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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT LAW ON REFERENDUM AND CIVIL INITIATIVE  
OF SERBIA  
as of 15 October 2009**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

**TABLE OF CONTENTS**

I.	BASIC PROVISIONS .....	3
II.	REFERENDUM .....	4
1.	Joint provisions .....	4
2.	Republic Referendum.....	10
3.	Provincial Referendum and Local Government Referendum.....	12
III.	CIVIL INITIATIVE .....	13
IV.	TRANSITIONAL AND FINAL PROVISIONS .....	16
	EXPLANATION .....	18
1.	Constitutional Basis for Adoption of the Law.....	18
2.	Reasons for Adoption of the Law .....	18
3.	Explanation of specific solutions .....	19
4.	Financial Means of Implementing this Law .....	20

## **I. BASIC PROVISIONS**

### **Article 1 - Law's Subject Area**

This Law shall regulate the manner of conducting referendums and exercising civil initiatives.

### **Article 2 - Referendum**

A referendum shall be a way for citizens to directly decide on issues anticipated by the Constitution, law and the Autonomous Province Statute and statutes of local governments (mandatory referendum) and on issues under the authority of the National Assembly, Autonomous Province Assembly and local government assemblies, chosen by those assemblies on their own initiative, or on the initiative of a number of voters (optional referendum).

A referendum may be held for the purpose of forming a prior opinion (preliminary referendum), or, in order to approve acts passed by competent organs (subsequent referendum).

A decision obtained in the referendum referred to in Paragraphs 1 and 2 of this Article shall be fully effective and binding if it has been approved by a majority of the total number of voters in the territory for which the referendum was held, as defined by the Constitution, law or the Autonomous Province Statute and local government statutes.

If the Constitution, law or the Autonomous Province Statute and statutes of local governments have not defined the majority of voters that are needed for passing a decision by the referendum referred to in Paragraphs 1 and 2 of this Article, then the decision shall be considered effective and binding if more than half of the total number of voters voted and if a majority of them voted in favor of the decision.

A referendum may be held in order to get citizens' opinions on a decision that needs to be passed (advisory referendum).

### **Article 3 - Civil Initiative**

By means of civil initiative, citizens may propose amendment of the Constitution and general acts, under the authority of the National Assembly, or amendments of statutes, other regulations and general acts under the authority of the Autonomous Province Assembly and assemblies of local governments, or holding a referendum to vote on specific issues or present a proposal in line with the Constitution and law, or the Autonomous Province Statute and statutes of local governments.

### **Article 4 - Right to Vote, i. e., Participate**

Those citizens who shall be entitled to vote shall be those who have the right to vote, in line with the election laws, and they reside in the territory for which a referendum is held. Citizens who reside abroad, or who find themselves abroad during the referendum, shall have a right to vote in a Republic referendum.

If a referendum puts to the vote the rights and obligations of citizens who reside outside of the territory for which the referendum is to be held, those citizens shall also have the right to vote.

A list of citizens referred to in Paragraph 2 of this Article shall be prepared by an organ authorized to do so by the Assembly which passed the decision on the referendum.

Citizens, who, in accordance with election laws, have the right to vote, shall have the right to participate in a civil initiative.

#### **Article 5 - Freedom of Voting, i.e., Participation**

Citizens shall be free to express their opinion in the referendum and shall be free to decide whether or not they will participate in the civil initiative.

No one may hold a citizen liable because of his/her expressed opinion in a referendum or failure to do so, or for his/her participation in a civil initiative.

#### **Article 6 - Manner of Voting, i.e., Participation**

Citizens shall vote in a referendum in person and by casting their vote in secret.

Citizens shall participate in a civil initiative by signing the proposal.

#### **Article 7 - Funding**

The financial means for holding a Republic referendum shall be provided from the Republic Budget; for a provincial referendum and a referendum of a local government unit: from the Provincial Budget, or the budget of the local government unit.

No charges shall be paid for acts on referendums and civil initiatives.

#### **Article 8 - Protection of Rights**

Citizens and other authorized proponents shall have the right to protection from irregularities in a referendum procedure and the one for a civil initiative, in accordance with this Law.

No charges shall be paid for the complaints and appeals citizens and other authorized proponents file for the purpose of protection from irregularities in the referendum procedure and the one for the civil initiative.

#### **Article 9 - Suspension of Time Limits**

Time limits specified by this Law for the Assembly to use for certain activities aimed at holding a referendum or a civil initiative shall be suspended during breaks between regular assembly sessions; the suspension shall stop on the day of the beginning of a regular or outstanding assembly session.

## **II. REFERENDUM**

### **1. Joint provisions**

#### **Article 10 - Mandatory Referendum**

The National Assembly, the Autonomous Province Assembly or the local government to assembly, must pass a decision on holding a referendum to put to the vote issues which, in accordance with the Constitution, law, or the Autonomous Province Statute, or the statute of a local government unit, should be decided upon by the citizens in the referendum.

When it has been decided that the referendum referred to in Paragraph 1 of this Article shall be used to put to the vote approval of an act adopted by the Assembly, the Assembly must pass the decision on holding the referendum simultaneously with passing the act in question.

If it has been stipulated that citizens in the referendum referred to in Paragraph 1 of this Article shall propose the decision or if the referendum must be held before the Assembly's decision, the Assembly must pass the decision on holding the referendum within the time limit specified by law, the Autonomous Province Statute, or the statute of the local government unit.

#### **Article 11 - Referendum Initiated at the Will of the Assembly**

The National Assembly must announce holding a referendum and put to the vote an issue under its authority at the request of a majority of its members, within 30 days; the Autonomous Province Assembly and the assembly of a local government must announce holding a referendum and put to the vote issues under their authority, defined by their statutes, at the request of a majority of their members, or people's representatives within the same time limit.

In the referendum referred to in Paragraph 1 of this Article, citizens shall vote on an issue which needs to be regulated by an act of the Assembly (preliminary referendum), or they shall vote to approve an act which has already been adopted by the Assembly, but not yet proclaimed (subsequent referendum).

The decision on holding the referendum shall specify whether the referendum shall be a preliminary or subsequent one.

#### **Article 12 - Referendum Initiated at the Will of the Voters**

The National Assembly, or the Autonomous Province Assembly or the assembly of the local government shall be obliged to hold a referendum if the minimum number of voters, defined by the Constitution, or the Autonomous Province Statute or the statute of the local government, request so within 30 days from the date of filling a correct request.

The voters' request referred to in Paragraph 1 of this Article shall indicate whether the voters want a referendum for expressing their opinion on the issue which yet needs to be regulated by the act of the Assembly, or they suggest adoption or rejection of the act, or some provisions thereof, previously adopted by the Assembly.

A correct request referred to in Paragraph 1 of this Article shall be considered a request signed by the required number of voters, which is pertinent to the issue which may be decided upon in the referendum and which meets terms and conditions for launching a civil initiative, specified by this Law, and in case of the referendum, the terms and conditions specified by the autonomous province statute, or the statute of the local government unit for their respective territories.

In the referendum referred to in Paragraph 1 of this Article, citizens shall express their opinion on an issue which yet needs to be regulated by the Assembly (preliminary referendum), or on an act proposed at the will of votes (constitutive referendum), or on full or partial annulment of an act adopted by the Assembly (referendum for act annulment).

#### **Article 13 - Advisory Referendum**

The National Assembly, or the Autonomous Province Assembly or the local government assembly, may announce a referendum on an issue of wider importance under its authority so as to get the opinion of citizens on the decision which needs to be made in respect to that particular issue (advisory referendum).

The Assembly which announced an advisory referendum shall be obliged to take into consideration the opinion of citizens expressed in that referendum before passing any decisions.

**Article 14 - Decision to hold a Referendum**

A decision to hold a referendum shall include in particular: the territory or area for which the referendum is being held; the title of the act, or the issues which citizens will vote on in the referendum; the act about which citizens will vote in the referendum and an explanation thereof, or an explanation of the issue about which citizens will vote in the referendum; the date of the referendum; the time of the referendum; and the type of the referendum which is being announced.

The decision to hold a referendum shall be announced in the Official Gazette of the Republic of Serbia, or in the official gazette of the Autonomous Province, or a local government unit.

Not less than 30 or more than 60 days may pass from the day of announcement of the referendum to the date when it is actually held.

**Article 15 - Referendum Administration Organs**

The referendum administration organs shall be the Referendum Commission and electoral boards.

The Referendum Commission shall be formed by the Assembly which passed the decision on holding the referendum, and the Commission then shall form the electoral boards.

When a referendum is held for the territory of the Republic of Serbia or the Autonomous Province or parts thereof, sub-commissions shall be formed in cities and municipalities.

The sub-commissions in cities and municipalities shall be formed by the Republic Commission when the referendum is being held for the territory of the Republic or parts thereof; the sub-commissions shall be formed by the Provincial Commission when the referendum is being held for the territory of the Autonomous Province or parts thereof.

**Article 16 - Representatives of Authorized Proponents**

A representative of an organ, organization or citizens who launched the initiative on holding a referendum (hereinafter authorized proponent) shall sit in the referendum bodies.

The authorized proponent, or his/her representative, shall have rights in accordance with the law which regulates the election of members of parliament granted to a proponent of the list of candidates for members of parliament.

**Article 17 - Referendum Commission**

The Referendum Commission shall be responsible for the following activities:

- 1) securing the legality of the referendum;
- 2) securing material for the referendum to be held;
- 3) prescribing forms for the referendum to be held;
- 4) counting and announcing the results of the referendum; and
- 5) other activities specified by this Law and the decision on holding the referendum.

In addition to activities referred to in Paragraph 1 of this Article, the Republic Commission shall provide instructions for the work of the sub-commissions in cities and municipalities, and harmonize and monitor their work in terms of implementation of this Law.

Sub-commissions in cities or municipalities shall be responsible for: technical preparations for Republic, or Provincial referendums, for locating polling stations, for calculation of the results of

voting based on the material brought from all polling stations, forwarding the results to the Republic or Provincial Commissions and other activities specified by this Law and the decision on holding a referendum.

#### **Article 18 - Electoral Boards**

Electoral boards shall organize voting at polling stations, make sure that voting is regular and secret and count the results of voting at polling stations in line with instructions obtained from the Referendum Commission.

#### **Article 19 - Polling Stations**

Polling stations shall be located and organized in accordance with the law which regulates polling station issues for elections of members of parliament.

At a polling station, voters may clearly see a visibly presented act on holding the referendum, or the issue which is subject to voting in the referendum.

#### **Article 20 - Records on Citizens with the Right to Vote**

Lists of citizens with the right to vote shall be updated for each next referendum issue in accordance with the law which regulates records on voters.

#### **Article 21 - Referendum Date and Period**

A referendum shall be, as a rule, held in a single day, on Sundays and exceptionally it may be held for two days on Saturday and Sunday.

The referendum period shall be specified in such a manner as to allow all citizens with the right to vote to cast their vote.

Voting shall be closed when the period specified for voting expires; citizens who find themselves at the polling stations at the closing time shall be enabled to cast their vote.

If all citizens registered at a particular polling station have cast their vote, voting may be closed before the designated time limit expires.

#### **Article 22 - Referendum Information and Campaign**

An authorized proponent shall be obliged to provide citizens with objective information on the issue, or the act which is subject to referendum, in the form of a brief report published in the media or distributed to citizens by mail at their home addresses.

Media funded by public sources shall be obliged to allow equal access to all supporters of the referendum and those who are against it, and to keep records about it, to enable equal time on the air and correct reports on the reasons for and against the decision which is being voted on in the referendum.

A referendum campaign has to end 48 hours, at the latest, before the Election Day.

#### **Article 23 - Publicity of the Referendum Campaign**

Authorized proponents, or their representatives, have to have access to every place where the referendum procedure, specified by this Law, is taking place.

Voting in the referendum may be monitored by domestic and foreign observers, in accordance with regulations which regulate monitoring elections for members of parliament.

#### **Article 24 - Referendum Question**

A question which is subject to voting in the referendum must be clearly expressed so that it can be answered with the words "For" or "Against" or the words "Yes" or "No"; it must not be formulated in such way to suggest only one of the possible answers.

If two or more questions are subject to voting in the referendum, there shall be different ballots for each question.

#### **Article 25 - Ballot**

A ballot for voting in a referendum shall include: the name of the organ which is holding the referendum, the day when the referendum is held, the question which citizens need to answer by choosing between words "For" and "Against" or "Yes" and "No" printed one next to the other, instructions of the manner of voting and the seal of the organ which is holding the referendum.

Ballots shall be prepared by the Referendum Commission; they shall be printed in one place under control of up to three persons appointed by the Assembly which has passed the decision on holding the referendum.

#### **Article 26 - Voting**

Citizens who are registered in registries of citizens with the right to vote shall vote by circling one of possible answers on their ballot.

The rights of citizens who are not able to cast their vote at the polling station, or to vote by themselves shall be regulated by the regulations on the election of members of parliament which regulate the manner of voting of these citizens.

#### **Article 27 - Calculation of the Results at the Polling Station**

An electoral board calculates the results of voting at its polling stations.

An invalid ballot shall be the one where both, or none, possible answers were circled or which has been filled out in such way that it is impossible to conclude as to how a citizen voted.

The records kept by the electoral boards shall include: the date, the place where voting has been held, and the polling station; the issue that has been voted on in the referendum; the personal names of the electoral board members; the number of citizens with the right to vote at the polling station; the number of citizens who voted; the number of received, invalid and unused ballots and the result of voting.

The records shall be signed by all electoral board members and shall be submitted together with other sets of material, to the competent referendum commission, or a sub-commission in the city or municipality when the referendum was held for the territory of the Republic or the Autonomous Province, or parts thereof.

#### **Article 28 - Calculation and Announcement of the Referendum Result**

The Referendum Commission shall calculate the result of the referendum and file its report about the result to the Assembly which announced the referendum.

The report on the referendum shall be published in the same manner as the decision on holding the referendum.

#### **Article 29 - Decision Enforcement**

If citizens approved an act by voting in the referendum the act shall be considered adopted on the referendum day and shall be proclaimed in accordance with the Constitution and law, or in accordance with the Autonomous Province Statute and the local government statute; if citizens voted against the act in the referendum – it shall be deemed that the act has never been passed.

The procedure referred to in Paragraph 1 of this Article shall apply when the referendum has approved an act proposed at the voters' request.

When citizens have voted on a certain issue before the competent organ passed an act which regulates that issue, the competent organ shall be obliged to pass the act by observing the results of the referendum and within the time limit specified by the decision on holding the referendum, and not later than within 60 days from the date when the referendum was held.

When citizens, by the referendum, voted for full or partial annulment of an act passed by the Assembly, this act or, provisions thereof shall cease to be valid not later than within 60 days from the day when the referendum was held.

#### **Article 30 - Binding Capacity**

The National Assembly, or the Autonomous Province Assembly or the local government assembly may not adopt a decision contrary to the results of a referendum, or which would significantly amend it, within a year from the day when the referendum was held.

#### **Article 31 - Repeated Referendum**

A referendum on the same issue may not be repeated before a year has passed from the day when the referendum was held.

#### **Article 32 - Protection of Rights before the Referendum Commission**

A citizen shall have the right to file a complaint to the Referendum Commission, if he/she deems that a decision, or act or oversight in the referendum procedure were not regular, within 24 hours from the moment when such decision, or act or oversight happened.

The right to file a complaint referred to in Paragraph 1 of this Article shall be also granted to authorized proponents or their representatives.

The Referendum Commission shall decide on the complaint within 48 hours from the moment of its arrival.

#### **Article 33 - Annulment and Repeated Voting**

If irregularities which occurred at one or more polling stations significantly affected the results of voting, the Referendum Commission shall annul voting results at those polling stations and specify the time for repeated voting.

If irregularities in the Republic, or Provincial referendum occurred in the work of the sub-commission in the city or municipality, the Republic or Provincial Commission shall annul the activities of the sub-commission in the city or municipality and order the repetition thereof.

**Article 34 - Judicial Protection**

A complainant may file a complaint to the Administrative Court against a decision of the Commission on the complaint referred to in Article 32 of this Law, or if the Commission has not rendered its decision within the specified time limit; the complaint may be filed up to 24 hours after receiving the decision of the Referendum commission or after the time limit for ruling expired.

The Administrative court shall render the judgment on the complaint referred to in paragraph 1 of this Article within 48 hours from the moment of its arrival and this judgment shall be final.

The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes.

Until the Administrative Court becomes operational, complaints referred to in Paragraph 1 of this Article against decisions of the provincial referendum commission and local government referendum commission shall be decided upon by district courts, and complaints against decisions of the Republic referendum commission shall be addressed by the Supreme Court of Serbia.

**2. Republic Referendum****Article 35 - Voting Matter**

The National Assembly shall hold a referendum for the territory of the Republic of Serbia when citizens need to vote on:

- 1) issues which require a referendum according to the Constitution and law;
- 2) issues under the authority of the National Assembly at the request by majority of all the members of National Assembly;
- 3) issues under the authority of the National Assembly at the request of at least 100,000 voters.

**Article 36 - Referendum on International Agreements**

Referendums on international agreements concluded by the Republic of Serbia may be held only before the ratification thereof.

**Article 37 - Referendum on International Integrations**

If citizens have voted on transfer of elements of sovereign rights to an international organization or about joining a defense alliance which is regulated by an international agreement before they were concluded then, a referendum on the international agreement which regulates the same issue shall not be subsequently held.

**Article 38 - Issues which cannot be put to a Vote in the Referendum**

The matters of the authority of the National Assembly, specified in Article 108, Paragraph 2 of the Constitution, may not be subject to a referendum.

The subject of a legislative referendum may not be in contradiction with the Constitution, widely accepted rules of international law and ratified international agreements, nor can it reduce the achieved level of human and minority rights nor may it jeopardize the principles of civil democracy or the rule of law.

The subject of a referendum, which is regulated by an act lower than a law, may not be in contradiction with the law.

### **Article 39 - Referendum in a Particular Part of the Territory**

The national Assembly may hold a referendum for a part of the territory of the Republic of Serbia if the issue in question exclusively pertains to that part of the territory.

Only citizens with a place of residence in the particular part of the territory of the Republic of Serbia for which the referendum is being held shall have the right to vote.

A referendum for a part of the territory of the Republic of Serbia may also be held for obtaining the opinion of the citizens about a decision to be passed on particular issues and it is mandatory before passing a decision on the establishment or dismantling of a local government unit, or amending its territory.

### **Article 40 - Petition for Referendum**

A petition for holding a Republic referendum announced at the proposal of majority of Parliament members may be submitted to the National Assembly by any member of Parliament, the Government and the Autonomous Province Assembly.

### **Article 41 - Republic Referendum at the Request of Voters**

When at least 100,000 voters file a petition for holding a referendum, the National Parliament Speaker shall submit it to members of Parliament, the Government and competent working bodies of the National Assembly within three days.

If the Government or competent working bodies deem that an issue which is subject to the referendum request pertains to one of the issues referred to in Article 38 of this Law, the National Assembly shall ask the Constitutional Court to rule on this within 15 days.

If the Constitutional Court finds that the issue which is subject to the referendum request is pertinent to one of the issues referred to in Article 38 of this Law, the National Assembly Speaker shall notify all petitioners of the initiative and members of Parliament that the referendum is not legally possible.

### **Article 42 - Opinion and Counter-Proposal of the National Assembly**

When the National Assembly announces a referendum at the request of at least 100,000 voters, they may present to the public their opinion about the issue which is to be voted on and it may put to vote in the referendum as its counter-proposal.

The opinion of the National Assembly about the issue which is subject to a referendum, or a counter-proposal, shall be adopted simultaneously with the adoption of the decision on holding the referendum.

### **Article 43 - The Republic Referendum Commission**

The State Electoral Commission shall be responsible for holding Republic referendums.

### **3. Provincial Referendum and Local Government Referendum**

#### **Article 44 - Provincial Referendum Subject Area**

In a referendum held for the territory of the Autonomous Province or parts thereof (Provincial referendum) citizens vote on issues which, according to the Statute of the Provincial Assembly, require a referendum, and on the issues under the authority of the Autonomous Provincial Assembly for which the Assembly itself has requested a referendum vote or at the request of a number of voters specified by the Statute of the Autonomous Province.

The subject of a Provincial referendum may include issues which, according to the Statute of the Autonomous Province, have been specified as the responsibility of the Autonomous Province Assembly, with the exception of the Statute of the Autonomous Province; also, issues pertinent to the budget and final statement of the budget of the Autonomous Province, and issues about election responsibilities of the Autonomous Province Assembly.

The subject of a provincial referendum may not be in contradiction with Article 38 Paragraphs 2 and 3 of this Law.

#### **Article 45 - Provincial Referendum at the Request of Voters**

When a number of voters, defined by the statute, files a petition for holding a referendum and when the Assembly finds that the petition concerns issues which are not under their authority, or that it is about the issues which do not require a referendum, or about the issues which are not in conformity with Article 38, Paragraphs 2 and 3 of this Law or the Statute of the Autonomous Province, the Assembly shall ask the Constitutional Court to resolve it in 15 days.

Depending on the opinion of the Constitutional Court, the Autonomous Province Assembly shall either pass the decision on holding the referendum or notify the referendum petitioners that the referendum is not legally possible.

#### **Article 46 - Local Government Referendum Subject Area**

In a referendum held for the territory of a local government unit or parts thereof (referendum in a local government unit) citizens vote on issues which, according to the local government statute, require a referendum and on issues under authority of the local government assembly for which the assembly itself requested a referendum vote or at the request of a number of voters specified by the statute of the local government.

The subject of a local referendum may include issues which, according to the statute of the local government, have been specified as the responsibility of the local government assembly, with the exception of issues pertinent to the budget and final statement of the budget of the local government unit and issues about the election responsibilities of the local government assembly.

The subject of a local referendum may not be in contradiction with Article 38, Paragraphs 2 and 3 of this Law, and in the case of local government units which are in the territory of the autonomous province – it may not be in contradiction with the Autonomous Province Statute.

### **Article 47 - Local Government Referendum at the Request of Voters**

When a number of voters, defined by the local government statute, files a petition for holding a referendum and when the local government to assembly finds that the petition is about issues which are not under their authority, or that it is about issues which do not require referendum or about issues which are not in conformity with Article 38, Paragraphs 2 and 3 of this Law or the Local Government Statute, the Assembly shall ask the Constitutional Court to resolve it in 15 days.

Depending on the opinion of the Constitutional Court, the Local Government Assembly shall either pass the decision on holding the referendum or notify the referendum petitioners that the referendum is not legally possible

### **Article 48 - Application of Provisions on Republic Referendums**

Articles 40, 42 and 43 of this Law shall also apply to implementation of a Provincial and a local government referendum.

## **III. CIVIL INITIATIVE**

### **Article 49 - General and Specific Initiative**

A civil initiative may be filed as:

- 1) a specific proposal for adoption, amendment or annulment of a specific act, with a draft of the proposed document and its explanation (specified initiative), or
- 2) a general proposal for adoption, amendment or annulment of a specific act or addressing a specific issue; the proposal has to clearly show the direction of the change, or the solution proposed (general initiative).

### **Article 50 - Petition Board**

In order to launch a civil initiative, citizens shall form a petition board of at least three members with the right to vote.

The petition board may form special boards for collection of signatures at specific places.

### **Article 51 - Notice of Proposal**

The Petition Board shall create a proposal in one of the forms anticipated in Article 49 of this Law; sign and submit it to the Assembly responsible for adoption of the act or addressing the issue, for the purpose of providing information and verification of the proposal.

The proposal shall be registered in the register of received proposals and the petition board shall receive a certificate of receipt thereof.

The proposal may not be amended in any way after it has been adopted.

### **Article 52 - Proposal Verification**

The Speaker of the Assembly which received a proposal from the petition board verifies whether the proposal has been formulated in accordance with Article 51, Paragraph 1 of this Law, and whether it pertains to issues under the authority of the Assembly; if that is the case, the Speaker shall inform the board about it within seven days.

If the Speaker of the Assembly deems that a received proposal has not been formulated in accordance with Article 51, Paragraph 1 of this Law, or that it does not pertain to issues under

the authority of the Assembly, the Speaker shall be obliged to put the proposal on the next Assembly session's agenda.

The Assembly may decide to accept the received proposal or not, and the Speaker of the Assembly shall inform the Petition Board about the Assembly's decision within seven days.

The Petition Board may file a complaint to the Administrative Court against the Assembly's decision which rejected the proposal, within eight days from the date of receiving notice referred to in Paragraph 3 of this Article.

The Administrative Court shall decide on the complaint referred to in Paragraph 4 of this Article within 15 days from the date of receipt and its decision on the matter shall be final.

The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes.

Until the Administrative Court becomes operational complaints referred to in Paragraph 4 of this Article against decisions of the provincial and local government assemblies shall be decided upon by district courts, and complaints against decisions of the National Assembly shall be addressed by the Supreme Court of Serbia.

### **Article 53 - Collecting Signatures**

The Petition Board may begin collecting signatures after receiving notice from the Speaker of the Assembly about verification of the proposal. The Petition Board shall be obliged to end the collection of signatures not later than 90 days from the date or receipt of the notice and to file the list of signatories to the Assembly within that time limit.

If the Petition Board fails to collect sufficient number of signatures within the time limit referred to in Paragraph 1 of this Article it may notify the Speaker of the Assembly that the collection of signatures will be continued in the following 30 days.

If the Petition Board does not submit the list of signatories to the Assembly within the time limit referred to in Paragraph 2 of this Article it shall be considered as if the initiative has never been launched.

### **Article 54 - Manner of collecting signatures**

The Petition Board shall be obliged to submit a list of locations where the signatures will be collected to the mayor of the city or municipality three days before the collection of signatures begins and to visibly place a copy of the proposal for which signatures are being collected and the mayor's notice of verification thereof, at the locations where signatures are to be collected.

Locations where signatures are to be collected shall have to be accessible to the public and the action of collecting signatures there must not obstruct the usual purpose of these locations or violate the public order rules.

If collecting signatures at certain locations shall obstruct their usual purpose or violate the public order rules, the mayor may at the proposal of the competent organ of interior, forbid further collection of signatures at those locations.

### **Article 55 - Providing citizens with information on the initiative and the campaign**

The Petition Board may hold a civil initiative campaign and to call on citizens to take part in it, by observing the principles of volunteerism and freedom of thought of every citizen.

For participation on a civil initiative no material means from the private or public sources may be promised or given.

Citizens shall have the right to point to the Assembly to oversights and shortcomings in the collection of signatures for the proposal contained in the civil initiative.

### **Article 56 - Funding**

Funds for the civil initiative campaign shall be secured from the donations provided by citizens and legal entities.

The Petition Board may raise funds for purposes referred to in Paragraph 1 of this Article, on condition that the funds are kept at the separate bank account and that after the collection of signatures is done and over notify the public about the collected amount and spending thereof.

### **Article 57 - Contents of the List of Signatories**

Citizens' signatures shall be collected in a form for collecting signatures for a civil initiative:

- 1) the proposal for which signatures are being collected with the Assembly's register number;
- 2) the number of the signature, legibly written name and surname of the person who signed the initiative, his/her address, unique register number and signature;
- 3) the date and location where signatures were collected;
- 4) the note that all signatories have signed the initiative only once and a note on potential recall of a signature;
- 5) the signatures of the petition board members, or a board responsible for the collection of signatures.

A citizen may sign a civil initiative list only once.

### **Article 58 - Recall of own signature**

A citizen may recall his/her signature by the last day designated for the collection of signatures.

A signature shall be recalled in writing, the board responsible for the collection of signatures shall state the recall in the list of signatories supporting civil initiative.

### **Article 59 - Verification of Compliance to Requirements**

The Assembly which received a list of signatures supporting a civil initiative shall verify whether the list is in accordance with provisions of this Law and whether sufficient number of signatures has been collected.

If the Assembly finds that the list is not in accordance with provisions of this Law or that it does not include sufficient number of signatures, the mayor shall inform the Petition Board about it within seven days. The mayor may specify a month long time limit for these shortcomings to be corrected.

The petition board may file a complaint to the Administrative court if they deem that the Assembly's actions referred to in Paragraph 1 of this Article were incorrect. The complaint shall be filed within eight days from the date of receipt of the notice referred to in Paragraph 2 of this Article.

The Administrative Court reviews the complaint referred to in Paragraph 3 of this Article within 15 days from the date of receipt of the complaint and its decision shall be final.

The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes.

Until the Administrative Court becomes operational complaints referred to in Paragraph 3 of this Article against decisions of the provincial and local government assemblies shall be decided upon by district courts, and complaints against decisions of the National Assembly shall be addressed by the Supreme Court of Serbia.

#### **Article 60 - When an initiative is considered to be launched**

A civil initiative shall be deemed launched when the list of signatures, which is supporting it, is in accordance with provisions of this Law and when a sufficient number of signatures are collected.

#### **Article 61 - Decision about the Initiative**

The Assembly which received a valid civil initiative shall be obliged to render a decision about it within 60 days from the date when the list supporting the civil initiative was received, and in the manner and according to the procedure defined by the Constitution, law, the Autonomous Province Statute, local government statute or the Assembly's Rules of Procedure.

#### **Article 62 - Notice of Rejection**

When the Assembly rejects a proposal presented in a civil initiative referred to Article 54 of this Law they are obliged to inform the Petition Board about it.

#### **Article 63 - Protection of Rights**

Citizens and a Petition Board may file a complaint to the Administrative Court against the mayor's decision passed based on Article 54 Paragraph 3 of this Law or if they deem that the Assembly's actions in regard to the case referred to in Article 62 of this Law were incorrect.

The complaint referred to in Paragraph 2 of this Article shall be filed within eight days from the date of receipt of the Assembly's notice, the Administrative Court shall review the complaint within 15 days from the date of receipt of the complaint and its decision shall be final.

The Administrative court shall rule on the complaint by a council of three members by applying the provisions of the law on administrative disputes.

Until the Administrative Court becomes operational complaints referred to in Paragraph 2 of this Article against decisions of the provincial and local government assemblies shall be decided upon by district courts, and complaints against decisions of the National Assembly shall be addressed by the Supreme Court of Serbia.

### **IV. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 64 - Application of Election Regulations**

In terms of polling stations, voting materials, the way electoral boards are operating, the manner of voting, calculating results, and other issues in regard to voting which have not been regulated by this Law appropriate provisions of the law which regulates the election of members of parliament shall apply.

**Article 65 - Rescindment**

With the date of entry into force of this Law the Law on Referendum and Civil Initiative („Official Gazette of the Republic of Serbia“, No 48/94 and 11/98) shall cease to be valid.

**Article 66 - Entry into Force**

This Law shall enter into force on the eighth day from the date of publication in the "Official Gazette of the Republic of Serbia".

## EXPLANATION

### 1. Constitutional Basis for Adoption of the Law

Constitutional basis for adoption of this Law is contained in Article 97 Item 2 of the Constitution of the Republic of Serbia, according to which the Republic of Serbia is responsible to regulate and secure the protection of citizens' freedoms and rights and in Article 108 Paragraph 1 of the Constitution which specified holding a referendum at the request of majority of members of Parliament or at least 100,000 voters, in accordance with the Constitution and law.

### 2. Reasons for Adoption of the Law

According to the Constitution of the Republic of Serbia civil sovereignty stems from citizens voting in the referendum, from a civil initiative and through freely elected representatives (Article 2 Paragraph 1). Pursuant to the principle of civil sovereignty, Article 176 Paragraph 1 of the Constitution specified that citizens have the right to Provincial Autonomy and local government which are exercised directly or through their freely elected representatives.

According to Article 107 Paragraph 1 of the Constitution it takes at least 30,000 voters to launch a petition for adoption of a law (civil initiative). Article 108 Paragraph 1 specified the obligation of the National Assembly to announce a referendum for issues under its authority at the request of majority of all its members or at least 100,000 voters, and Paragraph 2 of the same article defined which issues cannot be put to a vote in the referendum. Article 182 Paragraphs 3 and 4 specified that establishing new or dismantling, or merging, the existing autonomous provinces is a referendum matter, also the territory of an autonomous province may not be changed without the approval of citizens in the referendum, in accordance with law. Article 188 Paragraph 2 of the Constitution specified that a local government unit cannot be established or dismantled and its territory cannot be changed in any way without a referendum on its territory. Also, at least 100,000 voters may file a petition requesting amendments of the Constitution (Article 203 Paragraph 1 of the Constitution). In order to adopt an act requiring amendments of the Constitution when such act is dealing with issues specified by Article 203 Paragraph 7, a Republic referendum has to be held, whereas for adoption of the act requiring amendments of the Constitution which deals with other issues the National Assembly has the right to decide whether the act will be subject to a Republic referendum or not (Article 203 Paragraph 6 of the Constitution).

The above presented provisions clearly show that the Constitution has given a lot of significance to referendums and civil initiatives, as forms of direct democracy, or exercising civil sovereignty and that this commitment is in accordance with constitutional principles and modern democratic processes in majority of European and other countries.

The Law on Referendum and Civil Initiative which is currently in effect, was adopted in 1994 and based on a number of its provision it can be qualified as restrictive, obsolete and not in accordance with solutions of the new Constitution as well as with recommendations of the Council of Europe in that particular field. (Recommendation 1704/2005 titled „Referendums: towards good practice in Europe“ and Recommendation 1821/2007 titled „Code of Conduct in the field of Referendum“). Basically, this law does not allow citizens to efficiently exercise their right to participate in governance through civil initiatives and referendums. Because the application of a series of solutions of this law in practice has proven to have some downsides referendums and civil initiatives are seldom used. First of all, the civil initiative is significantly limited by overly short time limit of just eight days for collecting signatures, as well as with the obligation to file a prior notice to the organs of the Ministry of Interior about the collection of signatures. Solutions in the law don't recognize or regulate all types of referendums recognized by the new Constitution. They also do not include rules corresponding with the changes in the

election legislation, they haven't removed the option of manipulation with the election results, and they do not provide an adequate protection of voters and signatories of a civil initiative.

Due to all this, there is an obvious need for adoption of the new Law on Referendum and Civil Initiative which should be, practically and formally, in harmony with the Constitution and enable a wider citizen participation in the governance through referendums and civil initiatives.

### **3. Explanation of specific solutions**

#### **Basic provisions**

Basic provisions (Article 1 to 9) specify the law's subject area, define the referendum (per types and terms and conditions for decisions to be fully effective and binding) and the civil initiative, the rights, freedom and the manner of voting, that is, participation in the referendum and civil initiative, the manner of funding, the protection of rights and the right on suspension of time limits during the break between assembly sessions.

#### **Referendum**

Referendums may be Republic, Provincial and local (according to the area for which is held), and according to the manner of administration, referendums may be mandatory (in cases defined by the Constitution, by law, or by the Provincial Statute or by city/municipal statutes) and optional (at the request of majority of members of Parliament or citizens). According to the moment when a referendum is held there are the following types: preliminary (for the purpose of voting before an action happened) and subsequent (for the purpose of verification of an adopted act). Also, a referendum may be advisory one (for the purpose of obtaining citizens' opinion on a decision that is yet to be passed). Decision is considered to be adopted in the referendum if majority of voters who turn out voted in favor of it, on condition that at least one half of voters plus one turned out to vote in the referendum (general rule) or some other type of majority defined by the Constitution, law or the Provincial Statute, or the city or municipal statute.

Rules are specified for each type of the referendum (Articles 10 to 13), as well as the contents of the decision on holding the referendum (Article 14), and organs responsible for holding it (Articles 15 to 18) and other important issues (Articles 19 to 34). Some of those issues are as follows: polling stations, registering voters, referendum time and day, referendum campaign, referendum issue, ballots, voting and calculation of results. A decision passed in accordance with the law is binding and the Assembly cannot amend it to a significant extent or pass a decision which would be contrary to the decision approved in the referendum within at least a year (Articles 29 and 30). The issue of protection of rights of citizens and referendum proponents is also regulated (Articles 32 to 34).

The section on a Republic referendum (Articles 35 to 43) contains special rules pertinent to the subject matter of voting, a referendum on an international agreement, issues which cannot be put to a vote in the referendum, holding a referendum for a part of the territory of the Republic, a referendum at the request of members of Parliament and voters, as well as on the composition and counter-proposal of the National Assembly (if a referendum is requested by voters).

Specific issues pertinent to Provincial and local referendums are regulated in the following section (Articles 44 to 48).

**Civil Initiative**

Provisions on civil initiatives at the republic, provincial and local levels are contained in Articles 49 to 63. There is a general and a specific civil initiative. The first one pertains to a general proposal to be adopted, an amendment or annulment of a specific act or addressing an issue whereas the latter implies a specific proposal with prepared draft of a legal act to be adopted and its explanation.

In order to launch an initiative a petition board has to be established, the board then formulates a draft and files it to the competent Assembly. The draft needs to be verified solely to avoid collecting signatures for an initiative which is legally not possible. Then, the collection of signatures can begin and it may last for 90 days plus 30 if a prior notice about the collection locations was sent to the mayor. A petition board may organize a campaign to promote its civil initiative and the funds for the campaign are provided from donations of citizens and legal entities. The list of signatories has also been regulated as well as verification of compliance to requirements for the list. The Assembly which receives a valid initiative has the obligation to make a decision on it within 60 days and notify the board about its decision. Citizens and the petition board have the option of judicial protection before the Administrative Court (Article 63).

**Transitional and final provisions**

Transitional and final provisions regulate the application of the election legislation, rescindment of the existing law, and coming into force of this Law.

**4. Financial Means of Implementing this Law**

Implementation of this law does not require additional funds in the budget of the Republic of Serbia.