

THE ROLE OF MUNICIPAL ASSEMBLY IN FIGHT AGAINST CORRUPTION



The project is financed by the EU and co-financed by the Royal Norwegian Embassy



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1. INTRODUCTION

The role of municipal assembly is vital in fight against corruption, although it is still not nearly as important as it should be. Decentralization is a long-term process, which should be under constant control of the public, with the ultimate goal to establish a sustainable system for fight against corruption. That type of system should essentially replace the existing populist-tribune approach to this fight, which fails to produce tangible results.

The question is: why do citizens think they cannot sufficiently influence their elected representatives? It is paradoxical that citizens feel powerless in relation to their representatives, even though the Law on Local Self-Government has introduced an obligation of organizing public debates at the local level. Additionally, an entire set of opportunities for participation of citizens in decision-making has been prescribed. However, in practice, the situation has not changed significantly, nor did the perception about the possibility to exert necessary influence. The reason for this should be sought in citizens themselves first and after in democratic institutions and representatives sitting in these institutions. Namely, this kind of situation is a fertile ground for emergence of various forms of corruption at the local level.

The following important question is: to what extent is the municipal assembly, with its immediate legitimacy, the key authority at the local level, which significantly affects social and economic development of the municipality? Democracy does not only consist of the electoral process, it also implies democratic

institutions, active involvement of citizens, informed public, active civil sector and full development of the control function of the municipal parliament.

The project *Corruption at the local level- zero tolerance*¹ represents a contribution to establishment of the system for fight against corruption at the local level. Assuming the municipal assembly should play a key role in this system and determining the areas which indisputably present the greatest risk for corruption such as public procurement, public-private partnership, employment, urban planning and political corruption, the project has created a base for further normative and practical elaboration of a demanding and uncertain fight against corruption at the local level.²

This study emphasizes normative and practical role of the municipal assembly in order to stress the importance of improving the control function of the municipal assembly in relation to local executive bodies, and especially with regards to the monitoring of the execution of local budget.

1 The project has been implemented by the Centre for Civic Education (CCE) in cooperation with the Institute Alternative (IE), NGO Bonum from Pljevlja and NGO Nada from Herceg Novi, with the support of the Delegation of the EU to Montenegro and co-financing of the Royal Norwegian Embassy

2 The project encompasses 14 Montenegrin municipalities: Bar, Budva, Cetinje, Danilovgrad, Herceg Novi, Kolašin, Kotor, Mojkovac, Nikšić, Pljevlja, Plužine, Podgorica, Rožaje and Tivat.

2. MUNICIPAL ASSEMBLY IN THE LAW ON LOCAL SELF-GOVERNMENT

The assembly is the representative body of citizens of the local self-government. The Law stipulates that citizens should elect their representatives (councillors) on the basis of the free, universal, equal and direct suffrage. The assembly is elected for a period of four years and initially has 30 councillors and an additional councilor per every 5000 voters. Thus, for example, the assembly of the Capital city has 59 councilors, whereas there are 30 councilors in the municipal assembly of Plužine. This makes the municipal assembly a body with direct and the highest legitimacy, which should guarantee the possibility of full control of work of the executive power.

In relation to prescribed competencies, the assembly has a key, strategic role in terms of the directions for the development of the community, as it adopts documents of importance for overall functioning of a specific local self-government (statute, ordinances, normative acts).³ The assembly adopts the Statute; municipal regulations and other general acts; local planning documents; spatial arrangement program; budget and final budget statement; capital improvement plan and investment policy; establishes the level of municipal taxes, fees and charges; manages property; sets up conditions for the establishment of local communities; considers

³ The Statute is the fundamental act governing organization, functions, and methods of exercising of the local self-government. The ordinance decides upon rights and duties of citizens, establishes public services and decides upon other issues. The assembly may adopt acts in the form of conclusions, charters and recommendations.

Mayor's reports; calls for the referendum to be organized on the territory of the municipality or on a part of its territory; establishes public services and performs other tasks.⁴

However, in reality the greatest concentration of power and money, i.e. of monopoly and discretion in decision-making, rests with the executive branch, which creates an enormous space and risk for emergence of corruption. Therefore, strengthening of capacities of the municipal assembly, with emphasis on control mechanisms, should be a priority in development of the system of fight against corruption at the local level.

Competencies of the municipal assembly are essential for creation of a favorable social environment necessary for efficient and effective fight against corruption. Manner of implementation of prescribed competencies contributes to creation of positive or negative social environment, which is expressed through distrust of citizens in institutions at the local level, lack of civic initiatives, exclusion of citizens from the decision-making processes, formalization of the public debate. This situation is extremely discouraging for establishment of the systemic foundation in fight against corruption. When we add to the equation voluntary function of the councillors, who on average once per month need to attend a session of municipal assembly, and averagely on the agenda of every session there are around twenty items, with hundreds of pages of materials, the situation becomes even more complicated.

Thus, instead of being a place where work and legality of executive municipal bodies and before all of the Major are subjected to rigorous scrutiny, in current setting the municipal assembly is merely a service for approval of proposed acts, capital projects, asset management, urban plans, initiated by the executive body.

For rational and efficient performance of activities from the competence

⁴ Law on Local Self-Government, "Official Gazette of Montenegro" no. 4 2/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14; Article 45

of the municipal assemblies, committees and councils are formed as permanent working bodies, and commissions as temporary working bodies. Councillors are appointed as members of the boards, whereas beside councillors members of commissions can be other persons as well. The most important is the work of the Committee for finance and budget and Committee for urban development and spatial planning. These committees deliberate on undeniably the biggest number of questions which carry high risk of corruption. Investments, adoption of planning documents (spatial planning, facilities drawings, basic footprint of the structure, number of stories of the structure as a base for building permit, etc.) the proportion of current and capital budget, earning level in local self-government and public services - all of these issues are vulnerable to corruption, primarily to political, then to all other forms of corruption. As is the case in the municipal assembly, working bodies are mainly composed of the structures which have received electoral legitimacy to form governments, and the practice follows the rule that in almost all instances the matters initiated by executive body are adopted by the power of the political majority. In this manner, public interest becomes a hostage of party interest, i.e. of the ruling political structure.

Municipal assembly has a president, who is elected from among councillors, and his/her office is voluntary, as a rule. This means that only councillors who become president of the assembly may be professionally engaged in the representative body. Candidate for the president must be proposed by at least one-third of the councillors and needs to be elected by a majority vote of the total number of councillors. The president of the assembly convenes the assembly, chairs and administers its work and takes care of execution of its ordinances and other acts. The competence of the president of the municipal assembly to take care of execution of its ordinances and other acts could be of great importance for improving control function of the assembly, but in the law it remained incomplete and imprecise.

Municipal assembly has a secretary, who is appointed at the proposal of the president of the assembly. The secretary organizes vocational

tasks, needs to have a law faculty degree, passed professional exam for the work in state administration and at least five years of experience. The manner and procedure for dismissal of the secretary are prescribed in the Statute.

The Statute adopted by the municipal assembly prescribes rights and duties of municipality and manner for exercising of these rights and duties, operations and manners of decision-making of local population, manners and conditions for performing of its own affairs, manner of conducting of control over the work of municipal bodies and public services, manners for ensuring the transparency of work of bodies and public services, financing and other issues of importance for functioning of local self-government.

Municipal assembly in practice must be given the role prescribed by the law. However, in order for this to happen it is first necessary to thoroughly analyze roles of councillors in the local self-government system, as well as relation between the assembly and the president of the assembly from the perspective of partisan influences.

Municipal assembly should not be a bad copy of the national parliament, but a pillar of the development of the local community and a key controller of executive power at the local level embodied by the president of municipality.

3. POSITION AND IMPORTANCE OF COUNCILLORS

Councillors, as well as the president of the assembly are entitled to propose acts to be deliberated by the assembly. However, this legal possibility could not come to life in practice. The same applies to a possibility for the citizens to propose agenda items (a specific issue they think should be considered at the session of the assembly).

The rights and duties of the councillors are more closely defined by the municipal statute. The councillor has right and duty to participate in work of the assembly and its working bodies, propose to the assembly for deliberation matters from its competence, submit proposals for adoption of decisions and other acts and pose questions regarding the work of municipal bodies. The councillor can take part in work of the working bodies in which he/she is not a member, without a right to vote.

The councillor is entitled to request information from the president of the assembly, president of the working body or secretary of the assembly about the matters which relate to the affairs from the field of rights and duties of municipal bodies, which are necessary for the exercise of function of the councillor. The competent body is obliged to submit a written response within ten days. Assembly services provide necessary conditions for the exercise of function of councillor.

It is easy to notice that the position of councillor is almost identical to the position of representative, as well as that normative framework offers numerous possibilities for launching of initiative and conducting control. However, we should point out to the status of councillors and their exclusively voluntary engagement, which has significant impact

on overly underutilized normative possibilities. Also, we should not disregard the position and status of the councillors in the party they come from, or their real position and influence in political structure, as often a decision on some initiative or the level of councillor's engagement depends on this. Although the mandate of councillors is formally free, it greatly depends on the decisions of the central organs of the party. The problem of free mandate of councillors became current due to practice of shifting of councillors from one party structure to another in order to ensure exercise of power, with elements of political corruption in numerous examples.⁵ On the other hand, the councillors are often constrained to act contrary to the dictates of the party, although they formally have a free mandate.

An additional mechanism which affirms control function of councillors, as they can continuously monitor, control and question the work of the president of the municipality, chief administrator, local self-government, public services, etc. is the institute of parliamentary questions (right of interpellation). The councillor has a right to submit formal questions at the session of the assembly to the president of the assembly, president of municipality, chief administrator, head of local self-government body, head of public services and other organizations founded by municipality. Parliamentary questions are delivered in writing, and the councillor is entitled to pose two questions at most.⁶

The institute of parliamentary questions (right of interpellation) is potentially one of the most effective mechanisms for establishing control function of the municipal assembly. But, in order for it to be truly effective, whenever there are grounds for it, parliamentary question should be followed by additional controls of the work and functioning of the municipal administration and public services conducted by competent authorities.

5 Djonović, Nikola, *Influence of political corruption on the decision-making process at the local level*, Centre for Civic Education, Podgorica, 2014.

6 Normative solutions from the Statute of Capital City (Official Gazette of Montenegro-municipal regulations, no. 28/06, 39/10, 18/12) have been used as a basis for indicating the position of councillors in the local self-government system

3.1 Conflict of interest of councillors

As the function of councillors is not professionalized, they often occupy high-level or managerial positions in municipal public services, institutions, companies and public enterprises at the local self-government level.⁷ This raises a question if the councillors can perform the control of operation of these entities through final budget account review, semi-annual reports on execution of the budget and reports of public services and enterprises.

The Law on Prevention of Conflict of Interest defines this in the following manner:

”Affairs of the Mayor, Deputy Mayor and Chief Administrator shall be incompatible with office of a councillor and membership in governing boards of public services established by local self-government unit. Affairs of heads of local administration bodies and public services shall be incompatible with office of a councillor and membership in governing boards of public services.

Persons from paragraph 1 of this Article may not be engaged by public services, legal entities and persons to perform any activity that is related to the affairs of the local authorities and that serve for exercising their rights and interests before local bodies”⁸

The provision on conflict of interest formulated in such manner does not fully meet its basic purpose, because the legislator does not understand the essential role of the councillor, especially in the part related to transferring of numerous authorities from the state to the local level, both presently and in future. Namely, full system of control and prevention of conflict of interest needs to be established at the local level, which is currently missing.

⁷ Numerous examples of councillors who occupy managerial positions in municipal public services can be found on the web site of the Commission for Prevention of Conflict of Interest, http://www.konfliktinteresa.me/funkcioneri/opstinski_funkcioneri.htm

⁸ Law on Local Self-Government, Official Gazette no. 42/03, Article 91

4. RELATIONSHIP BETWEEN THE MUNICIPAL ASSEMBLY AND THE MAYOR (PRESIDENT OF MUNICIPALITY)

The problem of functioning of the local self-government in relation to the effective fight against corruption at the local level is also reflected through inadequate relationship between the municipal assembly and the mayor. In this relationship, which is dominated by party loyalty, municipal assembly and her control function suffer, because the parliamentary majority almost as a rule vote for proposals and initiatives submitted by the mayor.

In normative terms, the assembly has primacy over the mayor, but in practice the situation is opposite, as these norms are overshadowed by the party interests. The municipal assembly elects the mayor by a secret ballot on the proposal of at least 1/4 of the councillors. Several candidates may enter the electoral race, but the person who receives the majority of votes of the total number of councillors is elected to the office.

Normatively speaking, the relationship between the municipal assembly and the mayor is strictly divided. The mayor, as an executive body with its own team and services, implements strategic documents adopted by the assembly, and on the other hand the assembly monitors implementation. Key monitoring mechanisms are adoption of the final budget statement of the local self-government and submitting report on the work of the mayor to the municipal assembly for deliberation. In practice, these are dry parliamentary debates, which do not bring quality, with a fixed scheme in which the councillors from opposition criticize, and the councillors from the governing structure mainly remain silent and just wait for voting. There is considerable room for improvement of

the existing practice and position of municipal assembly in this regard.

The Law on Local Self-Government envisages the following: “municipality shall create conditions, stimulate and assist the participation of local population in their exercise of local self-government through different methods of expressing views and decision-making of the population regarding affairs of common interest.”⁹

Citizens do not recognize that any local self-government has created or is in the process of creating conditions envisaged by the aforementioned provision.¹⁰ And creation of conditions that encourage and assist local population in exercising of local self-government is the main objective of the effective and efficient local government.

The forms of direct citizen participation in expressing their views and in decision-making are: initiative, civil initiative, the assembly of citizens, referendum (at the level of the local community and the municipality) and other forms of expressing views and decision-making determined by the Statute. The provision also foresees that the statute of local self-government may enhance the provided legal forms. The councillors could give significant contribution to effectuation of the legally prescribed forms of direct participation of citizens. Their more proactive approach, with a well-thought-out campaign designed to increase the transparency of work of executive power at the local level, would be encouraging to citizens and make them believe that certain arguments they make could be accepted by the decision makers. It is clear that in normative sense, it wouldn't do any harm if the councillors would have more proactive attitude in relation to the need for greater transparency and familiarization with the final budget statements, report on the work of the mayor, reports of public services and in their relation towards the citizens at the local level.

⁹ Law on Local Self-Government, Article 99, par.1, “Official Gazette of Republic of Montenegro”, no. 42/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14

¹⁰ During implementation of the project panel discussions on following topics have been organized: public procurement, public-private partnership, spatial planning, local assemblies, political corruption. The panel discussions have been organized in Rožaje, Kotor, Budva, Kolašin and Podgorica during 2013 and 2014.

5. THE PROCESS OF ADOPTION OF THE LOCAL BUDGET AND THE CHARACTER OF THE DEBATE ON FINAL BUDGET STATEMENT IN THE MUNICIPAL ASSEMBLY

In 2013 total expenditures of the local self-governments amounted to 213.41 million EUR or for 14% more than the total public spending in Montenegro.¹¹

Many bodies and institutions are responsible for controlling how this money is spent. Firstly, there is Ministry of Finance, followed by State Audit Institution, as well as some local authorities which conduct internal audits within the Public Internal Financial Control system (PIFC) and commercial auditors engaged for the control of the final budget statement.

However, the key responsibility for control over local self-government budget is exerted by the municipal assembly, which adopts the decision on budget and final budget statement, whereby it directly approves the work plan of the local executive authorities and report on its implementation. According to the Law on Financing of Local Self-Government, it performs supervision over the budget execution and purposeful utilization of the funds that are appropriated for certain purposes in the budget.¹²

Data on financial operation of municipalities published by State Audit Institution indicate there are a lot of problems present at the local level.

11 Source: Ministry of Finance Bulletin XXXI, available at: <http://www.mif.gov.me/vijesti/138237/Ministarstvo-finansija-objavilo-Bilten-XXXI.html>

12 Article 69, Law on Financing of Local Self-Government, "Official Gazette of Republic of Montenegro", no. 42/03, 44/03, "Official Gazette of Montenegro", no. 05/08, 51/08, no. 74/10

Having in mind the amount of funds available to local self-government in Montenegro annually, it is indisputable that controlling of planning, execution and auditing of budget at the local level is extremely important.

As things currently are, municipal assemblies have significant authorities, but little influence over control of local budgets. Obstacles to effective control over budget are short deadlines for deliberation of budget, un-professionalized status of councillors, lack of capacities for detailed analysis of the budget, lack of interest for using of information from the reports on conducted control of State Audit Institution, lack of connection with internal audit and numerous problems in the manner of conducting of commercial audit of the final budget statement.

5.1 Budget planning

The municipal assembly does not have a defined role in the process of budget preparation and formulation. As at the central level,¹³ this process is under the exclusive jurisdiction of executive authorities. The budget proposal is determined by the president of the municipality, who has legal obligation to submit the proposal to the municipal assembly by the end of the November of current year.¹⁴ Municipal assembly adopts the decision on budget by simple majority vote, and if the decision is not passed by the end of the current year, a decision on temporary financing is adopted for a period of up to three months.

5.2 New role of the Ministry of Finance in the budget adoption

According to the new¹⁵ Law on Budget and Fiscal Accountability, Ministry of Finance is involved in a phase prior to adoption of the

13 For more information about the transparency and participatory approach in the budgetary cycle at the central level see Report prepared by Institute Alternative titled: "Parliament and Civil Society Organizations- Partners in the Budget Control", <http://institut-alternativa.org/skupstina-i-organizacije-civilnog-drustva-partneri-u-kontroli-budzeta/>

14 Ibid, Article 42, paragraph 1

15 In April 2014 the Parliament of Montenegro adopted Law on Budget and Fiscal Accountability, which replaced previous systemic Law on Budget.

proposed budget decision-thus, before the proposal is submitted to the municipal assembly.

Competent body is obliged to obtain positive opinion from the Ministry of Finance on the proposed level and structure of expenditures, salary policy, capital expenditures and sources of financing and new budget surplus or deficit level, before the adoption of the proposed budget decision and submitting it to the municipal assembly.¹⁶ Should they receive a negative opinion-municipal assembly cannot adopt the budget decision.

This novelty significantly increases the role of central government in functioning of local self-governments and it is motivated, above all, by a low level of fiscal discipline that characterized operations of local self-government heretofore.

For municipal assemblies, this binding opinion of the Ministry of Finance may serve as an additional source of information to be used in forming the opinion on the proposed budget, since the aforementioned legislation stipulates municipal assembly should receive proposed budget decision along with said opinion.¹⁷

This novelty also imposes some additional limitations in already short deadlines, which may cause the budget proposal to be submitted to municipal assembly even later. As the Law has recently been adopted, this solution has not been tested in practice and therefore it remains to be seen how it will be handled and if Ministry of Finance has the capacity to respond to budget proposals of all municipalities in a timely fashion.

16 Article 35 of the Law on Budget and Fiscal Accountability, "Official Gazette of Montenegro", no. 20/14

17 Article 43, Law on Financing of Local Self-Government, "Official Gazette of Republic of Montenegro", no. 42/03, 44/03, 05/08, 51/08, 74/10

5.3 Temporary financing

Temporary financing due to untimely adoption of the budget for the following year is a common practice in Montenegrin municipalities. During 2014, almost 1/3 of municipalities in Montenegro resorted to temporary financing due to the fact that budget for 2014 has not been adopted until the end of 2013.

In local self-governments Cetinje, Ulcinj, Plav, Mojkovac, Berane and Andrijevica decision on budget for 2014 has been adopted only in March of the year for which the budget applies, with three months of temporary financing.

The nature of the debate on budget in municipal assembly can be illustrated by the fact that it is typically just one of many items on the agenda of the session of municipal assembly.¹⁸ A typical example is the example of municipality Nikšić, where the budget for 2013 has been adopted as one of 39 items on the agenda,¹⁹ and budget for 2014 at the session which had additional 27 items of agenda.²⁰

5.4 Revised budgets and their late adoption

In cases where during fiscal year there are shortfalls of planned revenues or increase of planned expenditures a budget adjustment is performed.²¹ Executive authorities prepare draft proposal of decision on changes and amendments of the budget decision, i.e. the revised budget, which is submitted to the municipal assembly for adoption.

18 Information from consultative meetings with representatives of local authorities, councillors and local NGOs, held in period 01-31 July 2013 in 14 local self-governments in Montenegro

19 The third session of the Assembly of Municipality Nikšić– 23 May, 2013, <http://niksic.me/lokalna-uprava/skupstina-opstine/sjednice-skupstine/treca-sjednica-skupstine-opstine-niksic-23-05-2013-godine/>

20 The sixth session of the Assembly of Municipality Nikšić– 27 December, 2013, <http://niksic.me/lokalna-uprava/skupstina-opstine/sjednice-skupstine/sesta-sjednica-skupstine-opstine-niksic-27-12-2013-godine/>

21 Article 45, Law on Financing of Local Self-Government, “Official Gazette of Republic of Montenegro”, no. 42/03, 44/03, 05/08, 51/08, 74/10

The practice of adoption of revised budget is very common in Montenegrin municipalities and is mainly used to cover poor budget planning, and especially unrealistic goals set on the revenue side. Revised budgets are almost always adopted at the end of the year for which the budget relates, usually in November or December, and the picture of unrealistic planning in local self-government becomes even more vivid when we take into consideration the untimely analysis of the final budget requirements. In such a situation, budget decision ceases to be a realistic instrument of planning and a reliable indicator, and becomes merely an outline plan which will inevitably have to be changed.

Revised budget approved on:	Budget for 2011	Budget for 2012	Budget for 2013
Berane	22.12.2011.	13.11.2012.	/
Podgorica	01.12.2011.	29.11.2012.	/
Herceg Novi	30.11.2011.	22.11.2012.	26.11.2013.
Rožaje	10.11.2011.	29.11.2012.	19.11.2013.
Budva	15.11.2011.	11.12.2012.	05.11.2013.
Kotor	29.11.2011.	05.12.2012.	/
Žabljak	27.12.2011.	26.12.2012.	24.10.2013.
Kolašin	23.12.2011.	26.12.2012.	27.12.2013.
Ulcinj	/	21.12.2012.	/
Plav	/	/	31.12.2013.
Šavnik	23.12.2011.	/	/
Danilovgrad	29.11.2011.	/	/

5.5 Tardy adoption of final budget statements

Proposal of the final budget statement shall be determined by the Mayor, who shall submit it to the municipal assembly by the end of May of the current year.²² “Upon the expiry of the year the budget is adopted for

²² Article 56, Law on Financing of Local Self-Government, “Official Gazette of Republic of Montenegro”, no. 42/03, 44/03, 05/08, 51/08, 74/10

municipal assembly shall adopt the final budget statement²³ which is submitted to the Ministry of Finance within 30 days of the adoption.

One of key conditions for fiscal transparency and successful budgetary control is timely disclosure of information. Final budget statement, as the final illustration of budget execution, represents the most important instrument for control of local budgets and a key budget document through which councillors and citizens can have insight into the financial operations of municipality.

Municipal assemblies predominantly adopt their final budget statement with substantial tardiness, due to dynamics of work of the executive authorities which violate prescribed legal deadlines for submission of final budget statement proposal to the assembly.

Thus, by the end of August 2013, only ten municipalities adopted their final budget statements for 2012,²⁴ and two municipalities (Plav and Budva) did so in the second quarter of 2013.²⁵ This is not an exception: these municipalities adopted their final budget statements for 2011 only at beginning of 2013.

It is practically utterly useless to discuss the finances of the previous year at the end of the current year. Late deliberation of final budget statements in most municipalities makes the adoption of these documents by the local assembly and control of the budget by councillors pointless.

The reasons for this are numerous, ranging from local executive authorities breaching the prescribed deadlines and delays in hiring of commercial auditors for audit of the final budget statement, over lack of interest of councillors for budgetary issues and deficiencies in legislative framework which do not promote transparency of the budget.

23 Ibid, Article 55, paragraph 1

24 Press release: Municipal spending in 2012 still a mystery, <http://institut-alternativa.org/kako-su-opstine-trosile-novac-u-2012-godini/>

25 Press release: Government to react because of deadline breaching, <http://institut-alternativa.org/saopstenje-vlada-da-reaguje-zbog-krsenja-rokova/>

According to the Law on Financing of Local Self-Government, local authorities are obliged to submit the proposal of the final budget statement for the previous year to the municipal assembly by the end of May of the current year.²⁶

Unfortunately, the legislative framework does not envisage the deadline for the adoption of the final budget statement by the local assembly.

Also, legislation does not stipulate obligation of local authorities to inform the municipal assembly on budget execution during the year, which means that councilors and public do not have information about execution of budget during the year to which the budget relates.

Final budget statements for 2011 adopted in:						
June 12	July 12	August 2012	September 2012	November 2012	January 2013	March 2013
Berane Podgorica Kotor	Andrijevića Tivat Ulcinj Bijelo Polje Mojkovac Plužine Pljevlja Cetinje Rožaje	Bar Herceg Novi Nikšić Šavnik	Danilovgrad	Žabljak	Kolašin	Budva Plav

5.6 Commercial audit of final budget statements as a tool for parliamentary control of the budget

Local self-governments are required to hire an external auditor to conduct audit of the final budget statement and prepare a report

²⁶ Article 56, Law on Financing of Local Self-Government, “Official Gazette of Republic of Montenegro”, no. 42/03, 44/03, 05/08, 51/08, 74/10

on the audit once a year.²⁷ These reports are available to municipal assemblies as an independent opinion on whether the submitted final budget statements reflect reality, i.e. as an assurance that municipal financial reports truthfully and objectively present the state of revenues and expenditures. Review of the current practice shows numerous problems in this part of the budgetary cycle, which is of utmost importance for effective parliamentary control of the budget.

Municipal assembly cannot influence the selection of the commercial audit, as this is under jurisdiction of local executive authorities. Commercial or external auditors are selected according to public procurement procedure, and most commonly shopping method is used, as this is a purchase of lower value.

All municipalities do not respect this obligation. During the research, it has been identified that some municipalities failed to hire external auditors for some years: Žabljak (2006), Andrijevića (2006), Rožaje (2009), Plav (2009). In spite of the failure to observe prescribed legal obligations, municipal assemblies adopted final budget statements of these municipalities, even without required audit reports.

Another tendency which impedes strengthening of control over budget is continuous control of final budget statements of some municipalities by one and the same audit company. Although international auditing standards for public sector recommend that after three years²⁸ new auditor should be selected, in some municipalities commercial audit is for years carried out by the same commercial auditor, sometimes without conducting public procurement procedure.

Beside the case of municipality Herceg Novi, where for six consecutive years the audit was conducted by the same company (“Deloitte”), as SAI observed, there are some other cases as well. In the period from

27 Article 55, paragraph 10, Law on Financing of the Local Self-Government, “Official Gazette of Republic of Montenegro”, no. 42/03, 44/03, 05/08, 51/08, 74/10

28 Report on audit of the final budget statement of municipality Herceg Novi for 2009, SAI, no: 40112-05-41/20, September 2010, p. 25

2006 to 2012, inter alia, the following has been noted: in Mojkovac - for six consecutive years one firm conducts the audit of the final budget statement (“Raciomont”, 2006-2011), in Podgorica - five years in a row it has been done by the same firm (“EUROREV”, 2007-2011), in Pljevlja - for four years it was done by the same firm (“EUROREV”, 2006-2010), in Žabljak- for four years done by the same firm (“Raciomont”, 2007-2010), Cetinje - for four years done by the same firm (“Reviko”, 2009-2012).²⁹

Particularly interesting is example of municipality Danilovgrad where, in period from 2006 to 2012, audit of final budget account was performed by audit firm “Raciomont” four times, and once for 2008 by “VM KOD”. The case is interesting because after reviewing the audit reports there is an impression that after “VM KOD” gave a report with some criticism related to the manner of keeping of financial records (balance sheet, calculation and payment of taxes, etc.) and concrete recommendations for correction of noted irregularities, this firm has been replaced after 2008. Namely, municipality Danilovgrad continued to cooperate with “Raciomont”. Their opinion on the final budget account remains the same year after year, with no perceived problems or recommendations, and even with the same grammatical errors in all annual reports.

In addition to the technical issues regarding the selection and re-selection of the same external audit, the quality of the report of external audit is questionable as well, and it depends on the audit firm which is performing the audit. For example, in municipality Plav, the audit firm issued an audit report containing a reservation of opinion, noting that the final budget “gives truthful and objective overview of revenues and expenditures, as well as outstanding obligations and budget borrowings”.³⁰ While controlling the same document, SAI gave

29 Comprehensive overview of the reports of external audit of local self-governments is available on the web site of the Institute Alternative-My City: <http://mojgrad.me/komercijalna-revizija>

30 Source: Report on external audit of the proposed final budget statement of the municipality Plav for 2011, available at: <http://mojgrad.me/dokumenti/plav/izvjestaj-o-komercijalnoj-reviziji-prijedloga-zavrsnog-racuna-budzeta-opstine-plav-za-2011.pdf>

negative opinion, containing very strident assessments and findings which attest to gross violation of regulations and “considerable material errors and notable deviations.”³¹

5.7 Internal Audit- relation with the municipal assembly

Potentially important source of information for control of local budgets is the work of internal audit, which represents a part of the public internal financial control system (PIFC).

Internal audit is an independent, objective review and advisory activity, aimed at providing added value and improving operation of entities, which assists the entity to achieve its own objectives by providing systematic, disciplinary-based approach to evaluation and improving the efficiency of risk management, controls and management processes.³²

Internal audit in local self-government has an obligation to regularly control functioning of different procedures, from public procurement to employment or issuing of travel orders. After the control is conducted, audit report is prepared and submitted to the president of the local self-government, as the only instance internal audit unit answers to. Currently, the option to inform the municipal assembly about the work of the internal audit has not been envisaged and the assembly does not receive a summary report on identified problems, number of given recommendations and number of fulfilled recommendations from last year’s report. On the other hand, the councillors are insufficiently informed about the existence and competencies of the internal unit, and for that reason there have been no requests to include the municipal assembly on the list of recipients

31 Source: State Audit Institution, Izvještaj o reviziji Završnog računa budžeta Opštine Plav za 2011. godinu, 10.12.2012. <http://www.dri.co.me/1/doc/IzvjestajPV4.pdf>

32 Definition taken from the Law on PIFC, Article 4, “Official Gazette of Montenegro”, no. 73/08, 20/11

of the report on the internal audit, even in a summary form.³³

On the other hand, even if there was a relation with the municipal assembly, at this moment it would not bring significant novelties in the budget control in the vast majority of municipalities, as the system of internal controls and internal audits is still not fully functional, despite having a well-rounded legislative framework.

All municipalities are required to ensure functioning of the internal audit: some through establishment of their own internal audit units, and the others can delegate these affairs to internal audit unit of some other municipality. The by-law³⁴ specifies that an independent audit unit must be established by Capital city Podgorica and other local self-governments which meet the following criteria: more than 200 employees and annual expenditures, or expenses exceeding 5 million EUR.

The situation in practice is discouraging: only a few municipalities have established internal audit units, and out of those which have separate units, only three have adequate number of auditors.³⁵ Currently, only eight municipalities have established internal audit units, and these are: Podgorica, Bijelo Polje, Nikšić, Cetinje, Pljevlja, Herceg Novi, Danilovgrad and Berane.³⁶ They employ a total of 18 internal auditors. Data show that only four municipalities have meet legal requirement and employed three auditors in their internal audit unit (Podgorica, Nikšić, Pljevlja and Berane), whereas other four municipalities have only two or one auditors.

There has been no progress in establishing of the system of internal controls in other municipalities. None of the remaining municipalities

33 Information from consultative meetings with representatives of local authorities, councillors and local NGOs, held in period 01-31 July 2013 in 14 local self-governments in Montenegro

34 Decree on establishment of the internal audit in public sector, "Official Gazette of Montenegro", no. 23/09 and 35/11

35 Law on Public Internal Financial Control System prescribes that: "Internal audit unit shall have at least three internal auditors, including the head of the internal audit unit", (Article 18).

36 Source: Registry of internal audit units kept by the Ministry of Finance, as of 1 July, 2014.

have used legal possibility to entrust, by means of an agreement, the audit to an internal audit unit of another local self-government. A particular problem represent municipalities such as Bar and Budva, which have sizeable budgets and number of employees in local government, and which have still not established internal audit units, even though they were obliged to do so in accordance with the Decree.

One of the exceptions in terms of the work of the internal audit is municipality Pljevlja, where the Service for internal audit submitted a criminal report against the former mayor, but this case has still not been closed by the prosecution or the court.³⁷

5.8 State audit and local self-governments

The State Audit Institution (SAI) conducts audit of the budget of local self-governments as a form of institutional, independent and external control of the budget.

From its establishment in 2004, SAI was able to conduct audits of 12 local self-governments.³⁸ ***None of controlled municipalities received positive opinion of the SAI.*** Audits have been performed in the following municipalities: Nikšić, Danilovgrad, Ulcinj, Kolašin, Rožaje, Danilovgrad, Herceg Novi, Plužine, Plav, Bijelo Polje, Kotor and Tivat.

In some cases performed control audits show high level of implementation of recommendations issued by SAI, as in municipality Kotor,³⁹ and in some other cases almost complete lack of interest to correct observed irregularities, as in municipality Plav.⁴⁰

37 "Prosecution has not filled charges against the former Mayor of Pljevlja", daily Vijesti, <http://www.vijesti.me/vijesti/tuzilastvo-jos-nije-podnijelo-prijavu-protiv-bivseg-gradonacelnika-pljevalja-clanak-96792>

38 Reports on audits of local self-governments: http://www.dri.co.me/1/index.php?option=com_content&view=article&id=97&Itemid=129&lang=sr

39 See: Izvještaj o kontrolnoj reviziji Opštine Kotor, <http://www.dri.co.me/1/doc/Izvjestaj%20o%20kontrolnoj%20reviziji%20Opstine%20Kotor.pdf>

40 See: Konačni izvještaj kontrolne revizije opštine Plav: <http://www.dri.co.me/1/doc/Konacni%20izvjestaj%20kontrolne%20revizije%20opstine%20Plav.pdf>

The councillors from municipal assemblies, which have been audited by SAI, did not adopt separate conclusions regarding the published audit reports. This is a missed opportunity to establish monitoring of implementation of recommendations issued by SAI and correction of observed irregularities, i.e. stronger political control of the budgets of local self-governments.

Due to its limited capacities⁴¹ SAI cannot perform annual audits of the significant number of municipalities. By using sampling method, guided by available capacities, findings of auditors and information gathered from other government agencies, physical and legal persons and media, SAI selects municipalities for annual audit plan. However, there is a need to promptly audit some of the local self-governments with the highest revenues, primarily Capital city Podgorica, and then municipalities Bar, Budva and Pljevlja.

41 Rulebook on internal organization and job classification in SAI envisages 80 positions-65 positions for the tasks of auditing and 15 positions for administration. Currently, there are 38 employees working as auditors, while 13 are working in the administration. For more information on work on SAI see *research report of the Institute Alternative "The State Audit Institution in Montenegro: The Influence Strengthening Proposals"*, December 2010, Podgorica.

6. THE PROCESS OF ADOPTION OF PLANNING DOCUMENTS UNDER THE JURISDICTION OF LOCAL SELF-GOVERNMENT

Local planning documents are spatial-urban development plan (SUDP) of the local self-government, detailed urban development plan (DUDP), urban development project and local location study, whereat adoption of SUDP and DUDP is mandatory.

Spatial-urban development plan defines objectives and measures of spatial and urban planning development of the local self-government, in accordance with the planned economic, social, ecological and cultural-historical development, and detailed urban development plan defines requirements for the construction of structures within the settlements in the regions covered by the spatial-urban development plan, in a manner which enables implementation of those plans. For smaller areas which are about to undergo significant and complex construction, or represent particularly characteristic segment urban development project may be developed. Local location study may be adopted for areas which are within the scope of the spatial-urban development plan and for which is not envisaged development of detailed urban development plan and urban development project.

Complete process of preparation of plans, selection of vendors and creation of the final draft of the local decision which should ultimately legitimize local planning document is managed by the Mayor (president of the municipality) with accompanying services.

As stipulated by the law, public debate is organized about the planning document. However, for over a decade the debate hasn't fulfilled its purpose and generally participation of citizens is very weak.

In the end, the decision is adopted by the municipal assembly, giving it full legal legitimacy.

It should be emphasized that the role of the municipal assembly in this process is inadequate and the councillors are often just served with unclear sketches and are not informed about the ultimate effects the interventions will make on environment. This is a field of high risk for corruption and therefore it is necessary to additionally improve the control function of the municipal assembly and consequently the position of councilor as well.⁴²

42 More about corruption in urban planning in publication by Marić, Boris; Bošković, Mirko; Vukićević, Boris *Urban planning in Montenegro-construction or corruption?*, Centre for Civic Education, Podgorica, 2014

7. POSSIBILITIES FOR PARTICIPATION OF CITIZENS IN DECISION - MAKING AT THE LOCAL LEVEL

The need for active participation of citizens in the decision-making process at the local level is a reflection of the level of democratic and political culture of a society, but also an evidence of the effectiveness of participatory democracy. In this regard, the municipalities should create preconditions, promote and assist participation of members of a local community to actively participate and decide in public services of common interest, in order to encourage cultural, sports, educational, health, information and other needs.

The Law on Local Self-Government⁴³ explicitly envisages forms of direct participation of citizens in expressing their views and in decision-making, and these are: *initiative, civil initiative, the assembly of citizens, referendum (at the level of local community and municipality) and other forms of expressing views and decision making* provided for in the Statute.

More specifically, Article 101 stipulates that citizens are entitled to launch an initiative before the competent bodies for purpose of considering and deciding on certain matters that are of interest for the local population. The competent body shall take a position on the filed initiative within 30 days and inform the applicant on it.⁴⁴

43 Law on Local Self-Government, "Official Gazette of Montenegro" no. 4 2/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14

44 If the body fails to take action based on the initiative from paragraph 1 of this Article, the applicant may refer to the Mayor or the Assembly.

Apart from the initiative, citizens shall be entitled to launch a *civil initiative*,⁴⁵ whose basic advantage represents the possibility to propose adoption of regulation that defines important matters falling under the local self-government jurisdiction. The local Statute shall regulate matters that may be subjected to the civil initiative, the required number of citizens' signatures for launching the initiative, procedure for conduct upon the initiative and other issues that are important for the civil initiative.⁴⁶

Assembly of citizens represents one of the more important forms of participation of citizens in expressing their views and in decision-making at the local level. Thus, it is prescribed⁴⁷ that: the assembly of citizens shall adopt requests and proposals and it shall forward them to competent authority. Local self-government authorities shall discuss the requests and proposals and inform citizens on it, within 60 days from the date the assembly of citizens is held.

Also, it has been prescribed that the citizens may directly participate in decision making at the local level by utilizing community and municipal referendum.⁴⁸

On the *community referendum* citizens living at one part of the municipal territory express their views on matters that fall under the jurisdiction of the local self-government. Law or the Statute shall regulate the matters that citizens may submit to a community referendum, as well as procedure of calling and holding the referendum.

45 Law on Local Self-Government, "Official Gazette of Montenegro" no. 4 2/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14, Article 102

46 If the competent authority does not accept the civil initiative, a matter that was subject of the initiative may be submitted to a referendum that shall be held within 90 days from the date the decision has been passed.

47 Law on Local Self-Government, "Official Gazette of Montenegro" no.4 2/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14, Article 103

48 Law on Local Self-Government, "Official Gazette of Montenegro" no. 4 2/03, 28/04, 75/05, 13/06, 88/09, 03/10, 73/10, 38/12, 10/14, Articles 104 and 105

On the other hand, a *municipal referendum* may be called with purpose that citizens living on the territory of the Municipality express their views on certain matters that fall under the jurisdiction of the local self-government in the cases, pursuant to methods and following the procedure provided for in the Municipal Statute, in accordance with the law.

Analyzing the level of participation of citizens in 14 municipalities encompassed by this project - Tivat, Kotor, Herceg Novi, Budva, Bar, Pljevlja, Plužine, Kolašin, Rožaje, Mojkovac, Nikšić, Danilovgrad, Cetinje and Podgorica – through various forms of participation in the process of expressing the views and decision-making at the local level, we can conclude that in the period from January 01, 2010 to December 31, 2013 there was a very low interest of citizens to make decision about the affairs of common interest.⁴⁹

More specifically, in *Capital city Podgorica*, in period from January 01, 2010 to December 31, 2013 only *two initiatives* have been submitted: civil initiative to amend and adopt a Study on parking zone, allowed parking time, category of motor vehicles which can park and manner of payment for parking in general and specific parking spaces in Podgorica and 2) initiative for a merger of villages and hamlets belonging to local community Brskut to local community Ubli. In the same time period there were no assemblies of citizens, community or municipal referendums.

In *Old Royal Capital Cetinje*, during the observed period only *two initiatives* have been submitted: 1) initiatives of citizens of Cetinje for building of the town animal shelter on behalf of NGO „Foundation Mirjana A.R“ and 2) an initiative for decision on prohibition of water restrictions on behalf of NGO „Foundation Mirjana A.R“. At the same time there were no assemblies of citizens, community or municipal referendums.

49 “The data collected by the research team of the Centre for Civic Education (CCE) pursuant to the Law on Free Access to Information in April and May 2014.

Somewhat worse situation in this respect has been registered in *municipality Mojkovac*, where in period from January 01, 2010 to December 31, 2013 not a single initiative or civil initiative has been submitted, and no community or municipal referendums were held. During this period there were two assemblies of citizens in two local communities.

On the territory of *municipality Kotor*, in the aforementioned period only one civil initiative has been submitted- an initiative of citizens of community Gornji Grbalj for adoption of act which would allow Public Utility Company „Kotor“ to use a new location for exploitation of technical/construction stone in the hinterland of the coast, and on the territory of Kotor. Additionally, in this period, participation of citizens in municipal assembly was registered on two more occasions (while considering the Decision on adoption of the spatial-urban development plan of Stoliv and while considering the Decision on purchase of land for completion of the urban plot Lastva Grbaljska), whereas there were no assemblies of citizens, community or municipal referendums. In the *municipality Herceg Novi* in the aforementioned period three initiatives and three civil initiatives have been submitted, whereas there were no assemblies of citizens, community or municipal referendums.

In *municipality Budva* four assemblies of citizens were held (assembly of citizens of the settlement Buljarica, settlement Gornji Pobori, settlement Svinjišta and settlement Miločer). These assemblies of citizens have been preceded by the initiatives of citizens for self-organization of local communities, and after the assemblies of citizens were held three local communities have been established, in accordance with applicable regulations. These are: local community Buljarica, local community Gornji Pobori and local community Svinjišta.

Also, in *municipality Tivat*, in the defined period one civil initiative has been submitted, while for the same period only one request for organizing of municipal referendum was submitted, and three assemblies of citizens have been organized.

Although local authorities periodically organize meetings with residents of local communities, in the analyzed period, in *municipality Plužine* no community or municipal referendums have been organized. In this period, there was one civil initiative submitted to the *Municipal Assembly of Plužine*. On the other hand, in *municipality Pljevlja*, in the reporting period, 19 assemblies of citizens were held, whereas there were no initiatives and community and municipal referendums. Similar situation is noticeable in *municipality Rožaje* where only one civil initiative was submitted in the specified period (the initiative of village Kajevići for giving the old name to village Kajevići in the local community Bać), whereas in the same period there were no assemblies of citizens, or community and municipal referendums.

It is important to mention that in municipalities *Bar, Danilovgrad, Kolašin and Nikšić* in period from January 01, 2010 to December 31, 2013 *not a single initiative or civil initiative has been submitted, and no assemblies of citizens or community or municipal referendums were held.*

This shows that participation of citizens in exercising, functioning and affirmation of local self-government is at a disturbingly low level, which does not create favorable environment for efficient and effective fight against corruption at the local level.

8. CONCLUSIONS AND RECOMMENDATIONS

- Conduct analysis of the electoral system at the local level for creation of a platform for adoption of the Law on Local Elections;
- Improve legislative framework through providing a possibility to professionalize a function of councillor for one percentage of the councillors;
- The municipal assembly, as the representative body of citizens, should play a proactive role in setting of strategic directions for development of local self-government, especially through strengthening its control function;
- Control function of the municipal assemblies should be fully realized in the process of adoption of the municipal development program, planning documents, budget and final budget statement;
- Special emphasis should be placed on the adoption of the final budget statement of the local self-government, as well as on timely monitoring of the budget execution on the annual level;
- Councillors should have access to information about the work of the internal audit in their local self-governments through submitted annual summary report on the work of the internal audit;
- Councillors in municipal assemblies should introduce in practice adopting of conclusions about the annual reports on (external) audit of the final budget statement of municipality and establish the obligation to monitor its fulfillment. The same should be done in the year in which their municipality is subject of control by SAI regarding the published audit report;
- It is necessary to avoid the practice of last minute adoption of the budget revision and limit timeframe for its preparation to third quarter of the fiscal year for which the revision is done;

- In cases when the final budget statements have not been adopted for a longer period, the Government should use the possibility provided by the Law on Local Self-Government and warn presidents of municipalities that they need to perform their duties. Additionally, it is necessary that Ministry of Finance should consider undertaking of measures available in accordance with the Law on Financing of Local Self-Government towards the municipalities that violate legal provisions related to key budgetary documents (measures come down to temporary suspension of payment of funds it receives from the transferred revenues)
- Councillors should not hold managerial positions in municipal public services and enterprises whose work they should supervise;
- Reports municipalities submit on a quarterly basis to the Ministry of Finance should be submitted to the Committee for finance and budget, and they should be subject of discussion in the municipal assemblies;
- All municipalities should publish on their web pages their report on external audit of the final budget statement;
- All municipalities should be obliged to regularly submit their report on external audit of the final budget statement to the SAI;
- Law on Accounting and Auditing should be amendment in order to introduce the process of quality control of audit firms in public sector, as a precondition for renewal of the license;
- Municipal assembly should pay special attention to the manner and character of the management of assets of the local self-governments. All documents related to management of assets should be available to public;
- Municipal assemblies need to work on establishing mechanisms for affirmation of participation of citizens in decision-making at the local level;
- It is necessary to examine usefulness of public debates at the local level, their effects and the causal relationship it has with the work and sessions of the municipal assemblies;

- There is a need to establish an obligation of presence of representative of councillors clubs at public debates;
- There is a need to establish an obligation to organize consultative meeting every six months with predefined agenda of the municipal assembly in plenary sitting (there must be a quorum) with presidents of local communities;
- When deliberating specific agenda items, there should be a possibility to invite representative of local community for whose territory, population or other form of public interest the issue is directly related, in line with the “empty seat” institute for NGOs;
- An obligation should be set forth that web sites of municipal assemblies should contain all necessary information about their operation, councillors, their contacts, the manner of voting on various agenda items, possibility to submit electronic initiatives to the assembly and councilors, as well as the report on transparency of work of the assembly and each councillor separately;
- Web sites of municipal assemblies should have all acts on which municipal assembly decided easily available, as well as the acts which will be discussed at the next session of the municipal assembly, immediately upon submitting them to the councillors;
- The Statute of the municipal assembly should establish special procedures for reviewing the report on work of the president of the municipality, and this procedure should set forth steps for public involvement on different levels in process of presentation and review of the report.

9. LITERATURE

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- ✓ Municipality Bar – www.bar.me
- ✓ Municipality Budva – <http://www.budva.me/mne>
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