

## **Executive and Legislature at Local Level**

**Structure and Interrelation in Countries of  
South-East Europe**



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## The Rule of Law, Administrative Reform and Local Self-Government\*\*

### 1. The rule of law

The principle of the *Rule of Law* and the concept of the *Legal State* are paramount moral and legal values that are incorporated in the very foundation of the Western, and particularly European civilization<sup>1</sup>. In respect to administrative reform and local self-government their significance is essential for implementing the notion of *legality* of government decisions, as without the framework of the rule of law and the legal state, no modern political, legal and local government system can be conceived<sup>2</sup>.

Originating in the mid-19<sup>th</sup> century, the concept of the *Rechtsstaat* rests on a *normativistic legal model* of regulating social relations. According to this model, general legal norms (formalized in general legal acts, e.g. statutes, laws, regulations, etc.) prescribe the rules of social behavior. General legal norms are subsequently decomposed into concrete legal provisions contained in individual legal acts (e.g. administrative decisions, judicial rulings, etc.) that directly affect the behavior of individuals and other legal entities. The main feature of the normativistic model is that the legitimacy of legal action (including the legitimacy of legislative, judicial, administrative and local self-government decisions), *derives* from the *legality* of the legal acts. In other words, a legal decision (i.e. legal act) is legitimate by virtue of its legality. This model in its initial form, however, today can not be implemented without peril to the idea of fundamental human freedoms and rights and the concept of political pluralism and democracy - one needs only to have in mind any racist or other totalitarian regime that rests on so-called "law and order"<sup>3</sup>. As consequence, the values of the *Rechtsstaat* concept today can only be seen as a *precondition* of democratic political and legal systems<sup>4</sup>.

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<sup>1</sup> Lord Lloyd of Hampstead, M.D.A. Freedman, *Lloyd's Introduction to Jurisprudence*, Stevens Carwell, London/Toronto, 1985.

<sup>2</sup> Alexander Blankenagel, Denis Galligan, Stevan Lilić, Sanford Levison, Andras Sajo, *Law, Public Administration and Social Change*, CEU Summer University, Budapest, 1997 (course material).

<sup>3</sup> See: *Temeljni moderne demokratije - Izbor deklaracija i povelja o ljudskim pravima*, 1215-1989, Beograd, 1989.

<sup>4</sup> See: Stevan Lilić, Petar Kunić, Predrag Dimitrijević, Milan Marković, *Upravno pravo*, Beograd, 1999.

As opposed to this formal concept of legality, modern concepts of legal legitimacy base their fundamental principles on the *idea of the rule of law and human rights*<sup>5</sup>. The legality of government and administrative action, therefore, does not *ipso facto* include the legitimacy of these actions. In order to achieve legitimacy, government bodies, courts, administrative and para-statal agencies, as well, local self-government must also achieve *in concreto* legitimacy of each action they undertake or decision they render. This is done through various instruments and mechanisms of parliamentary, judicial and administrative control (e.g. parliamentary debate, hearings, judicial review, ombudsman interventions, etc.). Consequently, modern concepts of legal legitimacy, based on the idea of the rule of law and human rights derive from the premise that a governmental and local authority action is legitimate not only by virtue of the status of the subject or legality of the procedure, but also by *virtue of substantial democratic values incorporated in these actions and decisions*<sup>6</sup>.

### 2. Public services

The rule of law and the modern concept of the legal state based on substantial democratic legitimacy and human rights are particularly reflected within the framework of government *administrative action*. Traditional political theories define administrative action as an *administrative function*. Administrative function is further defined as one of the legal functions of the state, as a normativistic modality of "state law" (*Staatsrecht*). According to these concepts, the administrative function, and respectfully, the activity of local self-government, is a specific, legally regulated, function of state power that features the formulation of individual compulsory orders and commands and is authorized to perform acts of politically and legally permitted repression<sup>7</sup>. This traditional concept of *state law*, modified by the Marxist definition of the role of state and law "after the proletarian revolution" has widely circulated in all Central and Eastern-European countries under communism, particularly under the influence of the Soviet legal theory<sup>8</sup>.

On the other hand, the concept of the administration and local self-government as a *public service* originated at the turn of the last century in conditions of social, cultural and economic development of highly industrialized nations of Western Europe. Administrative and local self-government activity is now perceived, not as a function of state political power, but as a complex system of *public services*, i.e. activities focused on development, democracy, and general welfare of society and the quality of

<sup>5</sup> Allan Rosas, Jan Helgesen, Donna Gomien, *Human Rights in a Changing East-West Perspective*, Printer Publishers, London/New York, 1990.

<sup>6</sup> Serge Alain Mescheriakoff, *The Vagaries of Administrative Legitimacy*, International Review of Administrative Science, vol. 56, no. 2, 1990, p. 309.

<sup>7</sup> See: Georg Jellinek, *Allgemeine Staatslehre*, 1914.

<sup>8</sup> See: Hugh Collins, *Marxism and Law*, Oxford, 1982; J. Stalin, *Foundations of Leninism* (1924), London, 1940.

individual life". This lead to the concept that the real meaning of administrative activity is not to order obedience, but on the contrary, to render public services.

Public services are activities that play a "vital" role in the everyday life and work of individuals (e.g. education, medical care, etc.) and society as a whole (e.g. transportation, communication, etc.).<sup>9</sup> According to this model, in conditions of developed social structures and functions, central government and local administration undergoes a substantial transformation, as administrative activity no longer represent only a (legal) *instrument of government*. Administrative activity is now a product of a complex public administrative and local self-government system charged with providing *public services* and undertaking action aimed at securing social welfare, quality of life for its citizens, as well as cultural development and economic progress in general<sup>11</sup>.

Western European integration and transition processes in Central and Eastern-European post-communist countries can not be interpreted only as compulsory responses to economic and technological competition and pressures. Integration in Europe is also the result of autonomous development patterns of both the economic and political systems in this region<sup>12</sup>. The developed countries in Europe have achieved the level of democratic, social, and economic, human rights and technological development that set them within the general framework of modern post-industrial and information societies<sup>13</sup>.

Another result of the transition process is the consequent de-centralization and de-concentration of centralized government administrative systems into organizational and functional forms of a higher order<sup>14</sup>. This is due to the fact that increased complexity, and particularly the "informatization" of society, have practically rendered centralized directing, management and control of social processes obsolete, as the traditional government structure is inflexible and inefficient to adapt to the dynamics of the changing environment. To achieve substantial integration of legal and political systems that are compatible with tendencies in the developed European countries, hierarchical models must be substituted by new forms of organizational, functional, technological, human resource and financial integration patterns that enable multiple communication, not only with the internal governmental sub-systems, but with other external - international, political, economic and legal systems, as well<sup>15</sup>.

<sup>9</sup> See: Stevan Lilić, Dejan Milenković, *Javne službe u jugoslovenskom pravu*, Pravni fakultet u Beogradu, 1999.

<sup>10</sup> See: Leon Duguit, *Les transformations de droit public*, Paris, 1913.

<sup>11</sup> Daniel Bell, *The Coming of The Post-Industrial Society*, Basic Books, New York, 1973.

<sup>12</sup> Randal Baker, Julie Bivin Raadschelders, Reshaping the Old Order - The European Community, The United States and the New Century, *International Review of Administrative Sciences*, Volume 56, No. 2, June 1990.

<sup>13</sup> Stevan Lilić, *Information Technology and Public Administration in Yugoslavia - The Citizen's Influence*, Information Age, London, Vol. 12, No. 1, 1990.

<sup>14</sup> See: Dwight Waldo, *The Administrative State: Centralization vs. Decentralization*, New York, 1948.

<sup>15</sup> Eugen Pusić, *Upravni sistemi - I*, GZH, Zagreb, 1985, p. 308.

Administrative reform and reorganization of existing administrative systems in post-communist European countries must move in the direction of strengthening democratic control over state administration, increasing its accountability to democratic elected bodies, de-centralizing and de-concentrating the central governmental structures while maintaining the administrative system under the strict principles of legality, the rule of law and human rights protection<sup>16</sup>.

However, the need to modernize the administrative systems of post-communist countries in Europe goes much beyond subjecting it to provisions of legal documents: "The challenge with which public administration is faced in Central and Eastern-Europe is to redefine even its role in society, or, more concretely, its relations with politics, the economy and civil community. It is, therefore, worthwhile to recall that the dynamics of administrative transformation are intimately linked to changes in the political, legal, social and economic environment in which public institutions operate and on whose material and immaterial inputs they crucially depend. Legitimacy, authority, legality, acceptance and finance are amongst the most important resources required for effective administrative activity and they cannot be generated by the public administration itself. Accordingly, the outcome of politics aimed at public sector reform is decisively shaped albeit predetermined, by political, legal, social and economic developments"<sup>17</sup>.

Modern concepts of the administrative system rest on models of the administration as a complex and dynamic system of human inter-action<sup>18</sup>. In this model the administration is projected as a complex and dynamic "relatively closed" system of structures and procedures within itself, as well as an "open system" that communicates with other systems (e.g. the political and economic system) active in the social environment surrounding it. As a system of human inter-action that derives from the fact that individuals in society achieve their interests either through mutual co-operation, or through mutual conflict, the main social function of the administrative system, actively integrated into various patterns and forms of human behavior, is to regulate social processes. As realization of individual or group interests can either be achieved by compromise or by domination, the function of social regulation of an administrative system plays a essential role in *neutralizing contingency illegitimate social behavior or conflict*<sup>19</sup>. Administrative activity is thus perceived, not as a function of state power, but as an activity focused on the realization of the welfare of society and individual quality of life. In these new conditions of developed social structures and functions, the administration and local government undergo a substantial transformation: no longer does administrative activity represent a specific legal instrument of government and subordination. It is, rather, an activity which is the out-put and product of a complex organizational and value system

<sup>16</sup> Istvan Pogany (Ed), *Human Rights in Eastern Europe*, Edward Elgar, Brookfield, Vermont, 1995.

<sup>17</sup> See: Joachim Jens Hesse (Ed), *Administrative Transformation in Central and Eastern Europe: Towards Public Sector Reform in Post-Communist Societies*, Blackwell Publishers, Oxford, 1993, p. 38.

<sup>18</sup> Eugen Pusić, *Upravni sistemi I*, Zagreb, 1985, p. 9-11.

<sup>19</sup> See: Niklas Luhmann, *Soziale Systeme, Grundriss einer allgemeinen Theorie*, Suhrkamp, Frankfurt am Main, 1984.



charged with providing *public services* and undertaking action aimed at securing the welfare of its citizens, as well as progress of society<sup>21</sup>.

On the other hand, post-communist countries in Europe still on levels of mid and late industrial development, as well as those in early stages of high technology developments, will doubtlessly need to consider present European integration tendencies, not only in respect to their general social and economic development strategies, but also in regard to their administrative and local self-government systems as well. Within this dynamic social and economic environment, the recognition of the need of the administrative and local self-government systems of European post-communist countries to adapt to integration processes is prerequisite for the active participation, co-operation and integration of these systems into European integration processes. In this context, administrative and local government legislative reforms and administrative system compatibility of the Central and South-Eastern European post-communist countries with the West European integration processes should be the basis of future transformation of the respective administrative, local government systems, and their organizational and functional development towards business-oriented public administration<sup>21</sup>.

Comparatively speaking<sup>22</sup>, the transformation of central and local administrative systems should also be aimed at undertaking functional and organizational<sup>23</sup>, as well as technological<sup>24</sup> and personnel<sup>25</sup> reforms that are in line with achieving higher standards of administrative efficiency and human rights protection, particularly in regard to the issues of privacy<sup>26</sup> and data protection<sup>27</sup>, and service-rendering standards of economic and business management<sup>28</sup>.

A specific question to be addressed in the context of administrative system and local self-government reform is the issue of the efficiency of administrative systems. Generally speaking, the more there are technological factors present in administrative

systems, the higher the level of the efficiency of the system. Nevertheless, particularly in countries that are experiencing political and social "turbulence", an opposite tendency in the development of administrative systems can be detected. Times of crisis generate a tendency of extensive "administrating", primarily due to the general inefficiency of the social and economic system. Inefficiency gives rise to the need of more authority, but authority itself does not resolve the problem. This model, logically, requires an authoritative administrative system, as authoritative administrative decisions can only be implemented by means of political pressure and repression. Consequently, authoritative administrative systems cannot substantiate and resolve economic and social turbulence by mere "authoritative administrative efficiency". Such situations, particularly receiving active political support, can easily become the main obstacle for general social, economic and administrative reform.

### 3. Local self-government

Local self-government reform and reorganization of existing local self-government systems in post-communist European countries must move in the direction of strengthening democratic control over state administration, increasing its accountability to democratic elected bodies, de-centralizing and de-concentrating the central government structures while maintaining the local self-government system under the strict application of the rule of law<sup>29</sup>.

The need to modernize the local self-government systems of post-communist countries in Europe goes much beyond subjecting it to provisions of legal documents. The dynamics of local self-government transformation are closely linked to changes in the political, legal, social and economic environment in which public institutions operate and on whose material and immaterial inputs they crucially depend.

The countries of South-Eastern Europe are currently undergoing fundamental changes affecting the very foundations of their social, political and economic life and legal order. Although the extent of the transformation processes so far differ considerably from country to country, it is possible to identify a number of common features. These features, *inter alia*, include: a) the transition from one-party rule (in which the leading role of the communist party was dominant in all sections of society) to multi-party parliamentary systems with accountable governments; b) the abandoning of "democratic centralism" as the basic organizational principle, in favor of far-reaching de-centralization and de-concentration of the decision-making authority; c) the separation of the political from the economic system, and d) the implementation of economic reforms focused on privatization and de-nationalization, as a means of depriving the state of its enormous economic competence and legal possession of property.

Due to the need of efficient regulation of social, economic and technological processes, modern local self-government shows a general tendency towards

<sup>21</sup> David Rosenbloom, *Public Administration and Law*, New York/Basel, 1982.

<sup>22</sup> Stevan Lilić, *European Integration, Administrative Legislation Reform and Administrative System Compatibility* (Report), International Institute of Administration Sciences, International Conference: "Administrative Implication of Regional Economic Integration", Madrid, November 1990.

<sup>23</sup> Gerard Timsit, *Administrations ET des états: étude comparée*, Presses Universitaires de France, Paris, 1987.

<sup>24</sup> James Emery (Ed), *Organizational Planning and Control Systems - Theory and Technology*, Columbia University, Collier-Macmillan Limited, London, 1969.

<sup>25</sup> Jean-Paul Baquias, *Nouvelles Technologies ET Réforme Administrative*, *Revue Française d'Administration Publique*, No. 37, Paris, 1986.

<sup>26</sup> Heinrich Reinemann, *Organization and Information Management*, in *New Technologies and Management - Training The Public Service For Information Management*, IIAS, Brussels, 1987.

<sup>27</sup> James Michael, *Privacy and Human Rights: An International and Comparative Study with Special References to Developed Information Technology*, Dartmouth, UNESCO Publishing, Hampshire, 1994.

<sup>28</sup> Colin Bennet, *Regulating Privacy: Data Protection and Public Policy in Europe and the United States*, Cornell University Press, Ithaca/London, 1992.

<sup>29</sup> Stevan Lilić, *The General Context of Business-Oriented Public Administration in Post-Communist Transition*, Introductory report delivered at the International Seminar on Business-Oriented Public Administration, Law School, University of Montenegro, Podgorica, March 2000.

<sup>29</sup> See: Stevan Lilić, *Lokalna samouprava u Srbiji i Crnoj Gori. Lokalna samouprava*, br. 1, Niš, 1997, pp. 68-75.

substituting traditional authoritative instruments of local government power with higher forms of achieving social regulation both at the micro- and macro-social level. It can be said that administrative repression today is a feature of underdeveloped social and economic systems and leads to the phenomena of "vicious bureaucratic circles" (once applied, repression leads to more repression, which agitates the problem even more, then more repression is applied, and so on). Thus, the development of modern local self-government is less and less oriented toward the use of power and force, as there is objectively less possibility of compulsory social regulation. Thus, the more there are technological factors present in local self-government, the higher the level of the efficiency.

In this context, today there can be no legal state and democracy without developed local self-government. The right of local self-government at the same time is the duty of the central government. The central government must guarantee the right to local government, which in turn produces the duty of the central government to create conditions for the functioning of local community as a whole<sup>30</sup>. On the other hand there is the duty of the local community to efficiently satisfy the needs of the local community and secure continuous quality of the local (communal) public services that are in the interest of the end-users<sup>31</sup>.

It is the fundamental nature of local authority to fulfill needs of people that inhabit a certain (local) area. Formally, local government is accomplished by citizens in areas that are defined in the constitution, laws and the statutes of the municipalities or cities<sup>32</sup>. According to the *European Charter of Local Self-Government* (1985), local government incorporates the right and ability of local authorities, within the limits prescribed by law, to regulate and manage certain segments of public affairs on the basis of its responsibility and in the interest of its inhabitants<sup>33</sup>. Having this in mind, local self-government can be defined as a function that is carried out and exercised by the citizens in a local area (e.g. the municipalities and in the cities)<sup>34</sup>.

The term "local self-government" is wider than the term "local government". Local self-government also means that there exists a certain degree of autonomy of non-central bodies that perform designated administrative and other tasks<sup>35</sup>.

In establishing the governmental organizational structure, centralization and de-centralization represent two significant binding principles<sup>36</sup>. The principles of

centralization and de-centralization, however, should not be viewed as two opposite and contradicting forms of establishing an organizational structure and integration<sup>37</sup>. In contemporary organizations there are many elements of centralization, but also many elements of de-centralization. Centralization and de-centralization as basic organizational principles should not be seen as alternatives that cancel each other, but should be seen as optimal combinations. Thus, instead of the dilemma whether to establish a centralized or de-centralized organization, it is better to ask which elements of the organization should be centralization (*what to centralize?*), and which elements should be de-centralization (*what to de-centralize?*)<sup>38</sup>.

#### 4. Relations between executive and legislature at local level in Serbia

Significant changes in our present political and constitutional system are reflected in the status of municipalities. According to the previous concept based on the principles of the so-called "communal system", the municipalities were the "basic socio-political communities" (and the presumption of all competence was designated to this level). However, with political and constitutional changes in the 1990-1992 periods in Serbia, the status of the municipalities has changed completely<sup>39</sup>, and the local communities have lost their previous importance and competence. The local communities in Serbia only represented territorial units and entities that depend on the ministries of the central government. The situation became more serious after the adoption of the 1999 Law of Local Self-Government by the so-called "Red-Black" political coalition (i.e. Milošević and Šešelj), as this law totally eliminated even the slightest hint of local government and autonomy, and "opened more questions than it solved".

However, with the profound political change of October 2000 the country has embarked on a road of substantial democratic economic and political reforms that include the urgent need to adopt a new local self-government law. In a new approach to this challenge, a prominent non-governmental organization - the *Public Administration and Local Self-Government (PALGO) Center* elaborated *Model Law on Local Self-Government*<sup>40</sup>. The Model Law was then opened to expert and public debate, and subsequently, with minor amendments, accepted as the official *Draft Law on Local Self-Government* of the Serbian Government which, with certain modifications, was adopted by the Serbian national Parliament on February 26, 2002 and published in the *Official Gazette of the Republic of Serbia* no. 9/02.

<sup>30</sup> Milorad Žižić, *Država i pravo između centralizacije i decentralizacije*, *Lokalna samouprava*, Niš, br. 4-5, 1999, pp.244-247.

<sup>31</sup> Pavle Dimitrijević, *Organizacija i metod rada javne uprave*, Beograd, 1959, pp. 179-186; Eugen Pusić, *Nauka o upravi*, Zagreb, 1973, pp. 145-148, etc.

<sup>32</sup> Stevan Lilić, Petar Kunić, Predrag Dimitrijević, Milan Marković, *Upravno pravo*, Beograd, 1999, pp. 65-68.

<sup>33</sup> The *Draft Model of the Local Self-government Law*, which is included in the Annex of this paper, was elaborated by the PALGO Center, Belgrade, in 2001. Members of the expert team were: Prof. Mijat Damjanović, Slobodan Vučetić, Prof. Stevan Lilić, Prof. Božidar Raičević, Milan Vlatković, Ass. Prof. Snežana Đorđević and Dejan Mileković, M.A.

<sup>34</sup> See: Slobodan Blagojević, *Lokalna samouprava u teoriji, komparativnom iskustvu i praksi*, *Lokalna samouprava*, Niš, br. 2, 1997, pp. 13-24.

<sup>35</sup> See: Stevan Lilić, *Lokalna samouprava u Srbiji i Crnoj Gori - normativni aspekti*, *Lokalna samouprava*, Niš, br. 4-5, 1999, pp. 128-133.

<sup>36</sup> See: Ranko Mujović, *Evropska povelja o lokalnoj samoupravi i naša lokalna samouprava*, *Lokalna samouprava*, Niš, br. 2, 1997, pp. 24-29.

<sup>37</sup> Evropska povelja o lokalnoj samoupravi i naša lokalna samouprava, Council of Europe, Strasbourg, 1985, *Lokalna samouprava*, br. 1, Niš, 1997, p. 146.

<sup>38</sup> Stevan Lilić, Petar Kunić, Predrag Dimitrijević, Milan Marković, *Upravno pravo*, Savremena administracija, Beograd, 1999, pp. 65-68; 231-237.

<sup>39</sup> Eugen Pusić, *Upravni sistem - I*, GZM, Zagreb, 1985, p. 308.

<sup>40</sup> See: Eugen Pusić, *Centralizacija i decentralizacija*, Zagreb, 1956.



In particular regard to the relations between the executive and representative (legislative) powers at the local level, the Model Law on Local Self-government introduced several innovations. As expressed in the Notes on the Model Law: "Instead of the present complex, non-functional and inefficient assembly system of unified power in the local community, the introduction of a specific system of power distribution is proposed. This system would comprise, on the one hand, the assembly of the municipality or city and the city of Belgrade, as a representative organ of citizens (art. 36-48, 73)<sup>41</sup> and the president of the municipality that is mayor, as the chief of executive power (art. 49-53)<sup>42</sup> and local administration (art. 54 - 69), on the other hand."

The Model Law also provides for the existence of a new institution called the "council".<sup>43</sup> As expressed in the Notes on the Model Law: "The Council for the development and advancement of local self-government would also seek to protect and promote local self-government and democratic control of citizens over the local government. This council may be formed by the assembly of the municipality or city (art. 154)"<sup>44</sup>.

The Model Law was put on public debate and circulated among the local communities where numerous round tables and discussions were held. In addition, the Model Law, together with relevant accompanying material was published in a major Serbian weekly magazine<sup>45</sup>, thus opening the project not only to expert, but general public scrutiny, as well.

However, when accepted by the Serbian Government and finally passed by the Serbian National Parliament in February of 2002, most of the solutions of the Model Law were accepted in a modified version. Most significantly, the adopted Law

accepted the Local Assembly (Art. 26-39) more or less in accordance with the Model Law, but in regard to the executive organ adopted the "president of the municipality" (instead of the mayor). In addition, significant changes were made in regard to the "council" which was transformed from the "council for the development and protection of the local self-government", to the "municipal council". This council and its competencies are defined in the following way: "The municipal council is an organ which harmonizes the realization of the functions of the president of the municipality and the municipal assembly and exercises supervisory functions over the municipal administration. The municipal council consists of up to 11 members, which on the proposal of the president of the municipality are elected by the municipal assembly, by majority vote of the total number of the assembly members, for a period of four years. The deputy president of the municipality is member of the council by virtue of office. A member of the council may be dismissed in the same procedure in which elected, on the proposal of the president of the municipality or at least one third of the members of the assembly. If the proposal of the president of the municipality is rejected twice for the same council member, the municipal assembly may elect a council member without this proposal. (Art. 43, Law on Local Self-Government). The municipal council: 1) verifies the proposal of the municipal budget; 2) has supervisory authority over the municipal administration, annuls or cancels the decisions of the municipal administration which are not in compliance with law, statute or other general act or decision rendered by the municipal assembly; 3) decides in administrative procedure in the second instance regarding the rights and duties of citizens, companies and corporations and other organizations vested with primary municipal authority; 4) assists the president of the municipality in other affairs of his/her competence." (Art. 44, Law on Local Self-Government).

Summarizing, it may be concluded that this manner of introducing legislation has three vital features: a) the Model Law was "produced" without a single "cent" (dinar) of the taxpayers money; b) the Model Law was compiled by experts according to the highest European and international standards and "presented" to the relevant governmental structures to accept and/or modify according to the current politics and functional needs and c) the project succeeded in the sense that the Local Self-Government Law was adopted by the National Parliament (and even a separate Ministry for Local Self-government established), which speaks in favour of the contribution to public interests and policy of this approach, i.e. the cooperation of non-governmental organizations and ministries, regarding legislative initiatives in countries in democratic transition.

<sup>41</sup> The assembly of the municipality is a representative organ, which performs the fundamental functions of local government, established by the constitution, law and the statute of the unit of local self-government. The assembly of the municipality shall consist of one house, and be comprised of representatives, elected by the citizens in direct elections, by secret ballot and in accordance with the law and the municipal statute. (Model Law, Art. 36)

<sup>42</sup> The president of the municipality (alternative: mayor) shall perform the executive function in the municipality. The president of the municipality (alternative: mayor) shall be elected for a period of four years, by direct and secret vote. Alternative: the municipal statute may determine that the president of the municipality (alternative: mayor) shall be elected by the municipal assembly. The president of the municipality (alternative: mayor) may not be a representative. (Model Law, Art. 49). Note: The election of the president of the municipality (alternative: mayor) requires changes in the law on elections.

<sup>43</sup> The assembly of a municipality may form a council for the development and protection of local self-government (henceforth: Council) for the realization of the democratic influence of citizens on the advancement of local self-government and the control of the work of local government organs. Members of the Council shall be chosen from among citizens and professionals active in spheres significant for local self-government. The Council has the right to submit proposals to the assembly of the unit of local self-government (ULG) aimed at improving local self-government and the protection of the constitutionally and legally established rights and duties of ULGs. The assembly, the president of the municipality (alternative: mayor), local administration and public services in the ULG are obliged to declare their position on the proposals of the Council. The statute of a ULG and the ruling on the formation of the Council shall establish the rights and duties, the composition and the manner of election and work of the Council (Art. 154, Model Law).

<sup>44</sup> *Zakon o lokalnoj samoupravi*, supplement to the weekly magazine *Vreme*, Belgrade, September 2001.

ANNEX  
**LAW ON LOCAL SELF-GOVERNMENT**  
(DRAFT VERSION, BELGRADE, February 2001)

**III THE ORGANS OF UNITS OF LOCAL GOVERNMENT**

**The Municipality**

**Article 35**

The organs of the municipality are: the assembly of the municipality, the president of the municipality (alternative: mayor) and the municipal administration.

**The Assembly of the Municipality**

**Article 36**

The assembly of the municipality is a representative organ which performs the fundamental functions of local government, established by the constitution, law and the statute of the ULG. The assembly of the municipality shall consist of one house, and be comprised of representatives, elected by the citizens in direct elections, by secret ballot and in accordance with the law and the municipal statute.

**Article 37**

The number of representatives shall be established by the statute in such a manner that in municipalities with up to 40,000 citizens 19 representatives shall be elected, and for each further 5,000 (alternatively: 7,000) citizens another representative.

**Article 38**

Representatives shall be elected for a period of four years. Representatives represent citizens, but in the assembly of the municipality they decide according to their personal convictions.

**Article 39**

The assembly of the municipality, in accordance with the law, shall:

1. adopt a municipal statute and rules of order for the assembly;
2. adopt a budget and the annual financial statement of the municipal budget;
3. adopt a program and plan for municipal development and certain activities, in accordance with the law;
4. adopt an urban planning strategy for the municipality and regulate the utilization of building land;
5. adopt regulations and other general rulings;
6. call municipal referenda and referenda in part of the municipal territory, declare an opinion on the proposals contained in citizens' initiatives and determine the proposal of a decision on voluntary financial contributions;
7. found municipal organs, communal and other public enterprises, institutions, organizations and services determined by the municipal statute and supervise their work;
8. appoint and dismiss an executive and supervisory board, appoint and dismiss the directors of the communal and other enterprises, institutions, organizations and

services founded by the municipality, and give consent to their statutes in accordance with the Law on Public Enterprises;

9. appoint and dismiss the secretary of the municipal assembly;
10. determine the level of municipal administrative charges and other charges, in accordance with the law;
11. determine the charges for the utilization of building land;
12. issue stocks and bonds;
13. adopt a ruling on public loans taken by the municipality;
14. regulate working hours in hotel and catering businesses, and retail and trades facilities;
15. give opinions on the Republic and regional area planning;
16. give opinions on the laws which regulate the issues of interest to local self-government;
17. perform other activities in the jurisdiction of the municipality, determined by the law and the statute.

**Article 40**

The decisions of the municipal assembly shall be binding provided the session is attended by a majority of the total number of representatives. Decisions that receive a majority of votes from the representatives present shall be adopted, unless determined otherwise by the law or the statute.

When adopting the statute of the municipality, a two-third majority of the total number of representatives is required.

**Article 41**

A session of the municipal assembly shall be convened when needed, but at least once every three months.

The president of the municipality (alternative: mayor) is obliged to convene a session of the municipal assembly following the proposal of one third of representatives or the proposal of a certain number of local sub-units, determined by the statute, and that no later than 15 days from the day the proposal is submitted.

**Article 42**

The sessions of the municipal assembly are public. The municipal assembly may decide not to have a public assembly session for security reasons and other reasons determined by the law and the statute.

**Article 43**

The assembly of the municipality may decide to constitute permanent or temporary working groups (board, commissions, councils). Permanent and temporary working groups shall be constituted following the assembly's decision. Citizens who are not representatives may also join working groups, but a minimum two thirds of the composition of working bodies shall be representatives.

**Article 44**

Criminal charges may not be brought against a representative, nor may he be detained or punished for an opinion declared or a vote cast in the assembly of the municipality.

#### Article 45

The assembly of the municipality shall have a chairman.

The chairman shall organize the work of the municipal assembly, convene and preside over its sessions and perform other duties determined by the law and the municipal statute.

#### Article 46

The chairman of the assembly shall have a deputy to replace him in case of his absence or when he is prevented from performing his duty.

The deputy to the chairman of the assembly shall be elected and dismissed in the same manner as the chairman of the assembly.

#### Article 47

The assembly of the municipality shall have a secretary to manage administrative affairs connected with the work of the assembly.

The secretary of the assembly shall be appointed following the proposal of the municipal assembly chairman for a period of four years and may not be re-appointed.

The municipal assembly may dismiss the secretary before the expiry of the mandate, following the proposal of the assembly chairman.

#### Article 48

The manner of preparation, conducting and work of a session of the municipal assembly and other issues connected with the work of the assembly shall be regulated by its rules of order.

#### The President of the Municipality (alternative: Mayor)

#### Article 49

The president of the municipality (alternative: mayor) shall perform the executive function in the municipality.

The president of the municipality (alternative: mayor) shall be elected for a period of four years, by direct and secret vote.

Alternative: the municipal statute may determine that the president of the municipality (alternative: mayor) shall be elected by the municipal assembly.

The president of the municipality (alternative: mayor) may not be a representative.

#### Article 50

The president of the municipality (alternative: mayor) shall:

1. represent and advocate the interests of the municipality;
2. oversee the implementation of the decisions and other rulings adopted by the municipal assembly, that is provide for their implementation;
3. propose regulations and other general rulings to be adopted by the assembly, as well as the manner in which issues on which the municipal assembly is to decide are addressed;
4. proclaim and announce the regulations and other general rulings adopted by the assembly;
5. oversee and be responsible for the performance of duties entrusted from the rights and duties of the Republic;
6. direct and coordinate the work of the municipal organs;
7. decide in administrative proceedings of the second level on the rights and duties of citizens, enterprises, institutions and other organizations within the primary jurisdiction of the municipality;

8. oversee the work of the municipal administration, annul or abolish rulings of the municipal administration which are not in accordance with the law, statute or other general rulings or decisions adopted by the municipality;
9. appoint a head of the municipal administration or the secretary of the secretariat;
10. give instructions for the implementation of the budget;
11. make the rulings for which he is authorized by law, the statute or the decision of the municipality;
12. perform other duties established by the statute and other municipal rulings.

#### Article 51

The president of the municipality (alternative: mayor) shall be obliged to point out the incompatibility of a regulation or some other general ruling with the constitution and law to the municipal assembly.

The municipal assembly shall be obliged to reconsider and vote on the disputed regulation or other general ruling within 30 days.

#### Article 52

The president of the municipality (alternative: mayor) shall be held accountable for his work to the citizens of the municipality and the municipal assembly.

The president of the municipality (alternative: mayor) shall be held accountable to the assembly for the execution of its decisions and other general rulings.

The president of the municipality (alternative: mayor) shall be held accountable to the government regarding entrusted duties.

The president of the municipality (alternative: mayor) who is elected by the assembly shall be held accountable for his work to the assembly.

#### Article 53

The mandate of the president of the municipality (alternative: mayor) for which he was elected may cease before its expiry when he submits his resignation, is sentenced for a criminal offence to an unconditional term of imprisonment or for some other punishable offence which makes him undeserving of the function of municipal president.

Reasons from point 1 of this article shall be stated by the municipal assembly.

The president of the municipality (alternative: mayor) may be recalled before the expiry of the mandate for which he was elected.

When the municipal assembly or at least 10% of citizens with suffrage decide that the president of the municipality (alternative: mayor) has violated the constitution, law and statute, they will initiate the recall procedure, providing that two thirds of the total number of representatives declare in favor of it.

The government of the Republic of Serbia may start a recall procedure for a municipal president (alternative: mayor) in the municipal assembly, if the government decides that duties entrusted have not been performed in accordance with the law. The municipal assembly shall decide on the government's proposal for recall in accordance with point 4 of this article.

The recall of the president of the municipality (alternative: mayor) shall be decided on by direct and secret vote cast by voters. The president of the municipality (alternative: mayor) shall be recalled if a majority of the total number of voters vote in favor of the recall.

If the president of the municipality (alternative: mayor) is elected by the municipal assembly, it shall appoint or recall him by secret vote, by the majority of votes of the total number of representatives in the municipal assembly.



## Municipal Administration

### Article 54

The municipal administration shall:

1. prepare drafts of regulations and other rulings to be adopted by the municipal assembly and the president of the municipality (alternative: mayor);
2. implement regulations and other rulings adopted by the municipal assembly and the president of the municipality (alternative: mayor);
3. decide in administrative proceedings of the first level on the rights and duties of citizens, enterprises, institutions and other organizations form within the primary jurisdiction of the municipality;
4. provide administrative supervision over the implementation of the regulations and other general rulings adopted by the municipal assembly;
5. implement Republic laws and other regulations the implementation of which is entrusted to the municipality;
6. decide in offence proceedings in accordance with the law;
7. perform professional and other duties established by the municipal assembly and the president of the municipality (alternative: mayor).

### Article 55

The municipal administration shall be formed as a single organ, but a number of organs of municipal administration may also be formed in municipalities with a population of over 50,000 citizens.

### Article 56

When the municipal administration is organized as a single organ, it shall be directed by the head of the administration.

### Article 57

When the municipal administration is organized as a number of organs, secretariats shall be set up.

The work of a secretariat is managed by the secretary.

Within a secretariat, internal organizational units (departments, sections, services, administrations, inspections, offices and similar) may be formed for the performance of kindred tasks.

### Article 58

The head of the municipal administration shall be appointed by the president of the municipality (alternative: mayor).

The secretary of a secretariat shall be appointed by the president of the municipality (alternative: mayor).

The managers of organizational units shall be appointed by the administrator or the secretary of the secretariat.

### Article 59

The head of the municipal administration shall be accountable for his work and the work of the municipal administration to the president of the municipality (alternative: mayor), in accordance with the municipal statute and the decision of the municipal assembly on the organization of the municipal administration.

The secretary of the secretariat shall be accountable for his work and the work of the secretariat to the president of the municipality (alternative: mayor), in accordance with the statute and the decision on the organization of the municipal administration.

The president of the municipality (alternative: mayor) may recall the head of the municipal administration, a secretary of a secretariat if he decides that he has performed his function illegally and incorrectly.

### Article 60

In the composition of the municipal administration there shall be a municipal architect-in-chief who shall:

1. coordinate the work of the municipal or city organs concerning urban planning, the utilization of urban building land and arranging public areas;
2. launch initiatives for the alteration and amendment of the detailed urban plan, as well as the design of urban plans;
3. give instructions for the drafting of architectural plans aimed at the protection of architectural values and preservation of the character of certain parts of the town and facilities;
4. give consent to (alternative: an opinion on) architectural plans of great significance for the municipality or city and perform other tasks established by the ruling on the organization of the municipal administration.

### Article 61

The architect-in-chief shall be appointed and dismissed by the president of the municipality (alternative: mayor).

### Article 62

In a ULG the statute may envisage the introduction of a municipal or city manager.

The conditions and manner of engagement of such a manager shall be determined by contract between the municipal (city) assembly and the municipal (city) manager.

### Article 63

The manager shall, among other duties, in particular:

1. launch projects which encourage economic development, the satisfaction of citizens' needs and increase municipal property;
2. encourage entrepreneurial initiatives and the creation of private-public arrangements and partnerships;
3. encourage and coordinate investments and the attraction of capital;
4. propose correction of regulations which hinder business initiatives;

### Article 64

A ruling on the organization of the municipal administration shall be passed by the municipal assembly following the proposal of the municipal president (alternative: mayor).

The ruling on the internal organization and systematization of the municipal administration shall be passed by the head of the administration or the secretary of the secretariat and confirmed by the president of the municipality (alternative: mayor).

### Article 65

In undertaking administrative supervision the municipal administration, may:

1. rule to implement measures and actions and determine the time period needed;

2. impose mandatory penalties;
3. submit a report to the competent authority on criminal acts or economic offences committed and submit a request for the institution of offence proceedings;
4. issue temporary orders or prohibitions;
5. inform another organ if there is reason for measures to be taken, for which that organ is responsible;
1. take other measures for which it is authorized by law, regulation or a general ruling.

For the performance of the duties of administrative supervision described in paragraph 1 of this article, a municipal inspectorate may be formed.

Authorizations and organization for the performance of duties described in Paragraph 1 of this law shall be further regulated by the municipal assembly.

#### Article 66

In proceedings before the municipal administration deciding on the rights and duties in the legal interests of citizens and legal entities, the regulations on general administrative proceedings shall be applied.

A complaint against the ruling of the municipal administration, which decides on the rights and duties of citizens and legal entities from the primary jurisdiction, shall be submitted to the president of the municipality (alternative: mayor).

#### Article 67

The president of the municipality (alternative: mayor) shall rule on the conflict of competencies between the municipal administration and other organizations and institutions which perform public authorizations, as well as between the municipal organs.

The head of the municipal administration shall rule on conflicts of jurisdiction between organizational units of the municipal administration.

The secretary of the secretariat shall rule on conflicts of jurisdiction between internal organizational units of the secretariat.

#### Article 68

The duties of the municipal administration related to the exercise of the rights, obligations and legal interests of citizens and legal entities may be performed by persons with the prescribed qualifications, who have passed the professional exam for work in the organs of state administration, and when determined so by a regulation, have adequate working experience.

#### Article 69

The exemption from service of the head of the municipal administration, and of the secretary of the secretariat shall be decided upon by the president of the municipality (alternative: mayor).

The exemption from service of an office-holder in the municipal administration shall be decided upon by the head of the municipal administration.

The exemption from service of an office-holder in the secretariat shall be decided upon by the secretary of the secretariat.

#### Article 70

In nationally mixed municipalities a council for inter-ethnic relations shall be formed and be made up of representatives from all national communities.

The council shall work for the realization, protection and promotion of national equality, in accordance with the law and statute.

The council shall inform the assembly of its positions and proposals, and the assembly is then obliged to declare its position on these.

The jurisdiction, composition and manner of work of a council for inter-ethnic relations shall be regulated by the decision of the municipal assembly, in accordance with the statute.

### The City and the City of Belgrade

#### Article 71

The organs of a city and the city of Belgrade are the city assembly, the mayor, the city administration and other organs established by the statute of the city and the city of Belgrade.

#### Article 72

The organs of the city and the city of Belgrade shall perform the affairs envisaged by this law for the municipal organs, as well as other duties established by law and the statute of the city and the city of Belgrade.

#### Article 73

The city assembly shall comprise representatives whose number shall be established by the city statute, but the number may not be lower than 65 nor higher than 75.

The assembly of the city of Belgrade shall comprise representatives whose number shall be determined by the statute of the city of Belgrade, but the number may not be lower than 85 nor higher than 110.

#### Article 74

The mayor shall perform the executive function in the city and the city of Belgrade.

#### Article 75

The provisions of this law relating to the municipality shall also apply to the city, except when established otherwise by this law.