions *petition and other proposals*, because they are not defined in more detail in the Constitution.<sup>50</sup>

The right to petition and the right to publicly criticise the government is the right of each citizen to address **proposals, suggestions, requests, criticism and complaints** to public authorities.

**Proposal** is a written address used by the citizen to ask public authorities to initiate proceedings or undertake a measure or action within their purview. Proposal is a form of individual address by the citizen (legal entity). However, when a proposal asks for a procedure that would relate to only a few individuals, rather than issues of common interest, it seems that proposals may even be made by several citizens. It can be derived from the Serbian Constitution that the proposal may be addressed to any public authority, organisation with public powers, Autonomous Province bodies and LSG units.

**Submission** is a written address by one or more citizens to public authorities, expressing disagreement related to the operations or actions of a specific authority, or their operations and actions are criticised by the citizens (it may also be called a reproach). Submission is a form of individual or collective address by the citizens or legal entities. What makes this written address different from others as a tool of participatory democracy, is that it may be used by citizens and legal entities to express disagreement or criticise the operations or actions of a specific public authority. It can be derived from the Serbian Constitution that the submission may be addressed to any public authority, organisation entrusted with public competences, Autonomous Province bodies and LSG units. Submission should be made directly to the authority criticised or disagreed with by the person making it.

**Complaint** is written address by a citizen to a public authority, stating the violation of a right or legal

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<sup>50</sup> <http://mojustav.rs/strucni-komentar-58/> Expert comments, accessed on 23/02/2017

interest by an act or action of the said authority. Complaint is a form of individual address of citizens (legal entities). Complaint in its form relates to concrete violation of a certain right and legal interest by an act or action of the authority. Complaints primarily relate to public authorities on all levels and organisations entrusted with administrative public powers. However, in some laws, a complaint means a concrete letter initiating a concrete proceeding (as, for example, proceeding before the Ombudsman), or complaints to the work of the public authorities set out in the Law on Public Administration.

Đorđe Cvetković  
LSG Bela Palanka

### 3.3.3 Public hearing

**Public hearing** is certainly one of the important forms of citizen participation and it is meaningful only if it engages a wide circle of citizens. Involvement in the public hearing on **draft budget** is particularly important for the citizens, because this is the opportunity to have a direct impact on defining and the selection of priority areas to be financed from the budget. Local self-governments could present information to the citizens about the budget calendar<sup>51</sup> and define dates for public hearings on draft budget.<sup>52</sup>

Public hearings, however, almost exclusively attract only those parties or their representatives (e.g. professional associations) that have direct interest vested in the proposal put forward for public hearing. In rare cases the local civil sector, through civil society organisations, is engaged in a proactive and designed way to participate in and contribute to the outcome of the hearing.

Public hearings are one of the tools ensuring transparency in the work of government bodies with the aim to increase democratic participation of citizens and their representatives in the process of formulating laws and by-laws adopted by the authorities. The practice of organising public hearings is also very important in the fight against corruption, because it enables those who are knowledgeable in a specific field to indicate problematic provisions or the provisions that would favour the interests of individuals or groups at the expense of the public interest.

The municipality may organise such hearings in order to listen to the needs and wishes of its citizens, to "feel the pulse" of the population at an early stage, which would reduce the risk of losing votes. The municipality, however, does not have the obligation to put in practice the proposals given by the citizens, but it does have to inform them about whether they have taken their proposals and suggestions into account.

Đorđe Cvetković  
LSG Bela Palanka

51 Local government budget calendar is defined in Article 31 on the Budget System Law, Official Gazette RS, No. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013 - corr., 108/2013, 142/2014, 68/2015 – other law, 103/2015 and 99/2016

52 Budget System Law, Article 42: Local government body in charge of finance shall submit draft local budget decision to the competent executive local body and simultaneously present the draft decision to the citizens

### 3.3.4 Initiative

Civic initiative can be used by the citizens to propose to the LSG assembly to adopt an act that would regulate a specific issue within LSG's purview, to change the statutes or other acts and call a referendum in accordance with the law and the statutes. The municipal assembly must discuss it and submit a response with justification to the citizens within 60 days of the receipt of the proposal. Local self-government statutes set out the number of signatures necessary for valid initiation of a civic initiative, which cannot be less than 5% of voters, and not seldom the LSGs decide to increase this percentage (e.g. to at least 10%), even though this makes citizen participation harder. There is an obvious disproportion between the efforts that need to be invested in collecting such a considerable number of signatures and the relevance of the outcome of such an initiative.<sup>53</sup>

#### Civic initiative – the example of the Municipality of Prokuplje

Civic initiative represents a form of direct citizen participation in the local self-government. The right to initiative is the right of the citizens to ask for, by signing the initiative, to put forward a concrete proposal on the agenda of the municipal assembly session.

Municipal administration must give expert support to citizens to formulate the proposal contained in the civic initiative. Civic initiative is valid if the list of signatories is compiled in accordance with the law, and signed by a minimum of 10% of municipality voters, enlisted in the electoral roll on the day of submission of the civic initiative. In order to prepare a civic initiative, the citizens form an initiative committee, with five members, with electoral right. The initiative committee may (not obligatory) form special subcommittees to collect signatures, in accordance with the law. The initiative committee submits the list of signatories of the initiative to the municipal assembly. Before the initiative is started, it is necessary to draft a document clearly indicating which changes or developments are requested. The copy of the text used to collect signatures should be submitted to the competent body (institution making the change). Collecting the signatures must be reported to the Ministry of Interior (MoI) three days before the start. The report should contain the name of the competent body, receipt number showing that the body has registered the application, place, time and manner of collecting signatures, and personal information of the people collecting signatures. The collecting of signatures may go on for only seven days after the time reported to the Ministry of Interior. The place where the signatures are collected, must also publish the registered application and receipt number for the signatories to see. The assembly shall hold a discussion on the proposal and submit a response with justification to citizens within 60 days of the day of proposal. Citizens have the right to object on grounds of

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53 Thus Jelisaveta Vukelić in *Neposredno učešće građana u donošenju odluka na lokalnom nivou vlasti u Srbiji* (Sociologija, LI, 2009, No. 3, p. 298) reports that the participation of citizens in making important decisions at the local level does not exceed 3%, and that even 91% of the citizens over the period of three years, which was covered by the study, did not take any participation in any organised public activity.

irregularities in the implementation procedure, as well as the right to indicate gaps and deficiencies in the civic initiative procedure.

There have been no civic initiatives in the Municipality of Prokuplje in the last several years. Since 2012, there has not been a single official submission to the municipal assembly. Before 2012, there was an initiative to change the names of some streets and the main square in the town, but it was not finalised.

Svetlana Paunović  
LSG Prokuplje

### 3.3.5 Citizens' assembly

A citizens' assembly may be convened for a part of the LSG territory, laid down in the statutes, and discuss and issue proposals on issues under the LSG purview. Requests and proposals are adopted by a majority vote and referred to the assembly or specific LSG bodies and services, which must, within 60 days of the day of the citizens' assembly meeting, review the requests and proposals made by the citizens and establish an opinion on them, or make an appropriate decision or measure and inform the citizens thereof.<sup>56</sup>

### 3.3.6 Participation in the legislative process

A characteristic of soft citizen participation and mechanisms/instruments used, is, as it has been said before, that the decision-making powers lie with the competent LSG bodies. It is very important that the citizens are included in all the stages of the legislative process (especially if there are changes in regulations or decisions about LSG operations) – starting with defining proposals/priorities, through consultations about drafts, and ending with the verification of the final option/decision. Another crucial element in this legislative process is transparency, or the way in which feedback is given on the outcome of a decision/input reviewed by the local self-government. In practice, sometimes LSGs include citizens in the first stage, but there is no feedback on the status of the submitted proposal or its further consideration. In this case we cannot speak of a consultative process, because it does not include citizens in all the necessary stages for it to be considered meaningful. Also, if there is no feedback, mutual trust cannot be built, and citizens may think that their contribution is not important, which might result in their not voting.

Consulting citizens and collecting proposals and suggestions from them is a two-way process in which public authorities ask for and receive citizens' opinions on certain topics of interest for both the citizens and the government bodies.

The importance of consultations also derives from the opportunity of the citizens to participate in the legislative process, discuss or give proposals in relation to certain policies or concrete decisions, as

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<sup>56</sup> The procedure for convening the citizens' assembly, its activities, and the manner in which its positions are established shall be defined by the statutes and a special decision of the municipal assembly

well as out of the principle that local authority decisions must be based on citizens' needs and must take their views into account.

Đorđe Cvetković  
LSG Bela Palanka

### 3.3.7 Participation in the planning process

The Law on Planning and Construction (Article 41)<sup>55</sup> stipulates that all planning documents with annexes must be available to public in the offices of the authority developing the document.<sup>56</sup> Also, after the planning documents are adopted, the text of all planning documents is published in the official gazette of the authority adopting the planning document, or the Official Gazette of the Republic of Serbia, Autonomous Province or LSG unit (except for the special attachment related to special measures of development and preparation of the territory for national defence purposes). Planning documents are published in electronic format and be available on the Internet.<sup>57</sup>

#### On participation in the planning process

Before the development of a spatial or urban plan, the law provides for the procedure of early public access, during which general (wider) and limited (expert) public is able to learn about the general objectives, purpose and the effects of the plan through the media (and in electronic format on the website of the LSG and the authority developing the plan), and during which all the bodies, organisations and public companies with authority to do so may provide their opinions and requirements for spatial protection and development and building construction. All remarks and suggestions made by legal entities and natural persons are recorded by the planning document developer, and recorded input may influence planning solutions. Early public access is performed by the planning commission of the LSG unit for planning documents within its purview.

The planning document is presented for public access after the expert control performed. The planning document is presented for public access by publishing it in daily and local newspapers. The competent body, i.e. the Planning Commission shall draft a report on the public access of the planning document, which shall contain information about the access, with all the remarks and decisions on each remark. This report shall be submitted to the planning document developer, who shall act on the decisions contained therein.

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55 Official Gazette RS, No. 72/2009, 81/2009 - corr., 64/2010 – CC decision, 24/2011, 121/2012, 42/2013 – CC decision, 50/2013 - CC decision, 98/2013 - CC decision, 132/2014 and 145/2014

56 Except for the special attachment related to special measures of development and preparation of the territory for national defence purposes

57 Except for the special addendum related to special measures of development and preparation of the territory for national defence purposes.

In case that after public access to the draft planning document, the competent body, i.e. the Planning Commission, determines that the adopted remarks change the planning document essentially, it makes a decision ordering the developer to develop a new draft planning document.

In practice, in the municipality of Aleksinac, it has been perceived that information reaches very few citizens, which is one of the key factors contributing to their soft participation. Besides, soft participation is also the result of the fact that the majority of citizens are not equipped to understand or evaluate the planning documentation. In this respect, issuing a summary explanation of the document that would clarify the most essential and crucial solutions contained in it, would be of great assistance.

**Uroš Velicković**  
LSG Aleksinac

### The example of the Municipality of Knjaževac – participation in planning processes

Citizen participation is enabled in public hearings. Draft documents (decisions, strategic plan or programme), are presented for citizen access on the official website of the municipality, on the municipality notice board and/or notice boards in town/village(s). When the document is made available for access, simultaneously the date for a public hearing is scheduled, which cannot be sooner than eight days from the day of publishing, and the general practice is 15 days. All interested citizens are invited to participate. Public hearing is held in a public building (municipality building, cultural centre or school in the town or cultural centre premises in villages). Although this is not provided in any document, public hearings are held in a building accessible to persons with disabilities.

Records are kept at the public hearing, containing all remarks, proposals and suggestions. The public hearing is moderated by an expert in the field, in order to be able to respond to the citizens, and it is often the case that the public hearing is moderated by the mayor. Because of further procedure related to the public hearing, the participation of the municipal assembly secretary and record keeper is necessary.

The practice has shown that the degree of citizen participation depends on the topic and the strength of interest groups. Lately, the highest participation and citizen interest has been demonstrated for the reconstruction of the Knjaževac Cultural Centre plateau. The citizens participated in early access to the planning documents, after which there were consultative meetings with the municipal officials and the designer, and a compromise was reached.

Probably the most important citizen participation turned out to be the public hearing on the strategic impact assessment for building a quarry in an outskirt settlement. The initiative for the construction of this commercial building was submitted by the investor. On citizen initiative, settlement residents, as well as the people from the entire town, also with support of municipal officials and involvement of experts in the municipal administration and public services, a strategic environmental impact

assessment was conducted showing that building the quarry would be unreasonable.

Participation in planning is also executed through direct participation of CSO representatives in development of the strategic document. The unspoken rule in Knjaževac municipality, which has become practice over the last ten years or so, is that civil sector representatives are always appointed on the teams developing strategic documents.

Marija Jelenković  
LSG Knjaževac

### 3.3.8 Participation in the administration

Another form of soft participation may be seen in the participation in the administration. As in other (numerous) areas, the aim of such participation is for the officials to receive feedback from the citizens related to decisions on tasks/programmes/projects they are (planning) to implement, or the decisions they make. These activities may be implemented through various forms of meetings with relevant stakeholders, such as CSOs, local community council representatives, business representatives and similar.

#### The example of participatory budgeting – the Municipality of Knjaževac

During the preparation of the Municipality of Knjaževac budget decision for 2016, and for 2017, the so-called participatory budgeting was implemented. For the 2016 budget decision, the municipality offered citizens five projects. The citizens voted and the project with the largest number of votes was included in the 2016 budget decision. Citizens were invited to vote on the municipality's official website, through the media, through posters put up around town and in villages. Ballot boxes were used for voting, which were installed in public buildings in the town, as well as on the municipality's official website.

The municipality went a step further in the preparation of the 2017 budget decision, enabling the citizens to give their own proposals of what they would like to see done in 2017. By far the highest number of votes was given to the proposal to build a dog asylum, which was assessed by the citizens as currently one of the main priorities in the municipality. The citizens were thus enabled to directly decide on how they would like to see their money spent in the community.

Marija Jelenković  
LSG Knjaževac

Citizen influence in decision-making processes has been stagnating, even though there is will among various actors, but also years of campaigning in the society about the importance of civic initiatives. It seems that it stopped at a level attained during the first decade of this century. Some documents have been improved, maybe for some things even the process is more transparent, but there is less energy

and will among the people. Again, everything is reversed in proportion, which in a way reflects the political situation in the society and societal processes as a whole. It seems that the process is still based on one-way approach from the LSG towards the citizens, with fewer reversed processes. Most importantly, there is less and less energy and will needed to improve the environment or social processes by organised groups of people or individuals through activism.

Initiative by the LSG is not sufficiently transparent and still "shy", without honest intent or will. One of the reasons for this is the fear that transparency might slow down some processes. There are also reasons in the number of factors, one of which may even be insufficient knowledge, and as it seems, experience about the meaning of transparency of any procedure. There are also numerous good examples showing that citizen participation is possible in practice, but it seems that a lot more needs to be done to make citizen influence an important factor in decision-making, implementation and management.

Nenad Ostračanin  
LSG Raška

### 3.3.9 Participation in fulfilling tasks

Local self-governments often use third parties to fulfil tasks for them. When using third party services (*outsourcing*), LSGs should have in mind that they are the ones to determine which tasks should be done, at what standards and costs. Also, LSGs have the possibility to designate someone to manage project(s), and thus use own available human resources and capacities.

Participation in fulfilling tasks, as an approach for LSGs to use when fulfilling tasks, is presented in more detail in Part 5.

## 3.4 Conclusions and Recommendations

In order to establish trust and legitimacy of local authorities, LSGs should put more focus on the implementation of the principle of participation, that is, to establish conditions for involving citizens in local-level policy making, implementation and monitoring. It is particularly important to work on strengthening direct citizen participation in the process of policy making, which would then be in accordance with the needs of the local community, and simultaneously create the opportunity for the citizens to participate in the evaluation and assessment of public policies.

Key conclusions and recommendations for the improvement of this area are presented below.

- Citizen participation is always a two-way process of communication between the citizens and the representatives of local authorities. Positive regulations have formally enabled the citizens of Serbia to actively participate in the development of their LSGs. However, citizen participation in the work of municipalities and towns in Serbia is not widespread and is not sufficiently encouraged.
- Although some progress has been made in the area of participation over the last ten years in Serbia, it is necessary to continue working in this area, especially in the part that refers to changes in laws and by-laws, promoting instruments and encouraging citizens to participate actively.
- Adopting LSG decisions to hold citizens' assemblies would promote dialogue between citizens and LSGs as well as foster joint formulation of proposals based on citizens' needs, which would be forwarded to municipal bodies for adoption. This mechanism would be binding and initiate additional participation of the public in the decision-making process.
- Organising referenda on different issues of general interest, such as communal activities, environmental protection and citizen safety, would have a considerable influence the quality of service provision but also the quality of life of the citizens.
- Informing the population on the work of municipal bodies and their plans is the main precondition for equal participation of citizens in decision-making.
- It is necessary to work on raising awareness of LSG representatives to look at citizen participation as a positive corrective factor. The system and regulations should be encouraging for citizens, rather than encouraging for LSGs to set even higher criteria for the use of instruments and discourage all forms of citizen participation.

- The existence of, or continuous building and maintaining trust between citizens and the government is a key element. Once lost trust of citizens is difficult to regain, and this is normally a long-lasting process. Trust can be built and maintained only by implementing certain principles such as respecting citizens and their opinion, providing feedback and similar.
- In order to bridge the gaps that often exist between citizens and LSGs, the civil sector can be a great agent and help organise citizens and direct their interests toward competent authorities, and therefore it is important to strengthen the civil sector.
- Local self-governments should organise and implement analyses of the attitudes of service users about local regulations and decisions, by forming broader working groups and wider coverage of citizens, civil and private sectors, considering this is an area that is the most lacking in LSGs. In this way stakeholders and users will develop a sense of ownership over the processes developing in the community, including public policies, and facilitate their further implementation.

PART 4

# Non-Discrimination



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## 4.1 Definition of the Principle

Non-discrimination means not only that no social groups, including minorities, vulnerable and marginalised individuals, may be excluded from the decision-making process and access to resources, but also that by planning special strategies, measures and activities, the possibility of discrimination be eliminated or reduced as much as possible. This, therefore, means that public officials, public institutions, authorities and others implement, in this sense, proactive policies related to reducing or eliminating various forms of discrimination. Today the degree of openness and democracy in a state is seen through, *inter alia*, its relationship towards citizens and groups with certain specific characteristics, different from those considered conventional. Non-discrimination, therefore, is observed both from the collectivist aspect, but also from the aspect of individuals. It is considered that each individual, regardless of their nationality, ethnicity, religion or other affiliation, has the right to be treated equally as any other citizen.

The following aspects of the principle of non-discrimination will be described below:

- Legal basis in Serbia,
- Significance of the principle of non-discrimination at the LSG level and
- Significance of the principle of non-discrimination at the LSG level in particular areas.

In defining the principle of non-discrimination, it is important to determine what *discrimination* is. Discrimination is any treatment of individuals or groups motivated by their *personal* characteristics. This characteristic may be race, colour, sex, nationality, ethnic and social background, religion, political beliefs, social status, economic status, culture, language, age, physical or psychological identity, nationality, gender identity, marital or family status, sexual orientation, health condition, previous conviction and membership in organisations.<sup>58</sup>

Treatment may take two directions – it may be *unequal* treatment (motivated and caused by differences), which is discriminatory, but also *equal* (treatment of differences that require different treatment, which also constitutes discrimination). In other words, “discrimination is unequal treatment of equals and equal treatment of unequals.”<sup>59</sup> Also, it is possible to discriminate on purpose or unknowingly.

Special measures, the so-called affirmative action, which can be used by the Republic of Serbia to achieve full equality of individuals or groups in essentially unequal position to other citizens are not considered discrimination.

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<sup>58</sup> Source: Priručnik za prepoznavanje slučajeva diskriminacije pred organima javne vlasti (2016). Belgrade: Commissioner for the Protection of Equality.

<sup>59</sup> Taken over from <http://ravnopravnost.gov.rs/en/discrimination/about-discrimination/>, accessed on 13/03/2017

Non-discrimination as a principle of authority, and based on all of the above, can be defined as equal treatment by government authorities of citizens in the exercise of their rights, regardless of their personal characteristics or unequal treatment of those citizens whose personal characteristics do not enable them to exercise their rights in a generally provided way, and therefore require different treatment.

#### 4.1.1 Legal structure of the principle

Both in practice and in legislation, several forms of discrimination can be distinguished – direct discrimination, indirect discrimination, the principle of equal rights and obligations, calling to account, associating for the purpose of exercising discrimination, hate speech and disturbing and humiliating treatment.<sup>60</sup>

Certainly, the most important forms are direct and indirect discrimination, recognised both in the Republic of Serbia Constitution and considered as general forms of discrimination that may be associated with any other form, so they may appear in many different forms.

Direct and indirect discrimination are linked to the mentioned 'directions of action', or to the issue of whether the equal are treated differently or the unequal are treated equally.

**Direct discrimination** is any situation in which a person, because of their personal characteristic, is treated unequally in relation to a different person in the same situation but who does not have the personal characteristic. Direct discrimination in this sense is relative – it is defined in relation to another person who is not discriminated against, but who is in the legal domain called the comparator. The comparator, however, is not a real person, but a hypothetical framework (which is why the term hypothetical comparator is more often used), which enables the identification of discrimination.

**Indirect discrimination** is a situation when, under seemingly equal conditions, a person is treated equally although their personal characteristics require different treatment. In this case, equal treatment results in injustice to the person and puts them in a disadvantageous position in relation to other persons without this personal characteristic. It is because of the fact that these conditions for treatment are seemingly equal that it is very difficult to recognise indirect discrimination, unlike direct discrimination.

##### A distinction can be made between direct and indirect discrimination

Direct discrimination occurs when a measure or a regulation provides for explicit discrimination (in the municipal administration, this is, for example, if someone does not get a subsidy for agriculture based on ethnicity).

Indirect discrimination occurs when a measure or a regulation is not directly connected with a specific personal characteristic, but its effect is such that in practice it puts certain societal groups in a disadvantageous position. If, for example, the Municipality of Blace did not envisage in the policy on funding CSO projects the funding of disability care, it may put the beneficiaries and members of the association for cerebral paralysis in a disadvantageous position.

Zoran Milutinović  
LSG Blace

The state's obligations to ensure the application of the principle of non-discrimination are reflected in several ways. First, there is the general prohibition of discrimination.<sup>61</sup> Next, the government adopts laws dealing with non-discrimination in different areas (gender equality, protection of rights and freedoms of national minorities), elaborates the implementation of laws with by-laws (rulebooks in different areas), then establishes independent institutions of control, which are in charge of acting in cases of discrimination (Commissioner for the Protection of Equality), and demonstrates political will, to reduce as much as possible discriminatory practices in the society (e.g. defining quotas for female members of parliament).

## 4.2 Legal Basis in Serbia

As legal successor of the Socialist Federative Republic of Yugoslavia, Serbia is signatory to numerous ratified international treaties guaranteeing human rights and freedoms. As such, Serbia also has clearly defined responsibilities deriving from these treaties, which are the subject of international law. Thus, Serbia is signatory to the 1945 United Nations Charter, and the 1948 Universal Declaration of Human Rights, in addition to other numerous international binding legal documents.<sup>62</sup> Further, by ratifying these and similar documents, Serbia has acknowledged the competences of responsible United Nations committees, such as the Human Rights Committee and others. These international treaties and responsibilities derived out of them, are transposed into the relevant provisions in the Constitution and the laws.

In Serbia, non-discrimination, or prohibition of discrimination, is based in Article 21 of the Constitution of the Republic of Serbia.

“ Article 21 of the Constitution of the Republic of Serbia

*Everyone is equal before the Constitution and the law.*

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61 See Part 2 of the Anti-Discrimination Law (II General prohibition and forms of discrimination), Official Gazette RS, No. 22/2009.

62 Such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1966 International Covenant on Civil and Political Rights

*Everyone has the right to equal legal protection, without discrimination.*

*All forms of discrimination are prohibited, on any grounds, and especially on the grounds of race, sex, nationality, ethnic and social background, birth, religion, political and other beliefs, economic status, culture, language, age, physical or psychological disability.*

*Special measures to achieve full equality of persons or groups in unequal position compared to other citizens shall not be considered discrimination.*

”

Also, special attention is paid to prohibition of discrimination in the media (Article 50) and prohibition of discrimination of national minorities (Article 76).<sup>63</sup>

The Anti-Discrimination Law is an umbrella law defining key issues in the area of action against discriminatory behaviour. It establishes the institution of the Commissioner for the Protection of Equality and defines mechanisms that can be used by the citizens. Other important institutions which, inter alia, monitor the implementation and application of the non-discrimination principle is the Ombudsman and local ombudsmen, and the Office for Human and Minority Rights and Coordination Body for Gender Equality, as expert bodies of the Government.

The prohibition of discrimination is also present in the Law on Gender Equality<sup>64</sup>, and sector laws have been adopted guaranteeing the principle of non-discrimination in the area of health, social protection, education, labour and employment, media, information and free access to information, sports, and others.

The adoption of anti-discrimination legislation has become the basis for subsequent adoption of strategic documents. The most important strategic document in this respect is the National Strategy for Prevention and Protection from Discrimination<sup>65</sup> and its Action Plan for the period 2014-2018, and other strategies, such as the Strategy for Social Inclusion of Roma in the Republic of Serbia<sup>66</sup>, National Strategy for Improving the Position of Women and Promoting Gender Equality<sup>67</sup>, and National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationships.<sup>68</sup>

It is important to note that Serbia will, through the process of integration and accession to the European Union, be under the obligation to also implement the directives of the European Commission related to the

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<sup>63</sup> Official Gazette FRY, No. 11/2002, Official Gazette SCG, No. 1/2003 –Constitutional Charter and Official Gazette RS, No. 72/2009 – other law and 97/2013 – CC decision

<sup>64</sup> Official Gazette RS, No. 104/2009

<sup>65</sup> Official Gazette RS, No. 90-5273/2013-1

<sup>66</sup> Official Gazette RS, No. 26/2016

<sup>67</sup> Official Gazette RS, No. 56-14173/2015

<sup>68</sup> Official Gazette RS, No. 56-2461/2011

prohibition of discrimination.<sup>69</sup> The principle of non-discrimination is specifically defined within the Negotiation Chapter 23 and the obligations to be fulfilled by the state are defined in Action Plan for Chapter 23, under “The Principle of Non-Discrimination and Position of Socially Vulnerable Groups”.

### Examples from the Municipality of Blace

One of the principles of non-discrimination in the Municipality of Blace is incorporated in the municipality's strategic document, Local Action Plan (LAP) for the improvement of the position of women and gender equality on the territory of Blace municipality for the period 2016-2019, which was preceded by the Decision of the Municipal Assembly Blace in 2015, on adopting the European Charter for Equality of Women and Men in Local Life.

#### Example 1

In the LAP for the improvement of the position of women and gender equality on the territory of Blace municipality for the period 2016-2019, the principle of non-discrimination (as well as guarantee of equality before the law) can be found in the section Framework for equality and eliminating discrimination. Based on capacity assessment of the local mechanism and LSG as a whole, priorities were defined to improve the gender equality and anti-discrimination framework.

The framework for equality includes:

- Ensuring gender assessment and the participation of local gender equality mechanism in decision-making.
- Integrating gender-sensitive statistics and indicators in the data base and official records of the LSG and public authorities in the municipality.
- Gender budgeting.
- Promoting and implementing equal opportunity measures.

#### Example 2

In the Municipality of Blace LAP for Youth (2015-2020), no. I-022-1765/14, adopted in 2014, the principle of non-discrimination (as guarantee of equality before the law) is contained in Section 2 – Principles and Values:

- **Respect for human rights** – ensuring that all youth have the same rights regardless of sex, race

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69 The most important directives of the European Commission related to the issue of anti-discrimination are: Directive No. 2000/43/EC of 29 June 2000 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive No. 2000/78/EC establishing a general framework for equal treatment in employment and occupation and Directive No. 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Source: *Priročnik za prepoznavanje slučajeva diskriminacije pred organima javne vlasti* (2016). Belgrade: Commissioner for the Protection of Equality.

and nationality, religious and political beliefs, sexual orientation, social status, or functional/physical disability. Equal opportunities for the development of youth based on equal rights are provided, in accordance with needs, personal choices and abilities.

- **Equality** – enabling that all youth have the right to equal opportunities, to information, to personal development, lifelong learning, employment in accordance with different personal characteristics, choices and abilities. The respect for gender equality, non-discrimination, freedom, dignity, safety, personal and societal development of youth shall be ensured. Such municipal strategic documents aim to eliminate all forms of discrimination against certain groups and have all categories of persons access their rights on the territory of Blace.

Zoran Milutinović  
LSG Blace

## 4.3 Significance of the Principle of Non-Discrimination at Local Level in General

### 4.3.1 Preliminary remarks

In terms of non-discrimination as a principle guiding local governments, it is important to emphasise that respecting other good governance principles, especially the principle of accountability and the rule of law is key for eliminating discrimination. Accountability, in this respect, may relate to accountable discharge of authority and respect of the rights of citizens guaranteed, or consistent implementation of what has been laid down in the laws. As for the principle of transparency, the openness of government towards citizens and access to information in the possession of the government enables discovering possible discriminatory actions by the authorities. Additionally, the principle of participation, in interrelation with the principle of non-discrimination, enables equal engagement in the decision-making process and political life of all individuals or groups in general.

Part of LSG competences is directly connected to the access to right to equality and the prevention and elimination of discrimination. These are, for example, the following duties and obligations (LLSG and Law on Public Information):

- Provide assistance for the development of different forms of self-assistance and solidarity with the persons with special needs, as well as the persons essentially in unequal position with other citizens and encourage activities and the provision of assistance to organisations of persons with disabilities and other social and humanitarian organisations at the LSG unit's territory. This competence is directly connected with the anti-discrimination legislation.
- Ensure access to, protection and promotion of human rights and individual and collective rights

of national minorities and ethnic groups.

- Stipulate which national minority languages and writing will be used officially at the territory of the municipality.
- Implement measures that would enable persons with disabilities unimpeded access to information aimed at the public and provide part of the funds or other conditions for the work of media publishing information in sign language or Braille or in other ways enable these persons to exercise their rights to public information.
- Provide part of the funds, through co-funding, or other conditions for the work of the media publishing information in national minority languages, through the authority in charge of public information tasks.

Đorđe Cvetković  
LSG Bela Palanka

#### **4.3.2 The principle of non-discrimination as a means of assessing the legality of local self-government acts**

All actions of local authorities may be assessed in relation to their treatment of citizens. The relationship of LSG towards the citizens can be seen primarily in the regulations it enacts and implements, and in the extent to which in practice it is respecting the provisions positive legislation.

In this respect, two ways in which the principle of non-discrimination is used to assess the legality of acts/actions of the local government can be mentioned:

- In the regulations based on which the local authorities are acting and making decisions and, on the other hand
- Based on direct actions of local authorities and opportunities for the citizens to protect themselves from discrimination.

It is important to take care that the regulations themselves do not contain discriminatory provisions, so it is necessary to specifically examine all aspects that could possibly cause cases of indirect discrimination. In this respect, it is necessary to analyse all laws and by-laws related to discrimination, as well as international treaties and strategic documents (e.g. Strategy for the Improvement of Gender Equality, Strategy against Trafficking in Human Beings, National Programme for Women, Children and Youth Health, etc.), but also recommendations and other documents issued by human rights organisations.<sup>70</sup>

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<sup>70</sup> Vodič za primenu antidiskriminacionog zakonodavstva u procesu kreiranja propisa na lokalnom nivou. Belgrade: Commissioner for the Protection of Equality, 2014.

As for the implementation of regulations, or the protection of citizens from discrimination committed by the authorities, the key role here is the implementation of the Anti-Discrimination Law, which also provides for the establishment of the abovementioned institution of the Commissioner for the Protection of Equality (CPE) as the control branch of authority. The CPE receives and reviews complaints on violations of the provisions of this law, issues opinions and recommendations, and it can caution (in case the violation is not removed). The CPE only responds upon citizens' complaints and there is no possibility for it to initiate proceedings independently, as Ombudsman can. The CPE can also file charges or initiate misdemeanour proceedings.<sup>71</sup>

Ombudsman and local Ombudsmen are institutions primarily competent for cases of general violations of right of the citizens in procedures implemented by government bodies and services. A person that feels their right has been violated may lodge a complaint with the Ombudsman, and the proceedings can be initiated independently by the Ombudsman also.

Most often the punishment for misdemeanour is in the form of fine<sup>72</sup>, but it can also be imprisonment.

In terms of jurisprudence, protection is sought from the basic court, and complaints to first instance decisions are submitted to the appellate court. If the person discriminated against does not receive protection from the Appellate court, it can seek it from the Supreme Court of Cassation. However, there are practical problems in all stages of the procedure and in the majority of cases it is very difficult to prove indirect discrimination.

The Law on Local Self-Government provides that an *Ombudsperson* may be established in the municipality, authorized to control the respect for citizens' rights, determine violations made by acts, actions or lack of action by government bodies and public services, in relation to the violation by regulations and general acts of the LSG unit. Two or more LSGs can decide to establish one **joint Ombudsman**.

In order to protect the **rights of national minorities** in nationally mixed LSGs, the *council for inter-ethnic relations* can be established, as an independent working body, composed of the representatives of the Serbian people and national minorities, in accordance with the law and the statutes. The council for inter-ethnic relations considers issues related to the achievement, protection and promotion of national equality, in accordance with the law and the statutes. The council for inter-ethnic relations has the right to initiate proceedings before the constitutional court to evaluate the constitutionality

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71 On roles and competences of the Commissioner for the Protection of Equality in relation to LSGs see: *Vodič za primenu antidiskriminacionog zakonodavstva u procesu kreiranja propisa na lokalnom nivou*. Belgrade: Commissioner for the Protection of Equality, 2014.

72 Official or other responsible person in the public authority shall be fined with between 10,000 and 50,000 RSD if they act in a discriminatory way (article 15, paragraph 2).

and legality of a decision or other general act of the LSG unit assembly, if they consider that it indirectly violates the rights of the Serbian people and national minorities represented in the council for inter-ethnic relations, and has the right to initiate proceedings before the Supreme Court of Serbia to evaluate compliance of the decision or other general act of the LSG unit with its Statutes.

The Law on Gender Equality, passed in Serbia in 2009, obliges LSG bodies to organise a standing working body or designate an employee for gender equality and equal opportunity policy.

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LSG Bela Palanka

#### **4.3.3 Measures for the elimination of *de facto* discrimination (affirmative action)**

The Constitution and the Anti-Discrimination Law as the main law in this area, stipulate that different treatment of individuals or vulnerable groups cannot be considered discrimination, and it is desirable in order to access the rights guaranteed to all citizens. These measures are called special measures in the law. **Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination.** “Special measures developed and adopted by government bodies, provincial autonomy bodies and LSGs, organisations delegated with the discharge of public authorities as well as other entities (e.g. employers), are the most important instruments of equal opportunity policy and the practical application of the equal opportunity principle”.<sup>73</sup>

In the Municipality of Sjenica, the suppression of discrimination and the organisation of affirmative action, in addition to the tasks of the LSG, is also very much supported by civil society organisations, especially in the prevention of discrimination and support to children and persons with disabilities, elderly, feeble and poverty-stricken persons. Special praise goes to the LSG, the organisations and citizens providing voluntary assistance and easing the troubles of a large number of migrants.

Maida Kasumović  
LSG Sjenica

These groups are considered to be initially in a disadvantaged position in relation to other citizens, putting them in the position of *de facto* discrimination. In Serbia, special measures are most often adopted in order to improve the situation of Roma, national minorities, women, internally displaced and socially vulnerable persons.

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<sup>73</sup> Pajvančić, M., Petrušić, N. and Jašarević, S. (2010). Komentar Zakona o ravnopravnosti polova. Belgrade: Centre of Modern Skills, p. 17.

The Law identifies facultative and mandatory adoption of special measures, or measures to ensure equality. It states that authorities may, in accordance with the Constitution and the Law, adopt regulations, individual legal acts and undertake measures with the aim to ensure full and effective equality between the representatives of national minorities and the majority population. However, considering the position of the Roma population, as the most vulnerable ethnic group in Serbia, the law states that authorities shall adopt legal acts and undertake measures with the aim to improve the position of individuals from the Roma national minority. As it has been said above, none of these affirmative measures may be considered discrimination, which is stipulated by the Constitution and anti-discrimination legislation.<sup>74</sup>

#### **4.3.4 Voluntary measures and programmes**

As mentioned above, LSGs may decide whether to adopt certain regulations in order to improve the situation of unequal groups. Strategically, local action plans are important, which are most often aimed at improving the position of the Roma population, of women or youth.

Numerous organisations, both national and international, are very active in this field.<sup>75</sup> Their tasks are focused on the implementation of projects with the aim to socially include different social groups. Projects mostly target individual groups as well as their inclusion in certain sectors. There are also projects encouraging inter-sectoral cooperation with the aim to improve the position of social groups in different areas (e.g. mobile teams focusing on assistance and support to Roma citizens).<sup>76</sup>

Standing Conference of Towns and Municipalities (SCTM) is well-known for initiating and implementing projects in the area of gender equality at the local level, and the donor community and international organisations are also very active in this field.

 Voluntary measures and programmes to combat discrimination are introduced at the municipal level through the adoption of certain policies and plans and through the implementation of projects. Municipality Bela Palanka is one of the signatories of the European Charter for Equality of Women

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<sup>74</sup> In relation to the implementation of affirmative measures, it is important to mention the activities of human rights CSOs. Lawyers' Committee for Human Rights (YUCOM) is an organisation that implemented in 2012 the project Antidiscrimination Mechanisms in Practice, which was focused on four groups considered to be socially disadvantaged – refugees, internally displaced persons, returnees based on readmission agreements and Roma. The focus of the project was also on special measures, the basis of which is regulated by the Law on the Protection of Rights and Freedoms of National Minorities. See: Antidiskriminacioni mehanizmi u praksi (2013). Belgrade: Lawyers' Committee for Human Rights, available at: [http://www.yucom.org.rs/wp-content/uploads/2015/04/Antidiskriminacioni-mehanizmi\\_web.pdf](http://www.yucom.org.rs/wp-content/uploads/2015/04/Antidiskriminacioni-mehanizmi_web.pdf), accessed on 15/03/2017

<sup>75</sup> The most active CSOs in the field of non-discrimination are the Lawyers' Committee for Human Rights, Belgrade Centre for Human Rights, Policy Centre, Helsinki Committee for Human Rights, Civic Initiatives.

<sup>76</sup> See more at: <http://www.osce.org/sr-serbia/235636>, accessed on 17/03/2017

and Men in Local Life and it adopted the Local Action Plan for improving gender equality 2016-2018, defining activities on the promotion of gender equality and improvement of the position of women on the territory of the municipality. One of the activities deriving from this plan is also the project: "Stronger Women for Better Tomorrow", which aimed to empower women economically through trainings on greenhouse agriculture, business plan development and business management. Women's empowerment is related to their increased participation in the economic life, necessary for the development of a strong economy, establishment of a stable economic society and improving the quality of life of not only women but also families and the social community as a whole. This project was implemented within financial support of the European Union and Swiss Government, through the European PROGRES programme and enabled the promotion of gender equality principles as well as the improvement of the position of women in the local community.

**Đorđe Cvetković**  
*LSG Bela Palanka*

Although legislation in Serbia is relatively well developed, it may be said that the implementation is still an issue.

Lack of discrimination in the modern society is an achievement of the modern civilization and a moral imperative, and for Serbia also an important standard in the context of the EU integration. It is, as defined in the EU foundation treaties, also the precondition for EU membership.

Even though there is adequate legal anti-discrimination framework in place, the laws are not implemented efficiently enough and there is a delay in the adoption of by-laws. Also, Serbia still does not have legal mechanisms against discrimination developed, which is reflected in a small number of processed acts, while regulations are often misunderstood and misinterpreted.

Since the start of the implementation of the Anti-Discrimination Law, very few proceedings have been initiated before basic courts. A study by the Lawyers' Human Rights Committee (YUCOM), implemented in 2012 concluded that a total of 184 proceedings were initiated for protection from discrimination.

**Mikica Vasilev**  
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## 4.4 Significance of the Principle of Non-Discrimination at Local Level in Particular Areas

### 4.4.1 Representation of minorities and specific groups in political decision-making bodies

Regarding national minorities, the LLSG identifies the term “nationally mixed LSG units”, representing LSG units in which a national minority makes up more than 5% of the total number of citizens or all national minorities make up more than 10% of the total number of citizens, in accordance with the last census in the Republic of Serbia. In LSGs with such structure, councils for inter-ethnic relations are established as independent working bodies, constituted of representatives of both the majority population and national minorities. There are 68 multi-ethnic municipalities in Serbia.<sup>77</sup>

Two more laws are important for the representation of minorities in decision-making bodies: The Law on the Protection of Rights and Freedoms of National Minorities and the Law on Local Elections.<sup>78</sup> The former is particularly important because it guarantees the right to participation of national minorities in decision-making bodies, through the establishment of national minority councils (Article 19), through which national minorities exercise their right to self-government in the area of language and alphabet used, education, information and culture. Local self-government bodies must ask for the council's opinion before deciding on these issues.

The Law on Local Elections also provides for a specific measure for promoting equal representation of women in decision-making and politics in general, by defining that one in three candidates on electoral lists (first three, second three, and so on) must be of less represented sex on the list.

Although during the past several years the number of women in politics has been increasing, it is still not enough. Primarily as the result of quota, women constitute approximately 30% of local parliaments or 33% in the National Parliament. There is still under 20% of women in executive power or under 15% in local community councils. Apart from this, the representation of women in politics does not only mean their number, but also full participation and promotion of the gender equality concept in public policies. This takes for policy makers to understand the issues of gender equality and the position of women, so that they can advocate for gender equality policy. Simultaneously, the political participation of women requires also to increase their capacities to be able to participate fully in decision-making – women traditionally do not have experience in politics and this is a new area for

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<sup>77</sup> Source: Ombudsman, available at: <https://goo.gl/7HW3lh>, accessed on 19/05/2017

<sup>78</sup> Law on Local Elections (Official Gazette RS, No. 129/2007)

them. On the other hand, political culture patterns and governing rules (especially within parties) are not transparent, procedures and clear rules of political competition are lacking, which makes activism and particularly advancement in politics, difficult for women. This is why it is important to support them create procedures and cultural patterns that will be supportive for women.

With regards to the representation of women in decision-making positions, the situation is much worse. In institutions at the national level (Government, Courts of Law), we may speak of a positive step forward, because women's participation is more visible. However, the situation at the local level, in LSGs, which are not under public pressure, is much worse, so there are towns in Serbia without any women in municipal councils. They are known as men's councils or men's towns.

The research on the participation of women in local decision-making, which was implemented by the Coordination Body for Gender Equality and the Ministry for Labour, Employment, Veteran and Social Affairs, indicates a very serious under-representation of women in the local government:

- under 5% of LSGs have women as president of the assembly or mayor
- in around 8% of LSGs women are on the position of deputy mayor
- there is only 16% of women in municipal and town councils in Serbia (84% men)
- there are no women in municipal/town council in 23 municipalities/towns, and this trend is increasing.

The data show that the normative framework is still not respected enough, and this is why we need practical guidelines that will enable its implementation. Apart from the participation of women, the normative framework also stipulates affirmative measures and activities that could create better chances for women and make women's political activity more visible.

Jelena Radojković  
LSG Sviljig

All above measures represent the response of the local government to unequal representation of different social groups in politics.

#### 4.4.2 Representation in the administration

The Law on the Protection of Rights and Freedoms of National Minorities, in addition to participation in decision-making, also provides representation of national minorities in the administration. For both areas, the Law itself provides for the use of language and alphabet of national minorities, which may be equally used officially, if the percentage of a national minority in the total population on its territory is as high as 15% according to the results of the last census. The use of national minority language and alphabet as official thus represents the basis for participation in the public sphere. The Law also defines that

employment in public services must take into account the national composition of the local population, which is also supported by the provisions of the Law on Employees in Autonomous Provinces and Local Self-Government Units.

In practice however, there are situations that speak of insufficient adherence to the mentioned regulations. Thus, recommendations of the Ombudsman contain those criticising the internal organisation and classification of jobs in LSG services, because of not defining job descriptions that require the knowledge of the national minority language as a criterion.<sup>79</sup> In terms of the functioning of the mentioned national minority councils, the annual report of the Ombudsman also states that conditions have not been provided for their meaningful functioning, which also reflects on the representation of national minorities in the local and public administration.<sup>80</sup>

Each year, LSGs provide funds with the budget decision, allocating them to the fulfilment of tasks in the area of protection from discrimination and improvement of equality of all structures of the population on the territory of the municipality. Municipality of Ivanjica has annual programmes to promote anti-discrimination policies (annual call for funding programmes/projects of associations dealing with the issues of persons with disabilities, minorities and Roma), as well as calls for associations implementing activities in the area of gender equality, improvement of the position of youth, elderly care services (both in rural areas and in the urban zone). These are mainly best practice examples in which the principle of non-discrimination is obeyed.

There are some ambiguities in the calls for funding associations related to non-discriminatory activities. For example, publishing calls for women under 30 years of age is an example of direct discrimination, while an example for indirect discrimination is employing persons registered with the National Employment Service for a minimum of three months. A lot of time is needed for the awareness of citizens to be changed in this area and for the citizens not to act only in individual and personal situations.

Nikola Ivanović  
LSG Ivanjica

#### **4.4.3 Fulfilment of tasks / Distribution of resources**

##### **a Preliminary remarks**

It can be derived from the previous sections that measures and tasks implemented by the local governments largely represent a reflection of the national legislation and guidelines. In this respect, the

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79 See more at: <https://goo.gl/e1ZHiw>, accessed on 20/02/2017

80 *Regular Annual Report of the Protector of Citizens for 2015* (2016). Belgrade: Ombudsman

fulfilment of tasks by the LSG is guided by the principle of non-discrimination transferred from the national level, especially with those tasks delegated from the central to the local level, which are, in turn, defined by special laws in special areas. Although the government guarantees the same rights for all, in practice this does not mean that LSG units may always guarantee that this right would cover every citizen and that not one citizen will be discriminated against. The following examples illustrate this difference.

## b Infrastructure

Local self-governments are, in accordance with the Law on Communal Activities<sup>81</sup>, responsible for providing conditions for the construction, maintenance and functioning of utility facilities and systems, as well as the appropriate coverage, scope and quality of utility services. In this respect, the issue is to what extent local authorities are in practice able to offer these services in the same scope and capacity to all citizens. In this context, the most prominent examples come from the area of infrastructure of availability of schools in local self-governments. According to the Law on the Foundations of the Education System, LSG is responsible for capital expenditures, which also include infrastructural investments in school facilities. On the other hand, the school network in mountain areas is often not adjusted to student needs<sup>82</sup>, which also has a negative impact on the availability of education as one of the fundamental rights of the citizens.

A municipality cannot always provide the same standards throughout its entire area. Different levels of service provision must always be based on objective criteria and should never differ between specific populations. In municipalities with a number of settlements, long road infrastructure, water supply and sewerage networks, a substantial portion of the municipal budget is allocated for the construction of new and mainly renovation of existing infrastructure.

The aim is to provide access to infrastructure to all residents. However, the issue is whether it is economically justifiable to invest in infrastructure in village settlements with few residents (in some villages there are under ten residents). On the other hand, the lack of or low quality of infrastructure leads to migration from villages to towns. Providing central heating system is economically justifiable only in the broader centre of the town, because the same level of service provision in the suburbs and in other residential areas would be financially unsustainable. Closing a school in the suburbs of the municipality may put children at a disadvantage because they would have to travel farther to school. But the concentration of schools seems justified, from economic and pedagogic perspectives, so this unequal treatment may be objectively justified.

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81 Babin, M. and Lažetić, P. (2015). Study: Modeli optimizacije mreže osnovnih škola u Srbiji, available at: <http://birnsrbija.rs/wp-content/uploads/2015/04/Babin-Lazzetic-Studija-o-optimizaciji-mre%C5%BEe-osnovnih-%C5%A1kola.pdf>, accessed on 20/02/2017

82 National Strategy for Addressing the Issues of Refugees and IDPs for the Period 2015-2020, Official Gazette RS, No. 62/2015

## C Integration

Social inclusion of refugees, displaced persons or migrants, also represents a field that may indicate unequal treatment or discrimination in view of access to rights. The aim of strategic documents in this area is social integration, which also leads to economic independence.<sup>83</sup> The ability of the municipality to successfully integrate the members of the said groups does not only depend on its economic potential, but also the attitude that the representatives of the government and the citizens have towards this. Not seldom is it the resistance, caused by lack of knowledge or fear, the reason why some measures cannot succeed in practice.<sup>84</sup> However, there are also examples of successful integration of individuals or groups, characterised by strong cooperation of different levels of authority, but also different types of institutions and organisations. "Practice has shown that the most efficient and the most successful activities of systematic support to refugees are those relying on the cooperation of several actors – republic institutions, financiers, LSG bodies, refugees and non-governmental organisations".<sup>85</sup>

## d Legally invisible persons

In Serbia, there used to be a great issue with a considerable number of legally invisible persons. This means that many people, mainly Roma, did not have personal documents (not registered at birth, living in informal settlements), which significantly limited their access to various services, as well as access to different rights. Over the last decade and due to coordinated actions of numerous services, but also civil society organisations and LSGs, their number has reduced significantly.<sup>86</sup>

## e Maintenance of cemeteries

The competences for the maintenance of cemeteries, as one of the communal tasks, lie with LSGs, which use their individual decisions to regulate this issue in accordance with the law. In multi-ethnic self-governments, this area is closely connected with the principle of non-discrimination. It is very important to ensure equal treatment of different religious minorities, especially in LSG units where there are cemeteries of certain religious minorities.

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83 National Strategy for Addressing the Issues of Refugees and IDPs for the Period 2015-2020, Official Gazette RS, No. 62/2015

84 Vučetić, V. et.al. (2016). *Studija o izbeglicama – Srbija 2016*. Belgrade: Friedrich Ebert Stiftung

85 Korać Mandić, D., Opačić, N., Škorić, B., Ćirić, D., Volarević, S. and Muždeka, N. (2006). *Integracija kao dugoročno rešenje za izbeglice i raseljena lica u Srbiji- analitički izveštaj*, available at:[http://www.nshc.org.rs/public/publikacije/ssi\\_integracija\\_2006\\_lat.pdf](http://www.nshc.org.rs/public/publikacije/ssi_integracija_2006_lat.pdf), accessed on 20/02/2017

86 The estimate is that there are less than 4,000 legally invisible persons (2014): <https://www.juznevesti.com/Drushtvo/Smanjen-broj-Roma-bez-licnih-dokumenata.sr.html>

## The issue of transport

As is the field of infrastructure, the issue of providing transport in LSGs may be seen through a perspective of non-discrimination. This is particularly visible in the area of education, which is closely connected with unsuitable network of schools, which was already mentioned in 4.4.3 b. In situations when school buildings are not accessible or are too remote from the place of residence, the only way for the students to exercise their right to education is by using transport organised by LSG bodies. If the LSG does not provide transport (which is particularly important for the most vulnerable social groups such as families of the lowest socio-economic status, children from rural areas, Roma families, refugees and others), not only is this right violated, but in the majority of cases can cause early school drop-outs. Different research has shown that the effects of this are negative both in terms of social inclusion of individuals and financial costs for the government.<sup>87</sup>

### **4.4.4 Public procurement (submissions)**

Public procurement in the context of non-discrimination includes the prevention of preferential treatment of legal entities on the market, or monopoly. This treatment shall depend on the local government regulations for publishing calls, but primarily on the implementation of the Law on Public Procurement. The Law identifies situations when the LSG may enter into agreements with certain legal entities – defined as exclusive right and special right, also stipulated in special laws. The principle of equality for bidders is also important for the principle of non-discrimination.

Discrimination is prohibited on any personal characteristic in the process of contracting.

Provisions of Article 12 of the Law on Public Procurement stipulates that the Contracting Authority may not determine conditions that would represent national, territorial, material or personal discrimination between bidders.

During the recruitment of employees and other persons engaged in municipal bodies, discrimination is prohibited based on any personal characteristic in all phases of the procedure prior to issuing an employment agreement.

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<sup>87</sup> Jovanović, V. and Čekić Marković, J. (eds.) (2016). *Kako do škole društvene brige – studija o efektima mera prevencije i intervencije za sprečavanje osipanja učenika iz obrazovnog sistema Republike Srbije*, Belgrade: Centre for Education Policy

## 4.5 Conclusions and Recommendations

It is of particular importance for the implementation of this principle to raise awareness of all actions (or non-actions) that represent discrimination and why anti-discrimination is important in the modern society, and of the roles of LSGs and higher levels of government, but also all other sectors and the society as a whole.

Key conclusions and recommendations for the improvement of this area are presented below.

- It is key for successful implementation of the principle of non-discrimination in local practice to have consistent implementation of other good governance principles, primarily the principle of accountability/rule of law and the principle of transparency.
- The human rights and anti-discrimination legislative framework exists and is being improved continuously, but is still not implemented systematically or consistently.
- It is necessary to work continuously on sharing information and raising awareness among citizens and public officials on non-discrimination as a good governance principle, on legal and ethical grounds for combating all forms of discrimination, as well as on existing available measures.
- The line between discrimination and implementation of affirmative measures is unclear – when the measures are desirable, or when they represent unequal treatment. For example, the Council of Europe recommends that issues related to Roma should be tackled in a clear, explicit, but not exclusive or separating manner.<sup>88</sup>
- The established independent body (CPE) is certainly a great step forward for anti-discrimination efforts in Serbia, in comparison with the period before its establishment (for illustration purposes, according to the CPE, even 90% of recommendations issued by the CPE were adopted by the subjects against which complaints were raised). However, the judicial system is still not effective enough on this issue: lack of practice in discrimination-related cases, lack of knowledge or understanding of the issues, procedural issues in proving discrimination cases, and inefficiency of court proceedings demonstrate the need for positive changes in the judicial system, and in this sense, about the enormous anti-discrimination potential which could in this way be released and used.

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<sup>88</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/108377.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/108377.pdf)

- The implementation of the principle of non-discrimination in everyday practice of the public administration and other public actors, particularly at the local level, is faced with numerous challenges: insufficient knowledge and understanding, often not identifying grounds for initiating proceedings on anti-discrimination or the prevention thereof; relevant capacities of municipal staff, appointed or elected persons on this issue have not been sufficiently developed; often there are no clear instructions as to how certain measures are implemented (e.g. how to ensure that an affirmative measure does not appear as discriminatory, etc.).
- Certain improvements are needed, both of the law and its implementation (e.g. respecting emergency procedure before the court, respecting the rule of the burden of proof, giving more authorities to the CPE, etc.).
- Bearing this in mind, it is of immense importance for all parties concerned for the arguments in related to anti-discrimination and existing international human rights standards to be included both in the acts for initiating proceedings and in the court decisions.

PART 5

# Efficiency

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## 5.1 Definition of the Principle

The principle of efficiency refers to the measure in which resources are adequately used for the completion of a task (action/activity). It is often the case that the terms 'efficiency' and 'effectiveness' are confused: efficiency means to do things the proper way (procedure), while effectiveness means to do the right things (achieve results). Effectiveness means that we have the "right objectives", and in a good governance system, these are implied by the fact that the power is discharged by democratically elected representatives, who function having in mind the principle of accountability. The principle of efficiency relates to maximum utilisation of available resources and capacities with the aim to fulfil the agreed set objectives and priorities.

When referring to an efficient LSG, we mean an LSG using available resources to provide best quality services with minimum cost and achieve the best possible results for the community, and so also includes effectiveness.

The principle of efficiency will be considered in this part through the following sections:

- The Fulfilment of Tasks;
- The Funding of Tasks;
- Accounting / Financial Budgets;
- Make or Buy (in the context of service provision);
- Inter-Municipal Cooperation;
- The Administration;
- Logistics.

## 5.2 The Fulfilment of Tasks

### 5.2.1 Which tasks should be carried out?

The principle of efficiency here will be presented through the prism of efficient fulfilment of tasks within the given competences. However, competences here shall not refer only to simple takeover of some tasks and responsibilities, but also considering whether a specific task would be most efficiently implemented at that level. For example, it makes no sense to decentralise tasks related to the sectors of defence, security, foreign affairs and similar.

#### Subsidiarity and transfer of competences

When transferring certain competences, the golden rule is the so-called principle of subsidiarity, under which all tasks should be implemented at the level closest to citizens, unless they would be more efficiently or effectively implemented at a higher level.

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"All tasks within the original scope of competence of LSG units are mandatory, which means that they have not only the right, but also the duty to fulfil them (duty to ensure performing these competences, through bodies, organisations and services). Article 2 of the LLSG also refers to this. Simultaneously, this means that there is no **voluntary** scope of competence, which the municipality and town could decide whether to perform or not."<sup>89</sup>

Even though their scope of competences is clearly defined in the sector laws, and there is no possibility for them to choose additional competences and tasks, it is important to ensure that LSGs have room to decide, within their given competences, which level of services will be provided within this scope of competences, which is not often the case, as additional, sector laws, narrow down the LSGs' possibility to decide on matters within their original scope of competencies. It has not been fully defined what would be the consequences of not performing the original competences, and in this case, it is the task of the state to monitor whether the given tasks are being fulfilled (and implement measures in case they are not). It is upon the LSG to determine the level (and quality) of services provided through these tasks, having in mind the efficiency of meeting the needs of the citizens, and their rights.

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<sup>89</sup> Milosavljević, B., Jerinić, J. *Nadležnosti jedinica lokalne samouprave u Srbiji, Analiza pravnog okvira*. Belgrade: Municipal Support Programme IPA, 2007, Belgrade, 2012, p. 12

Other tasks implemented by LSGs are delegated by the central level. This refers to delegated government tasks, not transferred competences. These tasks are delegated through specific laws regulating certain areas. In the case of delegated tasks, the **freedom of LSG units** to adapt their implementation to local circumstances and needs is **minimal**.

In relation to such comprehensive competences, the question also arises of whether LSG units have sufficient capacities to undertake and implement these tasks, having in mind that they are largely limited by the legislative framework, as well as that the freedom that LSGs must decide and implement initiatives independently is reduced to the minimum.

### **LSG competences and level of development**

The true scope of municipal competences may be understood only after presenting them in detail and specifying everything that is necessary for their performance. Only then we can see that municipalities – especially urban centres with developed infrastructure and demanding population – need to dispose of considerable financial and material resources and good human potential, to be able to perform all the competences provided for in the law. Simultaneously, rural municipalities need high resources to develop their infrastructure and keep the population from outflowing towards towns that offer higher social standard and better public services.

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### **5.2.2 Leadership tools (planning/implementation)**

Depending on the time interval observed, planning can be divided into short-term or operative planning (focusing on a period of up to or around one year), medium-term (around five years) and long-term or strategic planning (around ten years). Each of these periods may have its own methods, tools and elements helping to achieve the defined aim or vision. In terms of LSG units, their bodies and services, planning and monitoring includes developing documents, which refer to the internal context, monitor their implementation and report.

There can be two approaches in strategic planning: political and managerial/operational. While the political is related to setting “higher” goals and evaluating the outcomes, the managerial is related to the

implementation and achievement of objectives. These two approaches need to work in unison, which should, by making synergies (coordinated planning), enable the achievement of strategic goals optimally, in order to meet the citizens' needs.<sup>90</sup> Draft law regulating the planning system and also relating to LSGs is currently under the process of adoption. It is expected that the implementation of this law will lead to considerable process in public administration planning, especially in the area of strategic planning.

Participants in the planning system adopt documents, including medium-term plans. A medium-term plan is a comprehensive planning document adopted for a period of three years, enabling to link public policies with mid-term expenditure framework. It should not be forgotten that medium-term plans are also be developed and adopted by:

- Direct beneficiaries of LSG budget funds;
- Indirect beneficiaries of LSG budget funds, ordered by the LSG unit to develop medium-term plans in accordance with this law.

In terms of concrete tools used to develop these plans, they are defined in the Ordinance on the Methodology for the Development of Medium-Term Plans.<sup>91</sup>

It is important to emphasise that no matter how many planning tools there are, they must be mutually harmonised, i.e. there should be a coherent system of interlinked planning instruments and procedures for the implementation and monitoring of these plans.

### 5.2.3 Steering tasks

Cost efficiency of LSGs and the quality of local public services depend on the way in which the funding system is organised. The existing system for funding LSGs has significant weaknesses: inadequate allocation of non-earmarked transfers, lack of vertical balance in the distribution of revenues between different levels of government, lack of incentives to utilise original revenues more, as well as the unpredictability of local business environment caused by frequent and considerable changes in certain local taxes, fees and charges.<sup>92</sup> All of the above is a challenge considering that these are preconditions for the fulfilment of the principle of efficiency. In theory, we can look at 2 models – one related to the management of resources and the other, related to the management of outcomes (in terms of expenditures).

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90 Stojković, D. Priručnik za strateško planiranje. Belgrade: Republic of Serbia, Government, General Secretariat, 2011, p. 11

91 [http://www.rsjp.gov.rs/malodrvo/Uredba\\_o\\_srednjorocnom\\_PLANIRANJU\\_05122016-1.pdf](http://www.rsjp.gov.rs/malodrvo/Uredba_o_srednjorocnom_PLANIRANJU_05122016-1.pdf), accessed January 2017

92 Framework Document on the Goals and Principles for Reforming the System of Funding Local Self-Governments in the Republic of Serbia

In Serbia, moves have been made towards the model of outcome management and achieving objectives, through the introduction of programme budgeting (used by LSGs since 2015), rather than the sole focus on the distribution of financial resources, which is related to the model of managing resources.

**Managing resources** is a generic form of governance, providing nearly no information on the aim or purpose for spending funds. It is quite simple, but often insufficiently transparent.

**Managing outcomes** is, on the other hand, directed at the desired objectives to be achieved, which are linked with the costs necessary for their achievement. This form of governance may seem more complex than managing resources, but is more easily mastered through practice and upon seeing its benefits. Medium-term planning is linked together with financial plans through the Budget System Law.

### Example – Financial plan, budget assessment and financial report

The budget is planned and executed based on the system of unique budget classification. It is an important integrative element of the country's budget system. The structure of the budget is based on using one or more forms of budget classifications. In our country, there are five forms.

1. Economic classification used for:
  - Revenues and proceeds – presented according to regulations or contracts determining the sources of revenues or proceeds;
  - Expenditures and outflows – presenting the costs of individual goods/services and executed transfers.
2. Organisational classification records outflows by “place”, or by budget beneficiaries, distributing appropriations between individual beneficiaries.
3. Functional classification presents outflows by functional purpose for a given area.
4. Programmatic classification presents the classification of programmes of budget beneficiaries (this is a change in relation to the “old” law insisting on marking strategic areas and main budget beneficiary programmes).
5. Classification of expenditures and outflows by sources of funding presents revenues and proceeds, expenditures and outflows by purpose of delivery.

Delivery of programme budget for 2015 (PA 1 Operation of the National Library Njegoš):

| Account      | Description           | Planned             | Expenses            | Unspent           |
|--------------|-----------------------|---------------------|---------------------|-------------------|
| 411 188/0    | Salaries and benefits | 4,927,620.00        | 4,927,620.00        | 0.00              |
| 412 189/0    | Social benefits       | 882,040.81          | 882,040.81          | 0.00              |
| 465 200/0    | Other transfers       | 606,990.00          | 606,990.00          | 0.00              |
| 414 191/0    | Severance pay         | 305,036.00          | 193,033.41          | 112,002.59        |
| 415 192/0    | Fees for employees    | 120,000.00          | 108,385.97          | 11,614.03         |
| 416 193/0    | Jubilee awards        | 410,000.00          | 400,578.86          | 9,421.14          |
| 421 194/0    | Fixed costs           | 684,000.00          | 549,595.23          | 134,404.77        |
| 423 196/0    | Contractual services  | 468,000.00          | 452,824.00          | 15,176.00         |
| 425 198/0    | Maintenance costs     | 140,000.00          | 120,000.00          | 20,000.00         |
| 426 199/0    | Material              | 165,000.00          | 122,331.00          | 42,669.00         |
| <b>Total</b> |                       | <b>8,708,686.81</b> | <b>8,363,399.28</b> | <b>345,287.53</b> |

Delivery of the programme budget for 2015 (PA 2 Incentives for cultural and artistic creativity):

| Account      | Description          | Planned             | Expenses            | Unspent           |
|--------------|----------------------|---------------------|---------------------|-------------------|
| 422 204/0    | Travel costs         | 116,000.00          | 70,138.00           | 45,862.00         |
| 423 205/0    | Contractual services | 1,018,000.00        | 967,454.06          | 50,545.94         |
| 424 206/0    | Cultural services    | 485,000.00          | 447,919.37          | 37,080.63         |
| 426 207/0    | Material             | 305,000.00          | 201,312.00          | 103,688.00        |
| 512 208/0    | Admin equipment      | 230,000.00          | 141,070.00          | 88,930.00         |
| 515 209/0    | Invisible assets     | 855,000.00          | 851,888.93          | 3,111.07          |
| <b>Total</b> |                      | <b>3,009,000.00</b> | <b>2,679,782.36</b> | <b>329,217.64</b> |

Within the budget, part of the planned proceeds do not need to be distributed in advance, but may be kept as current budget reserve. The decision on the use of the current budget reserve is made by the local executive authority, on the proposal of the local authority in charge of finance. The current budget reserve funds are used for unplanned purposes which have not yet been appropriated in the budget, or for the purposes for which it has become apparent over the year that the appropriations were insufficient. The budget also plans for the funds for budget reserve, which is presented as a special appropriation.

The proposal of the final budget statement of the LSG is drafted by the competent local executive authority and submitted to the assembly for adoption.

Example financial statement:

| Account                              | Description                       | Planned              | Expenses             | Unspent           |
|--------------------------------------|-----------------------------------|----------------------|----------------------|-------------------|
| 411                                  | Salaries and employment benefits  | 4,927,620.00         | 4,927,620.00         | 0.00              |
| 412                                  | Social benefits                   | 882,040.81           | 882,040.81           | 0.00              |
| 414                                  | Severance and material assistance | 305,036.00           | 193,033.41           | 112,002.59        |
| 415                                  | Fees for employees                | 120,000.00           | 108,385.97           | 11,614.03         |
| 416                                  | Jubilee awards                    | 410,000.00           | 400,578.86           | 9,421.14          |
| 421                                  | Fixed costs                       | 684,000.00           | 549,595.23           | 134,404.77        |
| 422                                  | Travel costs                      | 116,000.00           | 70,138.00            | 45,862.00         |
| 423                                  | Contractual services              | 1,486,000.00         | 1,420,278.06         | 65,721.94         |
| 424                                  | Cultural services                 | 485,000.00           | 447,919.37           | 37,080.63         |
| 425                                  | Maintenance and running costs     | 140,000.00           | 120,000.00           | 20,000.00         |
| 426                                  | Material                          | 470,000.00           | 323,643.00           | 146,357.00        |
| 465                                  | Other transfers                   | 606,990.00           | 606,990.00           | 0.00              |
| 512                                  | Admin equipment                   | 230,000.00           | 141,070.00           | 88,930.00         |
| 515                                  | Invisible assets                  | 855,000.00           | 851,888.93           | 3,111.07          |
| <b>Total municipal budget</b>        |                                   | <b>11,717,686.81</b> | <b>11,043,181.64</b> | <b>674,505.17</b> |
| <b>Income</b>                        |                                   | <b>405,555.00</b>    | <b>312,577.00</b>    | <b>92,978.00</b>  |
| <b>Public works</b>                  |                                   | <b>167,000.00</b>    | <b>86,370.00</b>     | <b>80,630.00</b>  |
| <b>Pregnancy and maternity leave</b> |                                   | <b>791,182.00</b>    | <b>791,182.00</b>    | <b>0.00</b>       |
| <b>TOTAL</b>                         |                                   | <b>13,081,423.81</b> | <b>12,233,310.64</b> | <b>848,113.17</b> |

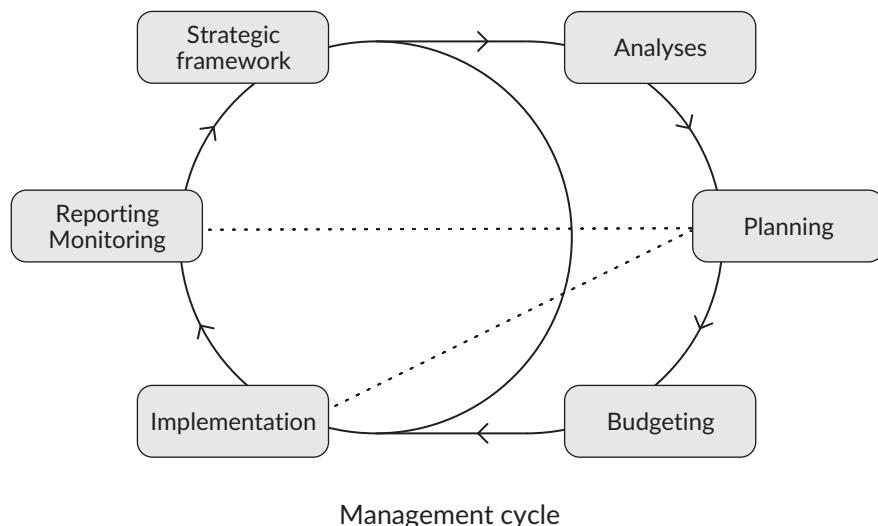
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### 5.2.4 The cycle of control

Planning is only one element of governance, because governance also includes the *implementation* of the plan, with appropriate LSG assembly decisions and purpose of necessary financial resources for its implementation, as well as timely establishment of monitoring and reporting systems. It is very important not only to stay with good planning, but also to implement the plans. Many municipal development plans in Serbia have not been implemented, mainly because of the lack of appropriate mechanisms and instruments, accompanied by corresponding budget lines that would ensure their implementation.

The indicators of success thus represent basis for establishing the system for monitoring and reporting, which in turn is basis for adequate strategic control. If for any reason or cause, there are deviations from the plan, or we fail to achieve the envisaged results, **leadership should determine the cause and undertake corrective measures**.



The monitoring plan itself needs to define:

- The method for checking the implementation of plans: who is in charge of checking, when (timelines), how (methods);
- Monitoring dynamics so that these mechanisms would timely indicate potential deviations from the planned implementation of the plan. Indicators are the basis for monitoring;
- The method of collecting/receiving feedback;
- The procedures and dynamics of reporting on plan implementation;
- How the information obtained will be used.

Without prejudice to complying with steps to be implemented through governance and a number of plans to be drafted and adopted, **there should be clear responsibility for the implementation and revision/adaptation of plans as part of the monitoring and evaluation process, i.e. the cycle of control.**

## 5.3 The Funding of Tasks

Local self-governments have limited financial resources, because the highest percentage of revenues come from the central level of government and the majority of LSGs are faced with the problem of insufficient funds to meet all the needs of the citizens in their community, so many services cannot be provided or cannot be provided well enough. Still, we should keep in mind that LSGs have the possibility to generate additional financial resources and use them in a way deemed most adequate for the community (and not wait for the central level to determine the specific task to implement), e.g. through conscientious disposal of public assets.

### Financial autonomy of the local self-governments

One of the main preconditions to achieve local autonomy is the existence and strengthening of financial autonomy (additional sources of revenue for functioning) and local property (property of LSG units). Key laws designing the financial position of the LSG in Serbia at this moment are the Budget System Law, Law on Budget, Law on Local Self-Government and Law on Financing Local Self-Governments.

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LSG Gadžin Han

Revenues/proceeds of local self-government can be classified as following:

**1) Original LSG revenues** – LSG units are entitled to the following original revenues derived on its territory<sup>93</sup>: local fees (administrative, communal, tourist); local charges (for the use of public resources, concessional charges and other charges in accordance with the law); local taxes (property tax, except for the tax for the transfer of absolute rights and tax on inheritance and gift and other taxes), as well as revenues (from fines, use of immovable and movable property owned by the Republic of Serbia used by the LSG, and owned by the LSG, from services, interest rates on LSG budget funds, from donations, from self-imposed local taxes).

**2) Assigned revenues** – those revenues the base and rate, or the method and criteria for calculation of which are established by the law, and the revenues generated on the territory of LSG are assigned entirely or in part to the said local self-government.

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<sup>93</sup> Article 2 of the Law on Financing Local Self-Governments

In accordance with the Law on Financing Local Self-Governments, these revenues can be:

- Revenues from assigned taxes (citizens' income tax, tax on inheritance and gift and tax on transfer of absolute rights);
- Revenues from assigned charges.

The most important assigned tax of the LSGs, is the income tax paid according to the place of permanent residence of the employee.

**3) Transfers from the Budget of the Republic of Serbia** which may be: **non-earmarked transfers**, determined annually based on gross domestic product achieved, and distributed among all LSGs (except for the City of Belgrade) according to criteria defined in the law, and **earmarked transfers** used for funding specific functions and outflows.

- **Non-earmarked transfers** are set at the level of 1.7% of the country's gross domestic product in accordance with the Law on Financing Local Self-Governments. Non-earmarked transfers include four groups of transfers: (1) equalization transfer; (2) general transfer; (3) compensation transfer; (4) solidarity transfer.
- **Earmarked transfers** are used to fund certain functions and expenses, which may be: (1) functional transfers – used to finance expenses within a certain function; (2) specific earmarked transfers – used for a specific purpose, or type of expense for which the transfer is awarded.

Local self-governments may have other revenues stipulated by the law, and also have the legal means to take short and long-term loans, which is regulated by the Law on Public Debt. Also, local authorities can take long-term loans but only to finance or refinance capital investment expenditures provided for in the LSG budget.

To what extent practice and theory may differ in the area of LSG funding, as well as how much influence policy may have on rather precisely defined provisions of the law and by-laws, can be seen in a study by the Centre for Applied European Studies<sup>94</sup>, the relevant part of which is presented below.

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<sup>94</sup> Finansiranje lokalne samouprave u Srbiji i uticaj političke veze lokalne i republičke vlasti. Belgrade: Centre for Applied European Studies, 2013

**“ Political nature of local self-government funding – myth or reality?**

Before the Law on Financing Local Self-Governments was adopted and came into effect (in 2007), the system of funding towns and municipalities was under extreme influence of political discretions at the level of Republic. Namely, before 2007, the practice of assigning financial resources from the central level to the LSG was done by adopting annual Budget Laws of the Republic of Serbia and the amounts changed every year. Some of the main weaknesses of the then system of financing were the following: the amount of the transfer was not fixed, there was no precisely defined methodology for determining the amount of transfers distributed to individual LSGs, the law did not even define the main types of transfer and finally, the system did not adequately address the issue of differences between certain LSG groups and units.

All this left enough room for strong influence of policy in the direction of “rewarding” LSGs in which the politic coalition reflected the ruling coalition at the central level, or at the least where one political party was present on both levels. Today the situation is much better, and the Law Financing Local Self-Governments leaves much less room for personal political influences. However, the question we are trying to answer in this text is – what room is left for the influence of political decisions at the central level in the domain of allocation of financial resources to individual LSGs?

The fact that the system of funding LSG and government support to local or regional projects has not been entirely well regulated, as well as that the local government system is under extreme influence of political party headquarters, is particularly indicated by the process of recomposition of government in towns and municipalities initiated after the last elections in Serbia (held in May 2012). (...) Still, it is important to consider two facts here. The first fact indicates that coalitions governing towns and municipalities for at least four and somewhere even more years changed and which, if we look at the results of individual parties that were part of the local coalition, received majority support at the last elections. The second fact is that most often the reason for changing the local coalitions in line with the national political distribution of executive power, is not presented to the public as new programmes, new ideas or similar, but the recomposition of government at the local level is justified by the need for better cooperation with the central level and the implementation of strategic projects. The core of the most common arguments of political party representatives for changes in local governments issued right after the elections, was the need for it to correspond to the level of republic, so that the reality and degree of implementation of strategic projects may be much higher. This argumentation indicates that the relation between the central and local authorities in Serbia is still not regulated systematically, but that it largely rests on personal and political hierarchy. The public appearances made an impression that the political actors both on the central and local levels, maybe not entirely openly, recognised that the development of

local communities largely depended on political contacts rather than clear and well-founded criteria for the division of resources or defining and implementing strategic priorities of the central and local authorities. This conclusion being true can be seen in the fact that a similar process, although in a different political distribution of power than today, also took place after local elections before that, held in 2008.

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*Taken over from Funding Local Self-Government in Serbia and the Influence of Political Links between Local and National Authorities - Centre for Applied European Studies*

## 5.4 Accounting / Financial Budgets

### 5.4.1 General

Based on the Budget System Law, the budget system is composed of the Republic of Serbia Budget, local government budgets and financial plans of organisations for mandatory social insurance. The integrity of the budget system is ensured by common legal foundation, unified budget classification, use of uniform budget documents for drafting the budget, medium-term and financial plans, unified budget accounting system, uniform criteria for budget control and revision, transfer of statistical reports and information from one budget level to another, and principles on which the budget procedure is based. The Ministry of Finance, through its various organisational units, supports and supervises this process, and the State Audit Institution also performs audit through its Sector for the Revision of Local Government Budgets. As accounting and financial budgets are a highly professional and extensive area, accent will be placed below on the presentation of these areas from the aspect of good governance, particularly the principle of efficiency.

### 5.4.2 Principles of financial management

The budget system should achieve goals related to:

- Overall fiscal sustainability and control;
- Allocation efficiency which shall imply a possibility of setting priorities within the budget, allocating funds in line with the government priorities within the budget, as well as a possibility of transferring funds from old to new or from less productive to more productive priorities;
- Technical or operational efficiency which shall imply the use of budget funds and possibility of their application with the lowest possible costs;
- Allocation efficiency which shall imply a possibility of distributing budget funds with the aim to promote gender equality.

## The system of financing local self-government

The system of financing LSG must be observed from two distinct aspects. The first aspect shows the level of fiscal decentralisation in the country and real financial power of LSG units. It provides answers to the question of whether there is balance in the system of active and passive financial equalization between different levels of authority in the country determined by constitutional and legal order. Without this balance, there is no economic or political independence of local authorities, and thus no grounds for them to achieve their purpose. Shedding light on this issue helps us explore the qualitative and quantitative sides of LSG revenues and “building” their financial power, security and independence.

However, there is another very important aspect of the system of financing, and this is the management of funds received. It is realised through a special public finance institution representing the “infrastructure” of public spending of a country – budget system and the Budget as its main element. While the first aspect clarifies the input side of the Budget, the second can be used to analyse its output component.

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During the preparation and execution of the budget, the **principles of efficiency, cost-effectiveness, effectiveness, publicity, comprehensiveness, accuracy and uniform budget classification** must be observed. In addition to the said principles, the Budget System Law provides that the beneficiaries of public funds shall establish financial management and control, implemented in policies, procedures and activities with the task to provide reasonable assurance that its goals shall be achieved through:

- Operation that is in conformity with regulations, internal acts and contracts;
- Truthfulness and integrity of financial and business reports;
- Economical, efficient, and effective usage of funds;
- Protection of funds and data (information).

### **5.4.3 Transparency**

Transparency, when applying the principle of efficiency, entails that there are clearly established and defined tasks and responsibilities of different LSG bodies related to fiscal policy management; that there is updated financial and non-financial information provided related to fiscal policy management; that there is effective public monitoring of fiscal policy implementation and status of public finance; that those responsible for publishing such information do not deny this information (unless their publishing would cause a significant threat to national security, defence or international relations). Special attention should be paid to transparency of the process of adoption and execution of the LSG budget, accompanying documents and information/justifications, as well as that all documents should be available on LSG webpages.

### **5.4.4 Accounting tools**

According to the Budget System Law, strategic planning and programme budgeting are interlinked processes. By developing programme budgets, resources are distributed and optimum functioning of the LSG ensured. These legal provisions have been applying to LSGs since 2015. Within this meaning, the programme budget shall:

- Provide a unique framework defining priority expenditures and outflows;
- Enhance policy coordination, which is of immense importance for achieving national social and economic goals;
- Provide financial context to medium-term plans of budget beneficiaries;
- Enable budget beneficiaries, the executive and legislative authorities to identify inefficiencies in spending as well as areas not achieving adequate results and needing more resources;
- Contribute to the improvement of public administration services through cost-benefit analyses;
- Enable developing a budget that is more transparent and understandable for the citizens.

However, in order to measure the impact of spending, it is necessary to meet some requirements, which are:

- Established programme structure and objectives of budget beneficiaries;
- Identified adequate performance indicators;
- Continuous monitoring and performance reporting;
- Periodic evaluation (ex-post analysis) of effects, or effectiveness, of public policies.

The budget process stretches over the entire year. We can take the Budget Memorandum to be the starting point in this process. Based on the memorandum, the local authority in charge of financial issues prepares the instruction for local budget preparation, containing: macroeconomic indicators, description of local policy planning, assessment of revenues and proceeds and outflows and expenditures, the scope of funds (limit) that may be included in the financial plan proposal of the budget beneficiary, guidelines for medium-term plans and procedure and budget and financial plan proposal preparation dynamics.

The development of programme budgets in LSGs in practice is a process that sometimes takes even years to "take root" (even with all the efforts invested in preparing LSGs as well as possible for this step, and all the expert assistance provided, particularly by the Standing Conference of Towns and Municipalities).

Here we present some of the most important challenges/obstacles identified during the first two years of LSG programme budgeting, which indicate that there is still not enough awareness about this type of budget development in LSGs<sup>95</sup>:

- Few officials and employees in LSGs have recognised the programme budget as a tool for improving both budgeting and overall LSG performance.
- In key stages of work everything came down to individuals in financial departments and offices for local economic development (LED).
- Lack of time for the process because the budget calendar is not adhered to.
- Lack of knowledge/understanding of the process, and lack of interest by the majority/part of actors included in the process.
- The majority of budget beneficiaries in LSGs do not completely understand the position of their colleagues developing the budget and they do not know enough about the principles of project management either.

In addition to adjustments, this system also requires determining directions for the improvement of all instruments of support in the interest of improving the quality of programme budgeting. Thus, *the analysis of the quality of LSG programme budgets during the first two years of mandatory application of the programmatic classification, a need has been identified to ensure better consistency of the coverage of the sectors shared by budget beneficiaries at all levels of government on one side, and the content of LSG programmes on the other*.<sup>96</sup>

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95 <http://skgo.org/files/fck/File/2016/progbudg/Prezentacija%201%20Pregled%20programskog%20budzetiranja%20u%20prve%20godine%20primene,%20rezultati%20i%20naucene%20lekcije.pdf>

96 <http://www.skgo.org/reports/details/1886>

## Budget accounting

Budget accounting is the cornerstone of financial reporting. In the Republic of Serbia, cash-basis accounting is applied. Financial reports are based on information about the sources of funds accrued over a certain period, location and purpose for which the funds were spent, as well as the cash balance on the date of the report. The basis for measuring results in financial reports represent balance of cash and cash equivalents of the LSG budget.

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### 5.4.5 Principles of accounting

Financial reporting and available accounting information should directly ensure more efficient decision-making. However, this information can be relied on only if they are relevant (timely), reliable (valid, free from major error), comparable (to follow trends) and consistent (neutral). A summary of the most important accounting concepts and principles is presented below.<sup>97</sup>

#### Concepts

- **Entity concept** – accounting represents a boundary (line) around each organisation, which is subject to special (separate) reporting.
- **Continuity concept** – it is assumed that operations will continue in the foreseeable future.
- **Stable monetary unit concept** – accounting information is presented primarily in monetary units (values).
- **Prudence concept** – items in financial reports are presented by avoiding overestimation of capital and revenues and underestimation of liabilities and expenditures.
- **Time period concept** – provides that accounting information is presented in regular intervals.
- **Materiality concept** – means to include financial information in the financial statement only if they are material to the financial statement users.

#### Principles

- **Principle of reliability (objectivity)** – accounting records and reports are based on the most reliable available information.

- **Cost principle** – assets and services, revenues and expenditures are recorded at their real historical amounts.
- **Revenue recognition principle (realisation principle)** – refers to recognising revenue (only when delivered) and the amount of revenue for recognition (monetary value of what is received).
- **Matching principle** – is directed at (1) identifying all expenses incurred during a period, (2) measuring expenses and (3) matching expenses and revenues earned during the period. The aim is to measure net profit.
- **Consistency principle** – use of the same accounting methods in future accounting periods.
- **Disclosure principle** – financial statements must present sufficient information to external users.

#### **5.4.6 An accounting model scenario**

Budget beneficiaries have the obligation to keep ledgers, compile, present, submit and publish financial reports in accordance with the law and other regulations regulating this area, while the Ordinance on Budget Accounting regulates budgetary accounting and the system of the Treasury General Ledger in more detail in accordance with Article 62, paragraph 1 of the Budget System Law. Therefore, the financial statements include cash-basis statements and statements made based on adopted accounting policies with justifications.

Direct beneficiary of budget funds is responsible for its own accounting, and within its mandate also for the accounting of indirect beneficiaries of budget funds for which they are responsible, while the local authority for finance, on behalf of the competent executive local body, is responsible for accounting of received and outstanding loans.

#### **5.4.7 Financial controlling**

Public funds beneficiaries establish financial management and control, using policies, procedures and activities, with the task to ensure reasonable assurance that they will achieve their goals through:

- Operation in conformity with regulations, internal acts and contracts;
- Truthfulness and integrity of financial and business reports;
- Economic, efficient and effective utilization of funds;
- Protection of funds and data (information).

Financial management and control include the following elements:

- Control environment;
- Risk management;
- Activities of control;
- Information and communication;
- System monitoring and evaluation.

Financial management and control is organised as a system of procedures and responsibilities of all persons in the organisation. Establishing, maintaining and regularly updating the financial management and control system, is the responsibility of the executive of public funds beneficiary, while the Minister of Finance establishes common criteria, methodology and standards for establishing, functioning and reporting on the system of financial management and control in the public sector. The competent government authority forms a service for budget inspection, which performs inspection over direct and indirect budget beneficiaries, public enterprises and organisations, as well as other legal and public-sector entities, according to the methodology and provisions regulated by the Minister.

## 5.5 Provision of Services (Make or Buy?)

### 5.5.1 Overview

The terms “make” or “buy” essentially explain whether the service provision is secured internally, within the local public system (make) or externally (buy), or whether we will use existing capacities or “rent” them.

Although there is no adequate system in Serbia for making decisions of this type, the following overview may contribute do understanding the terms and relevant reasons in favour of or against each of the models:

- MAKE (provide internally) – LSG uses own resources to establish a service (human resources, materials).
- BUY (provide externally) – LSG publishes a tender for services.
- MAKE AND BUY – services are outsourced, and a new legal entity (spin-off) may be established for it (e.g. public enterprise).
- DO NOT MAKE – DO NOT BUY (CUT) – cutting a service may cause the disappearance of a service which may lead to the private sector offering the service.

We should certainly have in mind that there is no perfect formula for deciding on the best way to do a job/provide a service. It is important to weigh and see which model has the most advantages in each individual case.

### **5.5.2 In-house provision – make**

Making the decision on whether something should be procured/provided internally requires precise and timely decision on the qualitative and quantitative nature of the work to be done, or the service provided by LSG, engaging precisely defined resources. The problem is that often LSG does not know the exact costs of doing a job, so it cannot identify the advantages and disadvantages of internal service provision. Also, there are areas that for various reasons (in this case security), should be provided internally – for example, drinking water supply for the citizens.

There are both pros and cons for internal service provision, for example:

- When we provide services internally, the resources are available to us all the time, LSG needs take precedence, existing LSG human resources and their expertise may be used to the maximum, public jobs can be done with higher awareness and potentially commitment.
- Negative aspects may relate to the services not being organised according to market conditions, the actual costs may be higher than in the case of external service provision, human resources in LSGs are not used in full capacity.

We should have in mind that the price/cost is an essential element, but must not be the sole element for decision-making. The quality of performance, public interest and social responsibility are elements of immense importance when making of this type of decision.

### **5.5.3 External procurement – buy**

External service provision entails buying services under market conditions, for example from other legal or private entities. External procurement is generally a better and cost-effective solution in case of maximum demand, exceptional requirements or unusual needs. External procurement may have the following characteristics:

- Local self-government is buying services from a third party (e.g. company, CSO, other)
- Prices are determined at market value – usually it is applied in areas in which there are multiple suppliers expressing an interest in providing the service.

- There is not full municipal control over the implementation of services. This is the main difference between external provision and provision through spin-offs. In this case, the LSG has no role in management over e.g. a private company and is not interested in the operational costs of the private company; i.e. LSG interests are focused on the cost, quality and level of service provided (the model is outcome-oriented).
- There is no ownership role, so there is no confusion about ownership either.
- Accountability: it is understood that the LSG in general is ultimately accountable, because it is always a service provided to the public/citizens, to whom the LSG is ultimately accountable, regardless of the existence of a contract with the service provider. For example, someone may consider municipality accountable if they have been injured (traffic accident) by the vehicle of a hired private transporter. However, the municipality can use the contractual right to refund expenses from the third party. It should be borne in mind that enormous expenses for damages may incur (however, the costs may incur even if the damage is made by the LSG vehicle).

#### **5.5.4 External procurement in Serbian context (public procurements)**

There are three main categories of Contracting Authority for public procurement:

- State public companies;
- Health care and social protection and
- Local self-government and public companies.

Having in mind the high level of delivery of the total value of public procurement, it can be concluded that LSG and local public company procurement often have a direct impact on the economic development and employment in a LSG in view of what is procured, in what way and at what prices. the improvement of public procurement becomes one of the strategic goals for LSGs, because it enables the achievement of other LSG strategic goals, such as: neutralising negative effects of the economic crisis, attracting foreign investment, local economy development, employment.<sup>98</sup>

Therefore, a range of factors and criteria must be considered during public procurement and not only the lowest price offered. Comprehensively defined objectives enable to include all costs related to the subject of procurement incurred during its exploitation (e.g., energy consumption, malfunctions and servicing costs), on one hand, as well as all the positive effects for the LSG, such as employment, increased competitiveness of local companies, which all yield long-term benefits.<sup>99</sup>

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<sup>98</sup> Unapredjenje sistema javnih nabavki u Srbiji kao odgovor na svetsku ekonomsku krizu, Public Procurement Directorate of the RS

<sup>99</sup> Ibid

If buying proves to be the most adequate solution, the procedure of public procurement is initiated. The principles of cost-effectiveness, efficiency and effectiveness the roadmap for achieving **expediency of public procurement**.<sup>102</sup>

Local self-governments also have difficulties in clearly defining the criteria to assess the value of procurement, as well as its expediency. In other words, clear justification of public procurement is lacking, even in a well-developed public procurement plan, which is an obligation of the contracting authorities to adopt annually.<sup>101</sup>

### Public Procurement Procedure Goals

The Rulebook on the contents of the act more closely regulating the public procurement procedure<sup>102</sup> stipulates that a Contracting Authority shall adopt an internal act to more closely define the goals of public procurement (relevance and reasonableness, cost-effective, efficient and transparent spending of public funds, effectiveness, competition and equal position of all bidders). If relevant Contracting Authority services approached procurement planning in accordance with advice and **criteria defined by the said Rulebook**, the expediency of public procurement would not be questioned.

### 5.5.5 Spin-off bodies

Spin-offs may take different forms, and in the LSG context in Serbia, these are most often public companies established by the local self-government. There may be various reasons to form such bodies, and most often it is that the LSG is unable to provide a service within the administration. By establishing these bodies, the LSG has control over the implementation of services, which is a great advantage, because the LSG is also its formal owner – LSG established the company and is most often the owner of the property, while the public company is the user thereof. The main reason for such a recommendation is maximum protection of public interest. The **negative side** is that there is the possibility for such bodies (for example public companies) to serve to employ resources that may not always be adequate in terms of qualifications and competencies, but may be “suitable” politically, which leaves additional room for corruption.

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100 Erceg, V. Svršishodnost javnih nabavki – značaj i definisanje. Belgrade: European Union Programme Support to Civil Society 2013 for Serbia, 2015

101 According to the Law on Public Procurement, the Contracting Authority (which can be LSG) is obliged to adopt an annual public procurement plan, containing the following information: registry number of public procurement; subject of public procurement; estimated value of public procurement; type of public procurement procedure; tentative date for initiating the procedure; tentative date for concluding the contract; tentative contract duration.

102 Rulebook on the contents of the act more closely defining internal public procurement procedures for CAs (Official Gazette RS, No. 106/2013)

Additional challenges that may occur with this type of body are numerous.

- Lack of control (strategic and operational) – if the strategy and business are given over completely, then LSGs have limited opportunities to impact the process, which is still in their ownership. Municipal regulatory and supervisory powers become minimal. Additional efforts should be invested in the majority of LSGs, both in the political and regulatory sense, to increase supervision of local assemblies over the work of public companies and other public organisations and institutions, local budget beneficiaries.
- Since LSG representatives are often members of the boards of such bodies, they should always have a broader picture (not focusing only on their sector and scope of work), and priority should be the improvement of service provision and not individual interest, as well as these representatives should have commercial experience, i.e. experience in economy and service provision.
- In relation to the above, there should be clear understanding of ownership. Therefore, the company should have enough freedom, but the accountability for representing the owner's interests, i.e. the interests of the LSG, and the development of the company should rest with the politicians. There is also the possibility in time for LSG representative to start representing the company's interests, rather than the interests of performing/providing the work/service in a good-quality manner, so for all the given reasons all of this should be carefully considered before entering such a relation.

### 5.5.6 Concessions and public private partnerships

The beginnings of concessions in Serbia date back to the 19th century<sup>103</sup>, which means that it is not a completely unknown practice in this area. The purpose of concessions is to help accelerate development, through investments, which in case when the receiver is a foreign entity, represent a form of foreign investment. The subject of concessions and public private partnership (PPP) is regulated by the Law on Public Private Partnerships and Concessions.<sup>104</sup>

Public private partnership (PPP), is long-term cooperation between a public and a private partner for the purposes of providing financing, construction, reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services of public interest, which may be contractual or institutional.

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103 In 1859, when the French society for the exploitation of the Majdanpek mine received a form of concession that lasted for 30 years, and the first concession contract was signed somewhat later between the City of Belgrade and an Italian company on tram transport. There are more examples in Serbia from the period of the early 20th century, but it is interesting that after the Second World War and until the 1990s, there were no concessions in Yugoslavia. Source: Knežević, M. *Značaj koncesija za strana ulaganja u Republiči Srbiji*. Belgrade: Ekonomski horizonti, 2010, 12, (1) p. 91.

104 Law on Public Private Partnerships and Concessions (Official Gazette RS, No. 88/11, 15/16 and 104/16).

With both concessions and PPP, it is very important to **always ensure the possibility of consistent and efficient implementation of public interest** in relation to the interests of stakeholders from other sectors. This means that ultimately the LSG is accountable, and particularly if the situation is such that there has been no previous experience, PPP should be approached with extreme caution.

The primary reason and need for caution, for the public partner, is the existence of a clear and unhidden motive to gain profit with the private partner. Private PPP partner is never about public interest and will do everything in their power to ensure their interests are met to the extent possible. The public partner, however, is always responsible to the citizens to provide the public service (e.g. public lighting, cleaning of public spaces). The risk for LSGs, apart from that, lies also in the level of professional and negotiation capacities of local officials and technical staff, to participate equally both in the process of preparation for the PPP, and in subsequent processes of contract management and monitoring, always and everywhere protecting the public interest and “attempting to provide additional quality for the money”<sup>105</sup> set aside for PPP. Municipalities and towns in Serbia differ in this respect greatly, so before any steps are taken towards PPP, it is necessary to implement appropriate internal processes and analyses, which would demonstrate the feasibility of such a process.

## 5.6 Inter-Municipal Cooperation

When establishing any form of cooperation, LSGs should answer certain questions and make decisions based on concrete information (e.g. what opportunities are created by the given form of cooperation, the benefits of this form of cooperation, they should conduct a financial analysis with the assessment of the level and structure of revenues and expenditures and identify any potential risks).

### 5.6.1 The opportunities

Cooperation between LSGs leads to reduced costs, due to joint funding and thus reducing costs per unit and enabling the economies of scale, and it is particularly convenient from the perspective of the use of modern technologies, which they would probably not be able to afford individually. When entering this type of partnership, it is certainly important that the participating LSGs have the same/similar needs (starting the venture or cooperation with the same or similar goal).

Long-term positive effects that may derive from cooperation between two or more LSGs are: positive impact on management practices in general; growing will and ability of each individual LSG to cooperate

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<sup>105</sup> Araújo, S., Sutherland D. *Public-Private Partnerships and Investment in Infrastructure*. Paris: OECD Economics Department Working Papers, No. 803, 2010.

with other public, private and other organisations; encouraging professionalism – through accountability for the work that is in this case divided between different LSGs; giving the opportunity to the management to focus on strategic goals by reducing burden/focus on smaller challenges that have occurred; developing solidarity between partner LSGs.

### 5.6.2 The risks

There are also certain risks related to cooperation between LSGs (distance, complexity of the decision-making process and task fulfillment, lack of will to delegate and/or divide political power, general system of control). An excerpt from a publication on inter-municipal cooperation is provided below.<sup>106</sup>

#### Risks related to inter-municipal cooperation

*The first and foremost condition for establishing efficient inter-municipal cooperation is a **clearly defined shared interest** of the municipalities to enter inter-municipal cooperation arrangements.*

*Establishing efficient inter-municipal cooperation also requires that the **leadership** in one of the LSGs would initiate the process of inter-municipal cooperation as well as existing **culture and tradition of cooperation** between LSG units. However, in addition to the said factors, in practice it has become increasingly important to have external incentives for establishing inter-municipal cooperation, which can come from the central government, but also from the regional level or supranational level, such as the European Union.<sup>107</sup>*

*We should not forget that the key argument for establishing voluntary cooperation is **cost-effectiveness**, but it should also be taken into consideration that inter-municipal cooperation may double the administration in some LSGs, which **increases total costs**. In addition, recent practices related to establishing and functioning of inter-municipal cooperation, have identified many obstacles to the establishment and development of municipal cooperation, which are usually caused by a lack of capacities of LSGs to establish inter-municipal cooperation, or lack of good quality communication with other local self-governments.*

*One of the identified obstacles often mentioned is the **lack of trust**. Reliable partner relations are*

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<sup>106</sup> Avlijaš, S., Knežević, I. Modeli meduopštinske saradnje u EU i mogući podsticaji za razvoj u Srbiji. Belgrade: Standing Conference of Towns and Municipalities, 2010 , available at:  
[http://www.skgo.org/upload/files/Analiza\\_modeli\\_MOS\\_u\\_EU\\_i\\_moguci\\_podsticaji\\_za\\_razvoj\\_u\\_Srbiji\\_web.pdf](http://www.skgo.org/upload/files/Analiza_modeli_MOS_u_EU_i_moguci_podsticaji_za_razvoj_u_Srbiji_web.pdf)

<sup>107</sup> Ibid

essential in cooperation with other municipalities, but any misunderstandings in the past may be a disincentive to the development of inter-municipal cooperation. Trust is built in time, however, insisting on contractual relations and leading well-prepared and direct negotiations is the best way to ensure equal treatment for a municipality in inter-municipal cooperation.

The next obstacle in establishing inter-municipal cooperation is the **fear of loss of power**/control over some areas. By entering the process of inter-municipal cooperation in the form of permanent inter-municipal cooperation bodies, and by transferring certain competences for providing public services, inevitably gives rise to fear from loss of control over the competences.

**Fear of losing identity** has also been identified in the resources on inter-municipal cooperation, because certain municipalities consider that through the process of cooperation they would lose their unique identity by which they are recognised.

Finally, there is belief among smaller LSGs that larger, urban municipalities, always have more benefits from inter-municipal cooperation in relation to other local self-governments. This is why partnerships based on equality should always be insisted on, regardless of the size of municipality, as well as active participation in defining all segments of cooperation.

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### 5.6.3 The organisation of inter-municipal cooperation

Local self-governments, as well as companies, institutions and other organisations that LSG is the founder of, have the opportunity to cooperate and associate for the purpose of accomplishing common objectives, plans and development programmes, as well as for the purpose of fulfilling other needs of common interest.<sup>108</sup> Also, the Law on Regional Development<sup>109</sup>, as one of its objectives in encouraging regional development, also includes encouraging inter-municipal, inter-regional, cross-border and international cooperation on issues of common interest. Other laws also, such as, for example, the Law on Social Protection<sup>110</sup> or the Law on Communal Activities<sup>111</sup>, also provide for establishing cooperation among communities (for example, two or more LSG units may agree to regulate joint provision of communal services, when it is indicated as efficient and cost-effective by the results of a feasibility study for joint provision of communal services).<sup>112</sup>

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<sup>108</sup> They may establish their own associations to represent the interests of their members before government bodies, etc. The provisions of the law regulating the establishment and operation of associations apply to the establishment and operations of LSG associations.

<sup>109</sup> Law on Regional Development (Official Gazette RS, No. 88/2011 and 104/2016)

<sup>110</sup> Article 7 of the Law on Social Protection (Official Gazette RS, No. 24/2011)

<sup>111</sup> Law on communal activities (Official Gazette RS, No. 88/2011 and 104/2016)

<sup>112</sup> Feasibility study is initiated when mayors of towns/municipalities commission the feasibility study

Cooperation models are different depending on whether the internal administration can implement the envisaged tasks or whether there is more benefit to implement the tasks jointly.

In certain cases it is the most efficient when the cooperation of one or more LSGs is complemented with establishing cooperation with service providers in the public sector, but each of these cases needs to be well analysed because of potential risks to the achievement of public interest.

Considering that in Serbia cooperation between LSGs has not yet become standard practice, similar models existing in the European Union are presented below.

### **Inter-municipal cooperation models in the European Union**

There are four basic models of inter-municipal cooperation in the European Union.<sup>113</sup> Although such formal forms of inter-municipal cooperation do not exist in Serbia, they should be considered for future planning and inter-municipal cooperation purposes.

**Quasi-regional governments** are standing organizations governed by municipalities that engage in the co-ordination of local government policies and/or in supra-municipal planning in one or more sectors (spatial planning, socio-economic development planning, public transport, emergency services, water distribution and waste disposal).

**Standing service delivery organisations** as second form of inter-municipal cooperation can dispose of their own decision-making powers transferred to them by the co-operating municipalities (and other government organizations), or they can function as agents on the instruction of individual municipalities involved in inter-municipal cooperation.

**Service delivery agreement.** This form of inter-municipal cooperation is characterised by the fact that the participating actors enter a formal agreement to co-operate in the delivery of services without establishing a joint standing organization.

**Planning forum/platform** are loosely coupled networks of municipalities and other public or private actors that engage in the coordination and planning of local policies.

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<sup>113</sup> Hulst, R., Montfort, A. (eds). *Inter-municipal cooperation in Europe*. Amsterdam: Springer Netherlands, 2007, p. 224-232

## 5.7 The Administration

### 5.7.1 Human resources

The need for motivated and professional human resources (HR) at the local level comes from several aspects. Beneficiaries, i.e. citizens understand that LSG and its bodies are to primarily serve them in accessing their rights and to provide adequate services. Having this in mind, both the leadership and staff in LSGs try to provide these services in the most efficient and transparent way possible, which is impossible without adequate (expert/professional) human resources. Looking also at the business sector in this context, which is even more demanding and critically inclined, the need for HR development and the existence of an adequate HR management system at the local level becomes a necessity.

#### Human Resources Plan

Human resources management in LSGs should begin with the development of a realistic HR plan, which should include an analysis of the existing situation and structure of employees by number and quality (permanent staff and temporary contract holders), differences between the existing and the needed number of employees, dynamics of the need for new resources in the planning period, needs for additional resources because of increased workload, need for additional resources requiring qualifications not envisaged in the existing Rulebook on job classification (when introducing new business processes) and redundant employees by individual organisational units.

Such a plan would represent a systemic legislative framework that would provide legitimacy for all future employments. If it is adopted on annual level, there may be the risk of leadership political ambitions and party-line employment and pre-defined HR solutions. This is why it is important for the analysis of the needs presented in the HR plan to be clearly in line with the aims presented in the LSG and its organisational units work plans, to justify employment by real needs and not only financial backup. The efficiency of HR planning should be evaluated by showing whether the results have been achieved with reasonable cost in relation to total available resources (financial analysis, achieved planning purpose, impact of planning on overall performance of the local administration).

Danijela Petković  
LSG Aleksinac

## 5.7.2 Organisation

A volatile and dynamic work environment in which the LSGs function, and the need to improve work processes and increase efficiency must be founded in LSG organisation and supported through a systematic approach – starting from a legislative framework that would recognise the structural and functional organisation of LSG to introducing new work processes, structures, technologies and promoting and nurturing proper values as basis for a modern LSG. In this respect, we can approach LSG organisation from two angles:

- One is related to the hierarchical/planning level (in the sense of clear line of responsibility); and
- Another related to the functional level defining clear steps in existing processes, work procedures /steps, interdependence of processes/procedures and coordination and communication methods necessary for their implementation.

### Organisation (hierarchy/planning)

Within an LSG organisation, the exclusive right of presumption of competence is applied, that is, each LSG body fulfils tasks within its competences laid down in the law and the statutes, and is objectively responsible for the fulfilment of its tasks.

It is very important to emphasise the legally relevant fact that there is a decided and clear hierarchy of responsibilities between LSG bodies for the fulfilment of tasks and performance of supervision.

Jovica Pešić  
LSG Doljevac

Different techniques and tools can be applied in the implementation of the functional plan with the aim to clearly define responsibilities/procedures for the performance of a certain task. One of the tools that could be used by LSGs is also the so-called RACI (Responsible – for operational implementation of tasks; Accountable – delegating and approving tasks; Consulted – includes two-way communication; Informed – includes one-way communication) matrix.

### Internal control

The principle of internal control within LSG authorities is applied through internal audit and budget inspection, which entail inspection control and internal audit of direct and indirect budget beneficiaries, public enterprises and institutions founded by the municipality, control of whether the law is adhered to in the area of material and financial affairs, and whether budget funds are spent for their intended purpose and legally, as well as through evaluating the system of internal control.

It is necessary to define the competences of the bodies and divide responsibilities for tasks, because otherwise there would be room for negligent, illegal and irresponsible fulfilment of tasks, excused by the "I am not responsible, it is not within my scope of competence" phrase. Responsibility for tasks is established also by signatures: when an officer on behalf of the municipal administration proposes a (draft) decision, to be adopted by the competent body (assembly or council), this act requires the signature of this officer, followed by the head of the department, and the head of the administration.

Jasmina Lapčević  
LSG Blace

### 5.7.3 Administrative techniques

Administrative techniques used in LSG operations may be of immense importance for providing timely, transparent and accurate information. Thus, administrative should not be in this sense mistaken for bureaucratic, because adequate administrative techniques actually help reduce bureaucracy, through systematisation and professionalism of staff, serving citizens and are in their best interest (also observing appropriate criteria such as transparency, accessibility, confidentiality). The Regulation on office functioning in the governmental bodies<sup>114</sup> regulates the system of administrative operations and also applies to LSG authorities fulfilling delegated tasks.

#### Administrative procedures

Administrative procedure regulations and practices refer to the widely-used terms: submission, act, annex, case, file, folder, log, registered material, archives, reception office, clerk's office, archive office and archive storage. The efficiency of administrative techniques is determined by the efficiency of quality staff engaged in administrative tasks and modern information technology. For the administration to be efficient, administrative techniques should be carefully developed procedures and processes, with a minimum of bureaucracy.

Administrative procedures require casework to be complete, systematic, done in cooperation and coordination, especially in the preparation of important decisions, by forming a network of tasks at different posts and a clearly defined central position.

Having in mind innovations in information technologies, the need to change and adjust regulations on administration affairs should be considered, to help simplify administrative procedures and simultaneously increase the efficiency and quality of the administration.

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<sup>114</sup> Regulation on office functioning in the governmental bodies, Official Gazette RS, No. 80/92, 45/2016 and 98/2016

The quality and efficiency of administrative techniques requires the transparency principle, i.e. availability of all information to citizens, carefully protecting personal information and data.

The issue of data protection does not only require a clearly defined access to certain registries or who has the right to access confidential material, but by clearly defining which material is confidential, because the confidentiality clause is in the existing practice very often abused.

The efficiency and transparency of the administration are directly connected, so it is necessary to utilize all available procedures, especially well-designed and developed websites. Information, participation and interaction with citizens must be ensured.

Citizens' interests and response to their requests need to be the priority in administrative operations.

Maida Kasumović  
LSG Sjenica

#### **5.7.4 Supervision of the administration**

Supervision of the administration is a broad term and may be observed through different areas. What is undisputed is that supervision as such must exist on different levels and instances (especially because we also have the political element involved) to avoid abuse of power and resources.

##### **Supervision of the administration**

The term itself in relation to government, provincial, regional and municipal structures and administrations is a generally broad spectrum of control on all levels and by pre-defined supervisory institutions. Supervision – control is done based on clearly and precisely defined division of responsibilities that must be in accordance with the law adopted at the highest level (National Parliament, proposed by the Government), as well as all by-laws developed and adopted on provincial, regional and local levels.

The exact and precise division of responsibilities, followed by clear political authority of the administration, are the main preconditions for better quality control.

LSG competences are clearly defined in the Law on Local Self-Government and Labour Law. The main by-law of the municipality – statutes – defines the functioning of the LSG in more detail, as well as the distribution of competences at the local level. Municipal budget, functioning of the LSG bodies,

followed by job classification, new employments in the municipal administration, managing municipal, construction works and capital affairs in the municipality, are all subject to direct or indirect AUDIT – control. It is possible to conduct control in all these areas, if the competences and obligations are accurately and precisely defined in advance.

Municipal administration is under direct control of municipal audit institutions (inspection, municipal courts, internal audit), while indirect audit, from the government level, is implemented by government bodies established by the Parliament (committees, agencies, State Audit Institution), or the Government, which through ministries, forms inspection services, agencies, special entities.

For the functioning of the municipal administration in terms of employees in municipal services, it is recommended that heads of departments and the heads of administration keep track of the efficiency of employees, by introducing regular and periodic reports submitted by the employees covering specific time periods. Also, records must be kept of employees' attendance at work, for more efficient performance.

Thorough and detailed audit of municipal administration conducted through audit institutions established by the central government, is finalised with the adoption of the audit report in the local assemblies and the Parliament. Although this audit is indirect, it is qualified as the most independent and thorough control of the municipal administration in our country.

Nikola Ivanović  
LSG Ivanjica

## 5.8 Logistics

### 5.8.1 Physical infrastructure

Physical infrastructure represents a necessary and indispensable element for the fulfilment of public tasks. Concretely, physical infrastructure in LSGs includes, for example: central administration – administrative buildings, schools, hospitals, streets, roads, squares, health centres, sports facilities, water supply facilities, waste disposal landfills, swimming pools, public toilets.

Physical infrastructure planning includes considering all the aspects necessary for the construction, maintenance and/or management of individual facilities and the surrounding location or physical resource. This means that there must be efficient coordination between different sectors within the LSG, as well as the understanding of broader needs (needs of the entire region, and the country even). Inefficient administrative

infrastructure management may lead to lost resources and misplaced investments, so this topic must be approached very carefully, and preceded by detailed analysis (building a school at a location without access roads, or too great a distance from public transport, would certainly be a problematic investment).

### Physical infrastructure and logistics (terms)

**Central administration (administrative buildings)** – In order to perform good-quality work, all public (government and local) institutions should be in one building, so that the client can be served as quickly and as efficiently as possible. Logistics in this case would be in the communication and coordination between all institutions that would be in one place, to efficiently provide information to stakeholders and citizens.

**School buildings** – school building maintenance (painting, cleaning the school yard, providing fuel for heating and transport for students from rural areas).

**Hospitals/health centres** – maintenance of public facilities of the health centre (painting inside, transport for medical staff to provide medical assistance in the field).

**Sports facilities** – provide transport for athletes for the promotion of schools – sports academies for younger ages in different sports and rewarding young athletes for success achieved.

**Leisure facilities** – maintenance of leisure facilities (open gyms, small sports fields and air domes).

**Streets, roads and public squares** – build the roads and squares and further maintain them (repair benches, paint them, design and maintain grass covers, pavements, public lighting).

**Water supply** – construction and maintenance of new pipelines, maintenance of existing pipelines, controlling water quality.

**Disposal of waste waters** – construction and maintenance of facilities for waste water treatment, installation of new pipelines.

**Location for waste disposal** – providing a suitable location, and development and maintenance thereof.

Fikret Sinanović  
LSG Tutin

## 5.8.2 Moveable goods

Administration also includes using appropriate equipment (movable goods/items). This includes, for example, various municipal vehicles, such as road maintenance vehicles, waste collection trucks, office supplies and similar. It makes perfect sense that the major part of this equipment is procured and maintained at the central level, having in mind this reduces total costs. On the other hand, these decisions should be made carefully, in the sense of checking whether the costs for maintenance include (vehicle) wear and tear, whether it is more efficient to buy or rent and whether a third party would be responsible also to provide the service.

### Logistics and movable goods

Logistics also include appropriate equipment. Office supplies and equipment are procured and maintained on the central level because this is more cost-effective. When it comes to municipal vehicles, for example, except for the opportunity to sign-off wear and tear through investment, it is important to know whether the vehicles are used on the central level or by individual departments. Sometimes it is cheaper to pay third parties for maintenance because the municipality may not have maintenance and repair staff or not own a garage. It is also important for the municipality to keep records of all the equipment.

Muhamed Abdullahu  
LSG Preševo

## 5.8.3 Information technology

The development of information technology should lead to improved efficiency of business operations. The efficiency of business operations could be reflected in making processes automatic, facilitating the work not only of LSGs themselves, but also innovating the operations of public companies and institutions. Using these technologies would have a direct impact on more efficient management of all LSG tasks.

For LSGs to be able to efficiently use available information technologies, it is necessary to take into consideration (in addition to the procurement of software and hardware) the following: enable linking together some work units/stations; clearly define responsibilities and corresponding rights to access information and award roles in the system; enable adequate system protection and individual work units; train staff to use and manage the technology provided; pay attention to data storage and safety (also relates to data confidentiality and safety in case the services of external associates and companies are used); system maintenance – hardware and software; availability and use of resources for private purposes.

## Example of the information system: the Municipality of Nova Varoš

Functioning of the information system in the context of efficiency will be analysed on the example of municipal administration (MA) Nova Varoš. Hardware and software were procured together with equipment in a public procurement procedure. Only the administrator can access all the data. All municipal administration staff are members of a single domain network, where they keep their folders, which are open access, so all staff have access to other colleagues' folders. This situation also presents certain risks. One of the greatest risks is that someone may copy, edit or forward certain documents without authorisation. If it is technically feasible, it would be better if the access to folders and data editing could be enabled with the owner's consent.

Recording, monitoring and archiving cases is done in the programme called OPIS. Unlike the domain network, each user has their own password to access this programme and may only upload their own files. Only the head of the municipal administration can access all files, so he/she can monitor the agility of employees. This segment is quite well regulated, and has a positive impact on workplace efficiency.

Backup of all data is done on average every seven to ten days. This segment could be improved by introducing regular, possibly daily backup of data.

In case of attack on the website, which has happened a few times so far, the administrator reports the attack to the provider, and the experience was that these attacks were relatively quickly neutralised. In terms of training of employees to use information technologies, there are no organised targeted trainings for employees, which should certainly be changed. Namely, the existing practice of self-taught dealing with information technology cannot be considered an adequate form of professional development. Periodic trainings by competent IT experts would certainly be a far better way to improve efficiency in this segment.

Milinko Šaponjić  
LSG Nova Varoš

## 5.9 Conclusions and Recommendations

Local self-governments in Serbia should put more focus on targeted action, which is not based only on the implementation of the law, because this is implied, but also to establish development goals and actions, where regulations and laws are only a means to achieve these goals. In other words, goals must be measured in all their stages of implementation, while LSG action and local regulations could be adjusted if found that the goals set are not being met. Through such action, LSGs could achieve efficiency and contribute to better quality service provision. Further, development processes at the local level must be followed by strengthening adequate local institutions and their human, technical and organisational capacities, as well as developing new or improving existing local legally binding procedures and rules, which would regulate interrelations of all relevant stakeholders participating in local development planning, implementation and management.

Key conclusions and recommendations for the improvement of this area are presented below.

- The size of LSGs in Serbia varies drastically, and all LSGs have similar tasks, but not equal opportunities to fulfil them. The consideration of territorial adjustments and introduction of several types of LSGs would be one of the solutions for equalizing the level of service provision. Also, transferring some competences to the level below the level of local community, especially in larger LSGs might improve service provision in rural areas.
- Additional efforts in the following areas would certainly improve service provision methods, specifically:
  - Regular service user satisfaction surveys;
  - Consistent introduction of e-government;
  - Introducing corporate governance and quality management in public companies.
- Planning is a great challenge both at the national and at the local level. Efficient, comprehensive mechanisms need to be introduced, which use simple tools for coordinated planning and implementation. The establishment of appropriate local mechanisms would regulate strategic planning, coordination and communication within the LSGs themselves. When developing these mechanisms in the future, focus should be directed at:
  - Making this system comprehensive, which means for all essential elements to be coordinated and interlinked.

- Tools for planning and monitoring should be as simple as possible (also for the decision-making to be as efficient and effective as possible), with simple instruments and tools (organisational charts, functional charts) used to present responsibilities in the management process in a transparent and understandable way.
  - Planning and management are not one-time efforts, they represent processes that need to be continuously revised.
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- In theory, LSG programme budgeting seems simple, but in practice it is a process that sometimes takes years to be fully adopted. Programmatic budget entails defining clear responsibilities (of all participants), competences for programme/activity implementation, as well as clear reporting procedures on achieved expected results and objectives. Establishing a clear connection between the resources invested and expected, i.e. achieved results, is the basis for this type of budget development.
  - The issue of selective fulfilment of tasks, especially delegated ones, has been identified as a problem. Namely, even though they are an obligation under the law, many tasks are not fulfilled because of the lack of resources, usually human, but also financial.
  - The fulfilment and funding of tasks cannot be separated because these are processes that must be viewed and implemented together – tasks can be fulfilled only if the necessary resources have been provided. If the central government puts certain requests before the LSG, then it should also provide the necessary financial resources to respond to them.
  - With regards to service-provision – internally or externally, i.e. the process of making the decision of whether something is more efficient to make or buy (although it is not easy to say which model would be the best for one LSG), should be guided by the following:
    - If there is no functional market for certain services, there is danger for one private supplier to abuse the market position and attempt to monopolize it.
    - External procurement is generally better and more economical in case of maximum demand, exceptional requirements or unusual needs, while with the permanent conditions it is best to use municipal resources (and may succeed only if the market is active).
    - Only clear procurement rules that are agreed in advance may provide sufficient competition.
    - Advantages and disadvantages of a spin-off company should be presented and assessed precisely (especially considering that the LSG is ultimately responsible for these tasks). LSG may guarantee

autonomy to a spin-off company (which is necessary for it to function as a business) only with a clearly defined ownership strategy.

- Public property management is still insufficiently developed. One of the reasons for this situation is the lack of local procedures that would regulate and direct efforts, regardless of the changes in management after local elections.
- Inter-municipal cooperation has enormous potential for efficient operation of local self-governments. Although many advantages have been identified to this way of cooperation, it is also necessary for the local community to know about all the risks. The majority of previously mentioned risks are possible to reduce to a minimum, by setting up appropriate organisational procedures and processes (e.g. to facilitate decision-making in a reasonable timeframe).
- The issue of partocracy is considered one of the main problems directly connected with the improvement of the principle of efficiency (and accountability).
- The foundation for the success of a team, in this context one LSG, is made by the people working in it. It should be kept in mind that it is much easier to implement reform and improve the work of the LSG when LSG staff are adequately motivated and when financial and other resources are invested in their work.



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Representatives of 25 local self-governments in South East and South West Serbia on learning visit to Switzerland – June 2017

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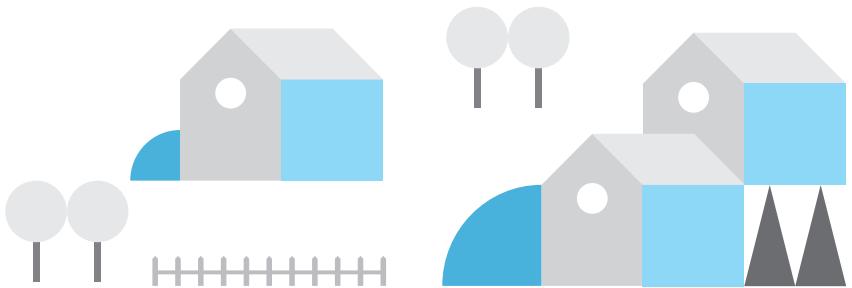
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