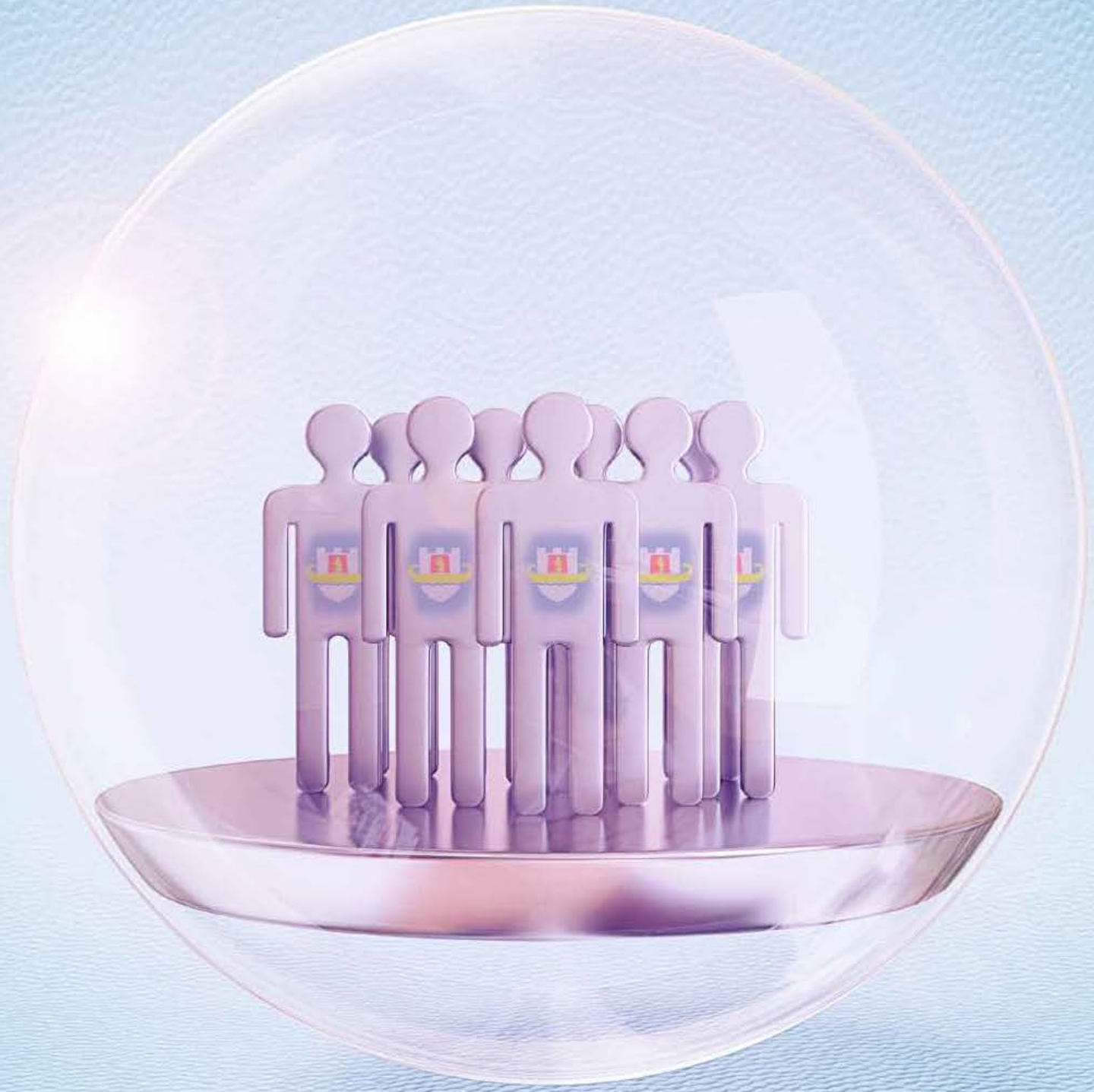
MONITORING AND EVALUATION REPORT, AUGUST 2011 - JUNE 2012

TRANSPARENCY OF LOCAL DECISION-MAKING AND PUBLIC PARTICIPATION IN DURRËS MUNICIPAL COUNCIL



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MONITORING AND EVALUATION REPORT

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AUGUST 2011 - JUNE 2012

IMPLEMENTED BY
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In the frame of the project:
"Fostering transparency in decision making process in local government by supporting active citizens' participation and through continuous civic monitoring."

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INTRODUCTION

"Transparency of Local Decision-Making and Public Participation in Durres Municipal Council" is the final product of a new initiative taken by the Center for Public Information Issues. Subject to monitoring and assessment in the framework of this research is the activity and functioning of Durres Municipal Council in two aspects, which are clearly defined by the law[1]: ***guaranteeing public participation in the decision-making process*** and the ***practical implementation of the decision-making process***, which consists of discussion, voting and announcement of the decisions. This Monitoring was conducted with the important support provided by the National Endowment for Democracy (NED), with its headquarters in Washington D.C.

The period covered by this monitoring starts in August 2011 and ends on July, 2012 (***12 months***). The reason why this period does not cover a full calendar year, but is divided in two consecutive years, is related to the delay in establishing the new Municipal Council in Durres, following the completion of local elections of May 8, 2011. The new elected Council was established only in August, 2011. The first 12-months session of the new Municipal Council concluded exactly on July, 6, 2012.

The novelty of this monitoring is that for the first time it combines a ***double assessment*** of the public's right[2] to participate in the local decision-making and the obligation of the Municipal Council to conduct the decision-making process pursuant to the relevant provisions[3] of the law 8652 *"On the Organization and Functioning of the Local Government", amended*[4].

In order to conduct this double assessment, the Center for Public Information Issues (CPII) developed a specific methodological tool, called ***PROACTIVE***, which represents one of the most important approaches in the frame of this initiative. ***PROACTIVE*** (*modified acronym for:* ***Protocol for Assessing Transparency in Decision-Making of the City Council through Active Civic Participation"*** is *sui-generis*, which means that is *"tailor-made"* for the relevant legislation in force in the Republic of Albania, concretely the Law 8652 *"On the Organization and Functioning of the Local Government", amended*. **PROACTIVE** is specifically designed also to assess and evaluate the level of proactive disclosure not only of the enacted decisions, but of the entire decision making process, as activated and provided by the public decision making body in local level (municipal council).

It is clear that, in the focus of this monitoring is exclusively the activity of the Municipal Council, which exercises the functions of the collegial decision making body at local level. The administration of the Municipality as a centralized monocratic body, headed by the Mayor, is not subject to monitoring. This differentiated approach represents also another novelty, if we bear in mind that no attention has been paid so far to the division and separation of the decision-making and executive powers at local level, in the context

of evaluating and assessing the transparency by the civil society operators or even international organizations working in Albania.

The CPII has calculated also the level of implementation[5] of the relevant legal provisions by Durres Municipal Council itself. Concretely, subject to evaluation and assessment in the frame of this report is the implementation of the ***Articles 33, 34 and 35*** of the organic law 8652 *"On the Organization and Functioning of the Local Government", amended.* These articles set the modalities of the discussion (including the one with the public), voting process, announcement and entry into force of the decisions of the Municipal Council. **Functioning of the Council in compliace with these legal provisions is a judicial and factual condition to guarantee a lawfull and transparent decision-making process, throgh ensuring public participation and effective access to the local legislation** (Announcement Notification of the decisions enacted by the Municipal Council).

It is clear that in the context of this monitoring research, *access of the public to the Council's decision* is not the same with the *participation of the public in the decision-making process.* This clear distinction between these two composite concepts, even though they are in fact organically linked, provides clear methodological advantages to assess transparency during all steps of the local decision-making process. This careful and clear concept distinction and separation for assessment purposes could be considered another important novelty of this initiative.

The evaluation results concerning the level of implementation of the legal provisions are presented in graphs and percentages. This evaluation is also conducted for the first time in Albania. The method developed and employed by the CPII could serve as a model[6] for other actors, too, who have an interested in the objective assessment of the implementation of specific laws or provisions at local government level.

Durres Municipal Council is specificely targeted by this montoring findings, without excluding though the municipality administration. Donors (governmental or non-governmental), who cooperate with the local government and community, are another specific target, too. Another intended target is the local media in Durres. This report will become available also to all Durres citizens, so that they star to evaluate from a different prospective the performance of their elected representatives in the Municipal Council.

The Report "Transparency of Local Decision-Making in Munilcipal Council of Durres and Public Participation" is published when less than a year remains from the deadline of the implementation of the Crosscutting Strategy in the Public Administration (CSPA), '09-'13. Part of the government vision stated in this important document is *"an administration based on transparent decision-making processes, which is involved and accountable to the public".* The findings of this report provide an additional opportunity for the Central Government to evaluate how the objectives set out in the framework of the CSPA have

been met, especially with regard to "*transparent decision-making processes*".

This report is published at a time when the Albanian Government has joined also global initiatives that aim at increasing the transparency in the decision-making process, such as the Open Government Partnership, joined by Albania on August 2, 2011.

The Center for Public Information Issues, as a civil society operator specialized in the area of access to legislation and transparency of official publications, adheres to the motto that ***"Albanian citizens should know what decisions are taken on their behalf".*** The official acts, at central and local level, are a public asset of unique value and as such they should be effectively available and accessible to all citizens. In this sense, the assesssment of the level of this access is a direct indicator to evaluate the compliance with the commitments already taken by the Albanian state not only towards itself, but also at international level.

In the framework of the reforms that aim at decentralization, the access to local legislation has a special importance nowadays. The local government bodies, concretely Municipal / Communal Councils, carry out today a wide range of decision- making activities. With their extensive powers recognized by law, the local government bodies could take important decisions on territory and property, local taxes and tariffs, loans, grants, etc. Such important decisions, with a direct impact on population and territory, should necessarily be under constant and close public observation. This supervision must be conducted not only prior to the decision-making process (through consultative processes with the interested actors and public), but also after the decisions are been taken (through the Prefect and/or interested actors).

The promotion of an efficient method, but also of a new culture of legal and democratic control on the official acts issued by the Municipal Councils, is one of the objectives of this initiative undertaken by CPII. The latter has extended its expertise and know'how obtained by monitoring state publications of the central constitutional institutions also to the local government bodies, hoping that in this way it is also bridging the gap (vacoom) created in the last 12 years, since the Law 8652, dated 31.7.2000 "*On the Organization and Functioning of Local Government", amended,* entered into force.

Gerti Shella
Project Director

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1. *Mainly Articles 33, 34 and 35 of the Law 8652 "On the Organization and Functioning of Local Government",amended.*
2. *Article 23 of the Constitution of Albania (SECOND PART, Chapter II of the Constitution).*
3. *These are concretely the Articles 33, 34 and 35 of the law in question, which establish almost completely the obligation for public transparency at local level. The monitoring of their implementation by the Municipal Council generates objective indicators for the assessment of transparency on local decision-making process (see the detailed explanations below that are presented on legitimacy).*
4. *These provisions define juridically and factually that which is regarded today as "effective access to the decision- making process", through setting the rules and procedures on announcement and publication of official documents.*
5. *Or level of compliance with relevant legal provisions of the law 8652 "On the Organization and Functioning of the Local Government", amended.*
6. *The method is intellectual property. Its usage by other interested actors could be easily activitated through a written permission issued by the author or the Center for Public Information Issues, CPII.*

FIRST PART

LEGAL FRAMEWORK AND MONITORING LEGITIMACY

1 LEGAL FRAMEWORK AND MONITORING LEGITIMACY

I. DECISION-MAKING PROCESS AT LOCAL LEVEL

The Local Government in the Republic of Albania is established based on the principle of decentralization of power and it is exercised according to the local autonomy (*subsidiarity*) principle (*Article 13 of the Albanian Constitution*).

The Local Government bodies are entitled to issue official acts. The official acts that are issued by the Local Government bodies have power only within the territorial jurisdiction where these bodies exercise the authority (*Article 116 of the Constitution*). The principles and procedures on issuing local judicial acts are provided for by law (*Article 120 of the Constitution*).

The Law 8652, dated 31.7.2000 "*On the Organization and Functioning of Local Government", amended,* regulates the institutional activity of the local government bodies in the Republic of Albania. According to this law, the bodies of the Local Government units exercise their powers through decisions, ordinances and orders" (*Article 7*). These official acts are mandatory to all the subjects included in (targeted by) the official act, which are under their jurisdiction (*Article 8/"b", Law 8652*).

The main decision-making function at local level is carried out by the Municipal/Communal Councils. The latter are considered as parliaments of the cities/towns and the law charges them with very important decision-making powers and attributes, such as setting local taxes and tariffs, approval of the annual budget, taking loans and

PURSUANT TO ARTICLE 32 OF THE LAW 8652, "*On the Organization and Functioning of Local Government*", THE MUNICIPAL COUNCIL HAS THE FOLLOWING POWERS AND COMPETENCES:

a) Approves the statute of the commune or the municipality and the internal regulation of its functioning.
b) Elects and discharges the Chairman and the Deputy Chairman of the Council.
c) Nominates and discharges the Secretary of the Communal or Municipal Council.
ç) Approves the organizational structure and the basic regulations of the administration of Commune or Municipality, of the units and budgetary units under the Commune or Municipality, as well as the number of their staff, applications for qualifications, salaries and the ways of renumerating employees and other elected or nominated persons in accordance with the legislation in force.
d) Approves acts for establishing enterprises, business companies and other judicial persons, which are established by the Council itself or in which it is a co-founder.
dh) Approves the budget and its changes.
e) Approves the alienation or renting properties of third parties.
ë) Organizes and supervises the internal control of the Commune or the Municipality.
f) Set the local taxes and tariffs and their level.
g) Decides on taking loans and settling obligations in regard to the third parties.
gj) Decides on establishing joint institutions with other units of the local government, including the subject of joint powers or with third parties.
h) Decides to initiate legal proceedings on issues related to its powers.
i) Elects the representatives of the Communal or Municipal Council in the Council of the Prefecture.
j) Decides to give or remove the mandate of the advisor.
k) Approves norms, standards and criteria on regulation and supervision of functions that are provided to the Council by the law and to protect and guarantee public interest.
l) Decides on the symbols of Commune or Municipality.
ll) Decides on the names of roads, squares, territories, institutions and objects in the jurisdiction of Commune or Municipality.
m) Awards titles of honour and incentives.
n) Decides on the rules, procedures and ways of carrying out the delegated functions, in accordance with and for the implementation of the law, pursuant to which the functions are delegated to the Commune or Municipality.

grants in considerable amounts, or even very critical decisions on the territory and public properties which have been recently transfered to be administered by the local authorities.

In the course of exercising their powers, the Municipal/Communal Councils issue decisions of normative and individual nature, which are mandatory to be implemented by the subjects under their jurisdiction. The ***Law 8652*** regulates in detail the process of examining, voting and announcement of the decisions of the Municipal/Communal Councils (*Article 33 of the Law 8652*). The voting of project-decisions in the Council can be conducted open or in secrecy . The Council decides on the cases when will be a secret voting. The acts of individual nature[7] are approved by secret voting at all times.

Following the amendments to the Law 8652 in 2004, it is provided for only one case when the decisions should be taken by three fifths of the total number of the members of the Council and this is concretely the case when the Council *"approves the changing of destination or renting out a property to third parties[8]"*.

ARTICLE 33
"THE VOTING"

1. *Voting in the Council could be open or secret. The Council decides on the cases when voting is secret. The acts of individual nature are approved by secret voting at all times.*
2. *The decisions of the Council are taken with the majority of votes of the members attending the meeting.*
3. *The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gj", "i" and " j" of Article 32 of this Law, are taken with the majority of votes of the total number of members of the Council.*
4. *The decisions are taken with three fifths of the total number of the members of the Council for cases provided for by Article 32, letter "e" of this Law.*
5. *In cases of voting for the chairman, deputy chairman and secretary of the Council, when the required majority is not secured, voting is redone between two candidates, who got the biggest number of votes in the first round.*
6. *The official acts of the Council are published within 10 days from the date of their approval and they enter into force 10 days after they are announced. The official acts of individual nature enter into force on the date when the subjects that are included in them are notified.*

II. PARTICIPATION IN THE DECISION-MAKING PROCESS

The main mission of the local government (authorities) in the Republic of Albania is to ensure governing at a level, which should be as close as possible to the citizens, through *"respecting the fundamental human rights and freedoms, which are sanctioned in the Constitution or other laws[9]"*. The public's right to participation and information are both included in the "Fundamental freedoms and Human Rights" Chappter of the Constitution of Albania[10], which, in its Article 23 explicitely provides:

1. *The right to information is guaranteed.*
2. *Everyone is entitled, in accordance with the law, to get information on the activity of the state bodies as well as the persons, who exercise state functions.*
3. *Everyone is provided with the opportunity to attend the meetings of collectively elected bodies.*

These constitutional guarantees are faithfully transposed to the provisions of the Law 8652, dated 31.7.2000 *"On the Organization and Functioning of Local Government", amended*[11]. In reference to the constitutional right to participation, Article 34 of this Law stipulates explicitly that: ***The meetings of the Council are open to the public. Every citizen is allowed to attend the meetings of the Council, pursuant to the way defined in the regulation of the Council.***

The notice on the incoming meeting of the Council is posted (displayed) in places specified by the Council and in media. The notice includes the date, place, time and agenda of the meeting

The Council decides with the majority of votes of the total number of members on cases when the meeting is closed to the public.

Prior to the examination and approval of the project-decisions, the Communal or Municipal Council, conducts consultative sessions with the community. Consultation with the community is conducted on every occasion pursuant to the method defined by regulation of the Council, making use of one of the necessary forms, such as open meetings with inhabitants, meetings with experts, interested institutions or non-governmental organizations or through taking the initiative to organize local referendums.

The participation of the public in the decision-making process is not the same with the access of the public to local legislation. The first implies ex-

clusively the participation of interested actors and general public during the process of drafting or examining the draft acts, in order to have a harmonized decision-making, whereas the second implies in most of the cases the access to local legislation, or in another words, effectively informing the public of the decisions issued by the Council, once the process of examining and voting them has finished. The legislator has been careful to regulate separately the public participation in the decision-making process and guaranteeing the access of the public to the anacted decisions through their announcement (*see more on this below*).

ARTICLE 34
"THE OPEN MEETINGS"

1. *The meetings of the Council are open to the public. Every citizen is allowed to attend the meetings of the Council, pursuant to the way defined in the regulation of the Council.*
2. *The notice on the meeting of the Council is posted in places specified by the Council and it is also published in media. The notice includes the date, place, time and agenda of the meeting*
3. *The Council decides with the majority of votes of the total number of members on cases when the meeting is closed to the public.*

III. ACCESS TO LOCAL LEGISLATION

In regard to announcement and entry into force of the decisions of the Municipal / Communal Councils, under Article 33/6 *"The official acts of the Council are announced within 10 days from the date of their approval and they enter into force 10 days after they are announced. The official acts of individual nature enter into force on the date the subjects that are included in them are informed."*

The decisions of the Council are dispalyed/posted in public places as defined by the Council, within the territory of the commune or municipality and, depending on the possibilities, the Council defines also other forms for their publication. The public, in every commune and municipality, can be also informed[12] based on the provisions of the Law no.8503, dated 30.6.1999 *„On the right of information about official documents"* and on the rules defined to this end by the relevant council itself (**Article 35 of the Law 8652).** At this point, the juridical modalities of the decision-making and those of transparency with the public are in reality organically unified with each other (or better saying, organically linked to one another).

Therefore, the compliance with these provisions is a ***juridical*** and ***factual*** prerequisite to guarantee the public access to local legislation, in the sense of effectively informing the citizens on the decisions approved by the Municipal Council, so that they can follow. It is clear that the public access to the materialized decision-making process (written decisions of the Municipal Council) is not the same in essence as the participation of the public in the preliminary process of examining the draft-acts by and with the Council. The *acess to legislation* implies having/guaranteeing the effective possibility to know the juridical-administrative norms set by the decision-making authority, concretely the Municipal Council.

The concretization of the decisions as paper-written by the Council, printing them out and announcing them represent the materialization of the whole decision-making process. Only in this forme and shape, they become the synthesis or the final product of the decision-making process. Despite the fact that the (physical) participation of the public in the decision-making process may have been guaranteed, if the public is not provided with effective access/means to be informed of the enacted decisions where the process get materialized, the participation itself loses its goal and essence.

The publication of the official acts constitutes one of the fundamental principles of governing, both at central and local level. This principle affirms the prerequisite that the physical and juridical subjects could be informed of the legal norms that are issued by the government bodies[13] in order that they could have the possibility later on to implement /follow or atc in compliance with them. For this particular reason, acts publication or announcement is a public service, which the decision making bodies should provide at cost's price. Based on these rationale, acts' publication is a constitutional and legal obligation of the gov-

ernment bodies. In theory this is referred to as "proactive information[14]" of the public, in order to distinguish it from active information, which is guaranteed by the laws "On the right of information". In the case of the latter, the citizens themselves are entitled[15] to ask for information in relation to a formal request, which is filed at the body, which has the intended information available.

The Law 8652,*"On the Organization and Functioning of Local Government", amended*, has also provided for this information format (the active one) on the official acts that are issued by the local authorities, making a direct reference to the Law no.8503, dated 30.6.1999 ***"On the right of information for official documents"***. The same legal provision, which defines the announcement and publication modalities for the official acts of the Municipal Council, explicitly stipulates also that: ***"The public in every commune and municipality is informed in accordance with the Law no.8503, dated 30.6.1999 "On the right of information for official documents"*** and the rules set by the relevant council itself to this end".(*Article 35/3, second sentence*).

ARTICLE 35
COUNSULTATION SESSIONS WITH COMMUNITY AND PIBLIC'S RIGHT TO INFORMATION

1. *Prior to the review and approval of acts, the communal or municipal council shall conduct consultation sessions with the community. These sessions are compulsory in cases as provided by article 32,letters "dh", "e", "f" and "k" of this law.*
2. *In each case, consultations with the community is done according to the modalities specified in the council regulation, applying one of the required forms such as open meetings with the inhabitants, meetings with experts, interested institutions and non-governmental organizations or launching the initiative for the organization of local referenda.*
"2/1. *For communal/municipal council, consultation sessions with the chairmen and chairmanship of villages under jurisdiction are compulsory, in accordance with the provisions of letters "ç", "dh", "e", "f", "k" and "ll" of article 32 of the law. In this case, counselling sessions are recorded in minutes [1].*
3. *Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate, the council shall also designate other forms of their publication. Public information in each commune and municipality is done in accordance with Law No.8503, dated 30.6.1999 "On the right to information on official documents" and rules designated by the respective council for that purpose.*

IV. THE GOAL OF MONITORING

It is clear from the above presentation that the Law 8652, dated 31.7.2000 " *On the Organization and Functioning of Local Government", amended*, has carefully transposed some important constitutional principles[16], with the clear intention to guarantee a transparent and open decision-making process to the public. The legislator has organically linked in the provisions of the Law 8652, the rules and the procedures on decision-making process of the locally elected representatives with the right of the public to be involved in this decision-making process. This involvement of the public is activiated ***at the beginning, during and at the end of*** the decision-making process. Concretely, this implies the preliminary consultation of a category of official acts[17] with the interested public/staholders, attendance of the meetings in the room while they are taking place and the access to the materialized decisions of the Council. The latter is guaranteed both through proactive information (announcement of the official acts by the Municipal/ Communal Council itself) and active information (through the provisions of the Law *8503 "On the right of information for official documents"*).

The articles 34 and 35 of the Law 8652 are the practical embodiment of this organic link, which aims to guarantee a transparent and open decision-making. While the article 33 provides carefully for the voting procedure and the entry-into-force legal modalities (*point 6*). The strict implementation of their provisions is a juridical prerequisite[18] to have a lawfull and open decision-making process.

Logically, the measurement and evaluation of the implementation level of the articles 34 and 35[19] automatically produces direct indicators for the objective assessment of the level of transparency and openness in local decision-making. In addition, measuring the implementation level of the article 33 indicates legitimacy of the council's decisions and the "strength" of their juridic power. As a matter of fact, the point 6 of article 33 is strictly correlated to the point 3 of the article 35. They should have been bonded together (and must be[20]), but, for some unknown reasons the lawmaker divided / distributed

them in two different articles. For methodological purposes, the enforcement level of the point 6 of article 33 will not be included nor used[21] as a variable in the evaluation process through which the level of transparency and openness of the decision making in Durres will be calculated or implied.

To monitor the decision-making and its transparency in local level means to monitor indispensably the implemeation level of the articles 33, 34 and 35 of the law 8652, amended. Each and every monitoring undertaken outside this logic (approach), would be un-anapropriate, non-serioz and incompetent to "diagnose" the problems related to local decision making.

In this sense[22], developing a methodological tool to evaluate the level of implementation of these three articles in practice has been one of the main objectives of this project. This new monitoring and assessment method was undertaken to be developed by the CPII in the framework of this integral project, which was implemented in two of the main municipalities, concretely in Durrës and Korça. The methodological model is of the type ***"Monitoring through Participation[23]"***, or ***MP*** in short.

While, the methodological tool developed by the CPII, named ***PROACTIVE*** *(a modified acronym for:* ***Protocol for Assessing Transparency in Decision-Making of the City Council through Active Civic Participation", is*** *sui-generis,* meaning that it is ***"tailor-made"*** to the relevant legislation in force in the Republic of Albania, concretely the Law 8652 *"On the Organization and Functioning of Local Government", amended.*

In general terms, the PRO ACTIVE combines in a single bloc the **monitoring of compliance with the law and the transparency of the decision-making of the Council** through **active citizens' participation and reporting.**

BRIEFLY ON THE MUNICIPAL COUNCIL OF DURRES

The Municipal Council of Durres city has 45 members. The new Municipal Council of Durres was mandated on August 10, 2011, following the local elections of 8 May 2011. The members of this Council elected as their chairman Mr. Idrit Hamiti[24] from the Party for Justice, Integration and Unity, whereas Mr. Edmond Rubiku[25]was elected as Deputy Chairman. Mrs. Meliha Maloku[26] was re-elected as Secretary of Durres Municipal Council.

Other related documents and actors who address the problem

1. **Strategy on Public Administration Inter-Sector Reform, 2009-2013, of the Albanian Government.**
2. **Strategy on Innovation and Good Local Governance, Council of Europe.**
3. **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, Utrecht, 16.XI.2009**

7. *Literally translated from Albanian language: acts of indidual character*
8. *Article 33, point 4: "Decisions are passed with three fifths of the total number of the members of the Council for cases provided for by Article 32, letter "e" of this Law."*
9. *Article 3, Law 8652, "On the Organization and Functioning of Local Government", amended*
10. *SECOND PART, Chapter II of the Constitution*
11. *Hereafter referred to simply as: law 8652*
12. *Retrieve information on decisions issued or enacted by the council*
13. *According to the Law 8652, dated 31.7.2000 "On the Organization and Functioning of the Local Government",amended, "The bodies of the local government units exercise their powers through the decisions, ordinances and orders (Article 7). These kinds of acts are obligatory to all the subjects under their jurisdiction, which are included in the act. (Article 8, point "b", Law 8652).*
14. *In some theoretical texts it may be also referred to as "passive information of the public"*
15. *In the case of Albania this is a right that is guaranteed by the Constitution (Article 23) and the Law 8503 "On the right of information for official documents".*
16. *The right of participation and information is included in the "Fundamental Human Rights and Freedoms", which are guaranteed by the Constitution of Albania, concretely in its 23 Article.*
17. *Discussion with the public is mandatory by law for the cases of desions on budget, fiscal package, alienation of properties and in cases of approving the norms and standards on regulation and control of the functions that Councils are provided by the law (neni 35/1).*
18. *Guranteeing an open and transparent decision-mking process to the public is not left at the assessment, discretion or sense of responsibility of the locally elected representatives, but it is regulated by law, mainly through Articles 33, 34 and 35.*
19. *Article 34 "on the open meetings" and Article 35 "Sessions of consultations with the community and the right of the public to be informed".*
20. *see chapter on Recommendations*
21. *Will not influence the outcome on the of the transparency and openness level in Durres Municipal Council.*
22. *In the context that is defined by Article 33, 34 and 35 taken together.*
23. *See: Methodology of the Project.*
24. *Decision No. 2 dated 09/ 08/2011, click to download: http://www.infocip.org/al/pdf/pl/durres/2011/vendim%20nr%202.pdf*
25. *Decision No. 3 dated 09/ 08/2011, click to download: http://www.infocip.org/al/pdf/pl/durres/2011/vendim%20nr%203.pdf*
26. *Decision No. 7 dated 22 1 09 12011, click to download::http://www.infocip.org/al/pdf/pl/durres/2011/vendim%20nr%207.pdf*

SECOND PART

THE MONITORING FINDINGS

2 THE MONITORING FINDINGS

BRIEF EXPLANATORY

The SECOND PART of this Report provides detailed explanation on the findings of the monitoring carried out by the Center for Public Information Issues, in cooperation with its local branch, the Citizens' Transparency Office in Durres. The primary object of monitoring is the observance (enforcement level) of the Articles 33, 34 and 35 of the Law no. 8652 "On Organization and Functioning of Local Government", amended.

As it became clear in the explanation provided in the First Part, the rigorous compliance with these three articles by the Municipal Council is a prerequisite for having ***a law-abiding, participatory and transparent decision-making process.***

Findings in this Second Part will be listed according to the ranking criterion as of these Articles into the very ***Law no. 8652, amended.*** *which means that they will comence with "Observance of the Article 33", then with "Article 34" and in the end with "Observance of Article 35". All relevant paragraphs and material provision within each paragraph will be subject to evaluation. All the assessment data provided in the* ***PART TWO*** *will be further processed in the* ***PART THREE****, to visualize the monitoring findings and to indicate level of compliance with these articles by the Municipal Council of Durres, as well as the transparency level and the improvements generated during first project intervention in Durres. (Aug. 9th, 2011-July 6th, 2012).*

1. OBSERVANCE OF THE ARTICLE 33, "THE VOTING"

Law 8652 "On the Organization and Functioning of the Local Government", amended

ARTICLE 33

"THE VOTING"

1. Voting in the Council could be held openly or in secrecy. The Council decides on the cases when voting is secret. The acts of individual nature are approved by secret voting at all times.
2. The decisions of the Council are taken with the majority of votes of the members attending the meeting.
3. The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gj", "i" and "j" of Article 32 of this Law, are taken with the majority of votes of the total number of members of the Council.
4. The decisions are taken with 3/5 of the total number of the members of the Council for cases provided for by Article 32, letter "e" of this Law.
5. In cases of voting for the chairman, deputy chairman and secretary of the Council, when the required majority is not secured, voting is redone between two candidates, who got the biggest number of votes in the first round.
6. The official acts of the Council are published within 10 days from the date of their approval and they enter into force 10 days after they are announced. The official acts of individual nature enter into force on the date when the subjects that are included in them are notified.

Unlike the articles 34 and 35 of the law 8652 which are of extreme importance in the frame of this monitoring evaluations, the article 33 represents a lower interest due to the simple fact that it "targets" exclusively the council as a decision making entity, and not at all the public which is the primary target and of greater concern in the frame of this initiative. The public's involvement in the decision making process in local level is mainly provided by the article 34 and especially by the article 35.

Nevertheless, one cannot pretend to make any assessment of the decision making in local level through skipping the observance of the voting modalities as legally performed by the Municipal Council in its open meetings, based on the provision of Article 33. In the end of the day, the decision making process consists on three well distinct phases: **1)** ***discussion with community*** of the project decisions, or as commonly known and public consultations, **2)** ***voting procedures*** in the meeting (Art.33), and **3)** ***announcement notification*** of the enacted decisions, so they become known by those who must follow (the subjects) such norms set by the Council.

THE MONITORING FINDINGS

1.1 SECRET VOTING OF THE DECISIONS OF INDIVIDUAL CHARACTER *(ART. 33/1)*

During the first 12 months in exercising its mandate (August, 9th, 2011 – June, 6th, 2012), Durrës Municipal Council passed in total 60 Decisions; 38 of them during 2011, while the rest until July, 6, 2012[27].

The vast majority of the decisions passed by Municipal Council are of individual character (54 in total). This classification (distinction) of decisions into two categories, namely of **individual** and **normative** character, was an essential part of the analysis undertaken by the experts of CPII in the framework of this Monitoring[28] *(read more about this argument in:* ***Methodology****)*.

This distinction /division into two categories of the Decisions of Municipal Council is of primary methodological importance for it is a prerequisite for assessing the level of compliance with **provision 33/1**[29] by the Municipal Council itself.

The provision 33/1 defines meaningfully that *"Acts of* ***individual*** *character are always approved by secret ballot"*. Based on the periodic reports compiled by the team of Citizens' Transparency Office in Durres, but also on the thorough and careful evaluation of all audio-video recordings, in which all the meetings of Municipal Council are documented[30], turns out that this provision of the law has been observed only in cases when ***nominal decisions***[31] were passed during the Council's establishment period[32] *(about 9)*.

For all the remaining decisions of ***individual character*** (45), it results that the members of the Council have casted their ballot (voted) openly. Based on the general number of decisions of individual character, CPII has estimated also the level of enforcement of the rule / modality defined by the provision (disposition) 33/1 of the Law 8652 by Durres Municipal Council during its first 12 months of mandate exercising *(Chart 1 & 2, pg.43)*.

The frequent avoidance of legal procedure of the secret ballot for all decisions of individual character, as provided by Article 31/1, in the case of Durres does not result that was *"dictated"* by the missing infrastructure of the hall, where the meetings of the Municipal Council are held. As a matter of fact, the council convenes in a modern room, equipped with a modern electronic voting infrastructure.

A reason that might explain why Durres Municipal Council generally approves the decisions of individual character through open voting could probably be that the members themselves have little knowledge of the provisions of the ***Law 8552, amended***. In fact, it would be a justified *"ignorantia juris"*, if one takes into account that there is no manual, regulation, directive or court decision in Albania that interprets and/or defines the criteria on what and how an individual decision is distinguished from a normative one *(read more on this on:* ***Recommandations****)*

What are the evaluation criteria to distinguish a normative from an individual act ?

The individual administrative act regulates in particular special relationships on a certain issue and towards a subject or group of identifiable subjects. Even in the cases when the administrative act extends its effects not on a certain person, but on a wide group or category of verifiable and identifiable subjects, its individual character remains. If the juridical relationship that it regulates is a concrete one, the act does not lose its individuality.
When means of an act binding rules of behavior are defined for a juridical or a complex of relationships, it is considered a general or normative act. In this case, the act is an abstract one. It regulates integral relationships and for a wide category of subjects. The general act does not refer to a concrete fact, but to a number of possible or hypothetical facts. To be the same for all, the normative act is formulated in the most general and abstract sense, referring without any discrimination to any and every fact. The normative act comprises standards that regulate general relationships, unlike the individual act that includes rules that regulate relationships with the subjects or objects.
In summary, one can conclude on three qualities of normative acts. These are general, provide abstract hypotheses and are not exhausted by a single act of implementation.

"Administrative Right 2", Dr. Sokol Sadushi (justice of the Constitutional Court), 4th revised edition. Publishing House "Grand Print", Tiranë, September 2008.

THE MONITORING FINDINGS

1.2 DECISIONS TAKEN BY SIMPLE MAJORITY VOTING *(ART. 33/2 AND 33/3)*

NORMATIVE DECISIONS

Of the total number of Decisions of the Municipal Council for the monitoring period, only a small number of them are of normative character (6 in total). Among these, can be mentioned the decisions ***on the Budget 2011***[33], ***on the Budget 2012***[34], decision ***on the Fiscal Package, 2012***[35], as well as some other less important decisions. **In all these cases, the voting was held openly, and, for as long these are normative decisions, such practice is fully based on the legal provisions.**

The decision making on Fiscal Package (*local taxes and tariffs*) as well as on Budget (*administration wages, public investments, etc.*,) are among the most essential tasks of a Municipal Council. The process which these decisions have to pass through is regulated carefully and separately by the *Law 8652,* specifically in Article 32, letters (paragraph) "dh" and "f" (see: the right side box)

OBSERVATION OF THE VOTING MODALITIES

The ***Article 33/3*** stipulates explicitly that *The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gj", "i" and " j" of Article 32 of this Law, are taken with the majority of votes of the total number of members of the Council.* Letters "dh" and "f" correspond to the budget and fiscal package.

Based on the close monitoring of the decision-making process in Durres Municipal Council, it turns out that this legal requirement (33/3) has been fully observed. In fact, at the Municipal Council prior to May 8th as well as in the one that was established after these elections, the difference between the majority and minority was determined by only a few votes. As soon as we have to do with approved decisions, this leads *a priori* to the conclusion that the ***provisions in Art. 33/3 of the Law 8652, amended*** are fully observed; otherwise there would not have been any decision i.e. on the budget or iscal package.

The CPII senior staff and the CTO team members in Durres, who closely observed all the meetings held by the Municipal Council of Durrës, have reported in all cases that the decisions of the Council are passed with the majority of votes of the members attending the meeting. **This leads to the firm conclusion that the provision contained in Paragraph 2 /Art.33 has been followed as the law 8502 requests.**

ARTICLE 32

THE MUNICIPAL COUNCIL HAS THE FOLLOWING POWERS AND COMPETENCES:

a) *Approves the statute of the commune or the municipality and the internal regulation of its functioning.*
b) *Elects and discharges the Chairman and the Deputy Chairman of the Council.*
c) *Nominates and discharges the Secretary of the Communal or Municipal Council.*
ç) *Approves the organizational structure and the basic regulations of the administration of Commune or Municipality, of the units and budgetary units under the Commune or Municipality, as well as the number of their staff, applications for qualifications, salaries and the ways of renumerating employees and other elected or nominated persons in accordance with the legislation in force.*
d) *Approves the acts of establishing enterprises, business companies and other judicial persons, which are established by the Council itself or in which it is a co-founder.*
dh) *Approves the budget and its changes.*
e) *Approves the changing of destination or the renting of properties to third parties.*
ë) *Organizes and supervises the internal control of the Commune or the Municipality.*
f) *Set the local taxes and tariffs and their level.*
g) *Decides on taking loans and settling obligations in regard to the third parties.*
gj) *Decides on establishing joint institutions with other units of the local government, including the subject of joint powers or with third parties.*
h) *Decides to initiate legal proceedings on issues related to its powers.*
i) *Elects the representatives of the Communal or Municipal Council in the Council of the Prefecture.*
j) *Decides to give or remove the mandate of the advisor.*
k) *Approves norms, standards and criteria on regulation and supervision of functions that are provided to the Council by the law and to protect and guarantee public interest.*
l) *Decides on the symbols of Commune or Municipality.*
ll) *Decides on the names of roads, squares, territories, institutions and objects in the jurisdiction of Commune or Municipality.*
m) *Awards titles of honour and incentives.*
n) *Decides on the rules, procedures and ways of carrying out the delegated functions, in accordance with and for the implementation of the law, pursuant to which the functions are delegated to the Commune or Municipality.*

THE MONITORING FINDINGS

1.3 DECISIONS TAKEN BY QUALIFIED MAJORITY VOTING (*ART. 33/4*)

The Law no. 8652, as amended, provides for only one case in the decision-making process, in which 3/5 of votes of all members of the Council are required. Article 33[36], states in its paragraph 4 that: *"Decisions are made by 3/5 of the total number of members of the council for the cases foreseen in article 32 , letter "e" of the this Law,* or in other words, in cases when the Council approves alienation or renting out (public) properties to third parties.

During the 12-month period covered by this monitoring, Durres Municipal Council has made at least 8 decisions *"On changing the destination or renting out properties to third parties"*. In all these cases the voting has been almost unanimous. **It can be affirmed that *the provision 33/4 of the Law 8652, amended,* has been fully observed during the monitoring period** (*first 12 months of the 2011-2015 mandate*).

In regard to the decisions of Municipal Council *"On changing the destination or renting out properties to third parties"*, a double assessment has to be made in terms of compliance with legal provisions for voting process. One has to keep in mind that these decisions are of a pure individual nature, being referred to a concrete fact and therefore no general and abstract rules are fixed through these acts[37]. Article 33/1 explicitly states that *"Acts of individual character are always approved by secret ballot."*

From the data extracted from periodic reports filled and provided by the Citizens' Transparency Office in Durres, as well as from the careful monitoring of all audio-video recordings of the Council's meetings, the CPII has drawn the conclusion that in every case listed above the councilmen did not submitt any secret ballot.

THE MONITORING FINDINGS

1.4 ANNOUNCEMENT AND ENTRY INTO FORCE OF DECISIONS OF THE MUNICIPAL COUNCIL (*ART. 33/6*)

As explained above, the **Law 8652, as amended**, provides clear definitions regarding the procedure of publication and entry into force of the decisions of municipal councils. *"The acts of the council are promulgated in 10 days from the date of their adoption and enter into force 10 days after the promulgation. The acts of individual character enter into force on the date of notification of involved subjects "*(Article 33/6).[38]

Legislator has been careful to distinguish clearly through this provision, the time of the adoption of the act from the moment of its promulgation. The announcement in this case implies the notification of the subjects addressed by the decision, as the councilmen themselves are familiar with the decision in question at the moment that it is ratified. The administrative act is considered as being notified by the Public Authority to the interested subjects from the moment of completion of all actions required by law in order for that act to be considered announced or promulgated[39].

Preliminary definition of the normative or individual character of the act (*in this case decision of the Municipal Council)* is necessary in this case, too, as a prerequisite to objectively assess the modalities followed for promulgation and entry into force of the decisions of Municipal Council.

According to the assessment made by the CPII, the decisions of Municipal Council provide a careful formal definition in terms of setting in the act's textbody the time modalities of their promulgation and entry into force.[40]

All decisions are explicitly provide to be announced within 1-3 days from their approval. From the careful evaluation of all decisions, it results that such pre-requisite is part of the act's text-body.

With regard to their entry into force, it resuls that all nominal decisions passed during the new Council establishment period *"enter into force after confirmation[41] by the prefect"*, while all the remaining decisens (51 in total), *"enter into force 10 days after the announcement"*. **This formal practice is fully based on the legal provision governing the modalities and deadlines of the effectiveness (coming into effect) of the decisions enacted by Municipal Council.**

As noted, the practice followed by Durrës Municipal Council, in fact makes reference to the first sentence of the provision 33/6, which in this case, is of a more generalizing character. In the opinion of the authors of this study, the second sentence: *"Acts of individual character enter into force on the date of notification of the concerned parties",* is almost practically non-applicable

due to a series of difficulties, implying the distinction/differentiation of the individual from the normative act's nature (character). Furthermore, during the period under monitoring, it follows that the Municipal Council has issued individual decisions[42] which target a large number of subjects, i.e the decision ***"On Citizens' List benefitting soft housing loans"***. This act of individual nature[43], despite returned several times for review and completion with new names by the Council, would also cause a significant waste of time, if announced individually to each and every subject included in it (about 400 citizens).

Therefore, CPII recommends the abrogation of the second sentence from paragraph 6 of article 33 (*read more on this in:* ***Recommendations***).

In the frame of evaluation for the implementation level of provision 33/6, with regard to the ***entry into force of decisions***, it's necessary to assess not only the ***time limit*** within which the announced act becomes effective, but also of the ***venue*** in which acts must be displayed to acquire legal effect. The lawmaker has regulated this procedure further below, in article 35/3, expressly stating[44] that: *"The council acts are posted (displayed) in public premises designated by the council, within the commune or municipality territory and, as appropriate, the council sets other modalities for their publication".*

Since the beginning of the monitoring, it was not difficult to identify the absence of special premises serving to announce Council decisions, as there would be a publicboard or a local newspaper, or an even through publication in the official website. Due to procedural issues implied by such a *material* vacuum identifyed since May 2011, CPII decided since the very beginning of this monitoring to produce an ***online platform*** during the constituition period (3 months) of the new Municipal Council afer Local Elections of 8 May. Throughout this online portal, the Council would be encouraged to post/announce/display its decisions. It was named ***"Database of Municipal Council decisions"***, and was donated by CPII to the Council in a ceremony held in the beginning of the plenary session of September 29 (the very meeting in which the 2011 Budget was to be approved, too).

In addition to the primary function for publishing the Council decisions to come, the Database, which is also linked to the official website of Durrës Municipality[45], contains all decisions issued by the previous Municipal Council (2007-2011), thus producing a platform in which the memory and institutional stability of the Durres "Parliament" were preserved and restored. *(More detailed information about the Database of Municipal Council Decisions will be provided in the following chapters in the course of evaluation of the implementation of article 35).*

Recommendation

In the framework of evaluations in this section, CPII deems that the distribution in two articles (33/6 and 35/3) of the set of modalities required for the announcement, entry into force of a decision and their public display (time, venue) is a technical negligence of the lawmaker, which, as also proven by the findings, has not served well their correct implementation *(read more on this in:* ***Recommendations****).*

27. During July the Councile convened in two plenary sessions. The first was held on July, 6th and the other one on July 24th. The later falls beyond the project timeframe; therefore it will not be subject to monitoring and evaluation in this Report.
28. To get this classification, compilers of the present report widely referred to the publication "Administrative Law" 4th revised edition, of Doctor Sokol Sadushi
29. The act 8652, amended, does not specify itself what has to be considered a Decision of Council of Ministers of normative or individual character. In general, both the theory of administrative law and judicial jurisprudence provide with minimal solutions to this important distinction.
30. For more click at: http://www.infocip.org/al/?page_id=269
31. Nominal decisions are considered those electing the inner organic structures of the Council itself, ie, the chairman, the vs. chairman, the secretary, the commissions, the representats of the councilin in other decision making structures in regional levels, etc.
32. Regardless of the fact that the first meeting of the new Municipal Council was held on August 10th, the establishment of its leading and organizational structures has been completed at the meeting of September 22nd , 2011. At this meeting the secretary of Municipal Council has been elected and the composition of its permanent commissions has been arranged. At the same time the meeting accepted the resignation (demission) of Sotir Ngresi, councilman of the Socialist Party, because he could not hold this mandate due to his assignment in Durres Municipality and gave the mandate to his substitute. Also, the oath of Seit Kertusha, councilman of the Democratic Party, absent at the first establishing meeting was administered. For more click at: http://www.infocip.org/al/?p=2622
33. Vendim i Keshillit Bashkiak Durres nr. 11, dt. 29.09.2011 "Per miratimin e realizimit te Bashkise Durres te vitit 2010 dhe detajimin e buxhetit te Bashkise Durres per vitin 2011 "
34. Vendim nr. 56, dt. 31.05.2012 "Per miratimin e realizimit te buxhetit te Bashkise Durres te vitit 2011 dhe detajimin e buxhetit te Bashkise Durres per vitin 2012
35. Vendim nr. 39, dt. 17.01.2012 "Per Sistemin e Taksave dhe Tarifave Vendore ne qytetin e Durresit"
36. This paragraph of article 33 was changed after the Law 8652 has been amended in 2004.
37. "Administrative Right 2", Dr. Sokol Sadushi, Fourth, revised edition. Publishing House "Grand Print", Tiranë, Septemberr 2008.
38. It is not devoted a special space in the framework of this section to the paragraph 5 of the Article 33, because the circumstances provided by it during the monitoring period of the activity of Durres Municipal Council has not been come accross.
39. "Administrative Right 2", Dr. Sokol Sadushi, Fourth, revised edition. Publishing House "Grand Print", Tiranë, Septemberr 2008.
40. This practice differs very much from that which is noticed at Korça Municipal Council, where there is a real "cacophony" regarding the final modalities of entry of decisions into force.
41. Or "promulgation".
42. of individual nature
43. See above the theoretical submission about the criteria on determination of normative and individual decisions.
44. paragraph 3 of article 35 has in fact two sentences: "The council acts are posted in public premises designated by the council within the commune or municipality territory and, as appropriate, the council specifies other forms of their publication. Public information at each commune and municipality is carried out in conformity with Law No. 8503, dated 30.6.1999 "On right of information about official documents" and rules set by the respective council for that purpose". It is clear that the lawmaker has regulated the obligation for proactive information in its own provision(by the Council itself) and of acts (through the request for information filed by the concerned party to the Municipality).
45. http://www.durres.gov.al/

2. OBSERVANCE OF THE ARTICLE 34, *"THE OPEN MEETINGS"*

Law 8652 "On the Organization and Functioning of the Local Government", amended

ARTICLE 34

"THE OPEN MEETINGS"

1. Council meetings are open to the public. Every citizen is permitted to attend council meetings according to the modalities specified in the council regulation.

2. Notification about the council meeting is publicly posted in the premises designated by the council and media. It includes the date, venue, hours and agenda of the meeting.

3. The council, by voting majority of the overall number of members, shall decide on cases when the meeting is closed.

THE MONITORING FINDINGS

2.1 OPENNESS OF COUNCIL MEETINGS *(ART. 34/1)*

One of the main goals of the monitoring report has been to concretely test and assess the right of citizens to attend the meetings of Durres Municipal Council. It is a constitutional and legal right (*refer to arguments provided at PART ONE: Legitimacy*).

Among the basic functions of the Citizens' Transparency Office that was established by the Center for Public Information Issues in Durres has been exactly the systematic participation as observer in every meeting of Municipal Council to directly test the observance of the right to participate. **It can be firmly stated that the involvement of the Citizens' Transparency Office team was fully guaranteed and even welcomed by the Council representatives.**

Unfortunately, it is observed that the Citizens of Durres rarely (if ever) are seen attending Municipal Council meetings and discussions taking place there. This reality is in contrast with what is observed in Korca, where there is a constant participation of interested citizens in almost every meeting of Municipal Council.

In some cases in Durres, citizens are seen waiting outside the premises of the Municipality for the completion of meetings of the Council, to find out if an issue of their interest has been discussed or not by the councilmen. This leads to think that part of the reasons for non-participation is correlated with the lack of knowledge of their constitutional and legal rights and guarantees for tracking closely the decision-making process as it happens in the open plenary sessions of the Council. Other causes might be the heterogeneous demographic composition of Durres, where community behavior and action is somehow lost due to large urban space and impetuous demographic movements. This makes citizens feel distanced, if not uninterested in decision-making process performed by the local government in Durres.

Furthermore, the infrastructure of the hall in which the meetings of Municipal Council take place, provides a few opportunities to accommodate citizens, who would have an interest in attending ***live*** the discussions. Although the hall has been renewed a few years ago, the project has not taken into account citizens' accommodation. In some cases, even the CTO team and CPII senior representatives were "forced" to attend meetings of the Council standing. It was noticed that also the Municipal administration staff members have not always found sufficient seats to attend the decision-making process. The same situation applies for journalists, who cover the Municipal Council meetings. Such a situation compromises the enforcement of the constitutional guarantee[46] in the Republic of Albania, according to which *"Everyone is provided with the opportunity to attend the meetings of collectively elected bodies" (Article 23/3 of the Constitution.*

The problems of infrastructure nature of the halls of Municipal Council meetings are common in Albania. This deficiency is justifiable for some of municipalities that have failed to invest in the construction of modern halls for Municipal Councils (e.g. in Korça), but raises important questions for the new halls that are built during the recent 7-8 years (in Durres, Tirana, etc.). Some of these new halls were built with the contribution of important donors, who work in Albania since many years to promote the citizens' right to participate in the decision-making process. It is inexplicable, even subject to criticism, that, at a time when these important principles should have been embodied in concrete products, citizens were not part of the equation that was

about to be solved. Apart from the local government, this makes responsible even the donor community itself that has funded the construction of **cities' parliaments,** which unfortunately do not enable an effectively direct participation of the public.

However, regarding the evaluation for the Durres Municipal Council with respect to the level of compliance with the provision 34/1 of Law 8652, it can be stated that the access provided to the interested public (in our case to CTO and CPII team) for attending *live* the meetings has been complete.

To address this problem, CPII recommends, in the framework of potential amendments of *Law 8652, as amended,* a third sentence to be added next to clause 1 of article 34, to explicitly provide that: *"The Council is obliged to provide the required accommodation infrastructure for the concerned citizens to attend in the room premises the meetings it conducts" (read more on this in:* ***Recommendations).***

PROJECT OUTCOME: Video-archive of municipal council meetings

In order to effectively address for solution such problem, CPII undertook a relatively complicated process to establish an online video-archive, which would contain all meetings held by the Municipal Council, as well as the public consultation meeting held so fat by it. By uploading all its decision-making activity online, CPII would provide anyone with access to follow and virtually take part in the process. The video-archive is a concrete application (materialization) of the new information technologies in promoting transparency in local decision making.

All citizens of Durrës may attend online, in audio-video all meetings of Municipal Council, via the CPII website www. infocip.org, already linked to the official website of Durrës municipality. All meetings conducted by the new Municipal Council established after the elections of May 2011, are video recorded by CPII and uploaded online to a modern video-archive. This unique approach introduced and realized by CPII is accessible by all citizens of Durrës, within their city/country or abroad, so that to be continuously informed of the decision making processes carried out in their city. It provides a new dimension of transparency to the decision making activity of Durrës Municipal Council, thus making it the only municipality in the Albania which broadcasts online its decision making activities.This video-archive makes the Municipal Council of Durres a leader in the region in terms of promotion of transparency in the decision making via new information technologies.

A strict audio-video recorded documentation of Municipal Council meetings is also substantial for the assessment by any concerned parties of legal modalities of the decision making. This video-archive represents an added value of the project as a whole, which CPII managed to implement in Durrës. The video-archive contains all Council meetings since August 2011 and continues to be regularly uploaded. **Watch it at: http://www.infocip.org/al/?page_id=271**

THE MONITORING FINDINGS

2.2 ANNOUNCEMENT NOTIFICATION OF THE MEETINGS (*Art. 34/2*)

2.2.1 ANNOUNCEMENT IN PUBLIC PLACES OF THE INCOMING MEETINGS

CTO team members haven't noticed or reported any board, in any public space in the city of Durres, besides Municipality[47], which might have served to display announcements on the coming-soon meetings of Municipal Council.

The Municipality of Durres has an information office, which, as a rule, takes notice on the date and time set for the Council meetings. The method used In the frame of this monitoring does include the performance evaluation of this Office. Anyhow, the public information through this office will be presumed as performed, taking into consideration the fact that this office has remained open during the monitoring time period (*this evidence will be reflected a-priory as a maximal value in the graph which indicate the on the implementation level of (compliance with) article 34).*

2.2.2 ANNOUNCEMENT IN THE MEDIA

Although Durres is among the largest cities in the country, with specific weight in the national economy due to the important harbor activity that takes place there, there are no local televisions there. This does not make local issues and the decision-making activity of the municipality subject

to constant media coverage (as in the case of Korca, where three local TV stations, which have a diversified programming, including detailed coverage of municipal activities).

Although the main meetings of the Municipal Council, Durrës have been covered by journalists reports broadcasted by TV stations with their seat in Tirana, (both national such as TV KLAN, Top Channel and regional i.e.Ora News TV, News 24 TV, ABC News, etc.), in terms of their preliminary notification or meeting announcement, as defined by the ***Article 34/2***, not a single case was identified within the present monitoring period. In the end of the day, the media coverage in the above mentioned media outlets is ***a post-factum*** action; therefore it does not matter, with regard to compying with the legal provision in question (34/2).

2.2.3 NOTIFICATION IN OTHER WAYS AND/OR BY OTHER MEANS

BY WEBSITE

Even though not an explicit legal requisition of the law 8652, amended, one of the possible ways of notification/announcement of meetings might be via Internet. Durres Municipality has an official website, which continuously provides information on the activities of Municipality Admisnitration. From the systematic monitoring made by the CPII during the monitoring period covered, it doesn't turn out that it has been used to publish announcements regarding the date, time and agenda of meetings of the Municipal Council.

BY TELEPHONE OR EMAILS

The main practice followed by the Secretary of Durres Municipal Council for notifying meetings has been through contacting all members of the Council and other interested persons mainly via phone and/or email. The CPII and CTO in Durres are informed regularly via phone, three to four days prior to the incoming meetings of Municipal Council. This practice, although has guaranteed normally the *live* attendance of the meetings by the monitoring team, meets on the other hand its objective limits in providing notification for all possible interested persons/subjects to attend the Council's meetings of the Council.

2.2.4 THE DATE, PLACE, TIME AND THE AGENDA OF THE COUNCIL'S MEETING

Another provision of the article 34, point 2, of the law 8652, amended is that *"The notice (on the meeting of the Council) contains the date, place, time and the agenda of the meeting"* (second sentence of the provision).

From the evaluation of all notices forwarded to the interested persons from the Secretary of the Council, results that such legal provision has been followed accordingly.

THE MONITORING FINDINGS

2.3 CLOSED MEETINGS (*Art. 34/3*)

By a majority of vote of the total number of members, the Council decides on the cases when closed meetings shall to be held (Article 34/3).

During the period covered by this report, all the meetings of the Council were openly held. There has not been reported any case of voting for a closed session to be held. Consequently, the provision 34/3 cannot be qualified for further evaluation in the frame of this monitoring, as long as irt was not observed by the monitoring team. During the two-years period that CPII is working in local government level, both in Durrës and in Korça, it was never observed even a single meeting to be held under the provisions set by this dispozition of the lay.

Suggestion:

In the framework of evaluations in this section, CPII considers that the Article 34/3 "On closed meetings", contradicts the very spirit of an open-to-all and transparent local government.

Therefore, CPII recommends the abrogation (abolition) of this provision in the frame of potential legal amendaments which can be made to the law 8502, amended .

3. OBSERVANCE OF THE ARTICLE 35, "CONSULTATION WITH THE COMMUNITY & THE PUBLIC'S RIGHT TO INFORMATION"

Law 8652 "On the Organization and Functioning of the Local Government", amended

ARTICLE 35

CONSULTATION SESSIONS WITH COMMUNITY AND PUBLIC'S RIGHT TO INFORMATION

1. Prior to the review and approval of acts, the communal or municipal council shall conduct consultation sessions with the community. These sessions are compulsory in cases as provided by article 32,letters "dh", "e", "f" and "k" of this law.

2. In each case, consultations with the community is done according to the modalities specified in the council regulation, applying one of the required forms such as open meetings with the inhabitants, meetings with experts, interested institutions and non-governmental organizations or launching the initiative for the organization of local referenda.

"2/1. For communal/municipal council, consultation sessions with the chairmen and chairmanship of villages under jurisdiction are compulsory, in accordance with the provisions of letters "ç", "dh", "e", "f", "k" and "ll" of article 32 of the law. In this case, counselling sessions are recorded in minutes [1].

3. Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate, the council shall also designate other forms of their publication. Public information in each commune and municipality is done in accordance with Law No.8503, dated 30.6.1999 "On the right to information on official documents" and rules designated by the respective council for that purpose.

THE MONITORING FINDINGS

3.1 CONSULTATION WITH THE COMMUNITY *(ART. 35/1 AND 35/2)*

Prior to the review or approval of the acts, the Communal or Municipal Council conducts consultations' sessions with the community (Article 35/1). The consultation sessions are mandatory when the Council[48]:

dh) Approves the budget and its changes.

e) Approves changing of property destination or renting out to third parties".

f) Decides on local taxes and tariffs, as well as their level.

k) Approves norms, standards and criteria for the regulation and enforcement of functions provided by law, and for the protection and guaranteeing the public interest.

Consultations with the community can be held by using one of adeguate forms, such as open meetings with citizens, specialists, interested institutions/stakeholders and non-governmental organizations or by taking the initiative to organize local referenda (***Article 35/2***).

3.1.1 PUBLIC CONSULTATION ON BUDGET AND FISCAL PACKAGE (LETTERS "DH" & ""F")[49]

During the period covered by this monitoring report, Durrës Municipal Council has passed two budgets, that of 2011 and 2012 respectively. Also, the adoption of the Fiscal Package of 2012[50] (taxes and tariffs) has been also passed during this period.

Due to the electoral campaign for Local Elections of May 8th, 2011, but more due to delays in establishing the new Municipal Council after elections, the ***2011 Budget*** passed rather late, by the end of September 2011.

Its introduction to the agenda for approval came after a dynamic reaction of the Citizens' Transparency Office in Durres that appealed publicly to the Municipal Council in order not to have any further delays regarding the discussion and approval of the municipal Budget of 2011.

The Municipal Council reacted positively to this public appeal made by the CTO in Durres and introduced the discussion and adoption of the budget on the agenda of the meeting scheduled to take place on September 29, 2011. Due to extreme delays in this very important decision, it was not possible to have any consultation with stakeholders on the draft budget submitted by the municipal administration.

Before this period, the Municipal Council (the decision maker) had never made any public consultation on Budget and Fiscal Package. The truth is that Mayor of Durrës, Mr. Vangjush Dako, (two consecutive mandates in the office), but also his Deputy, Ardian Çela, have been constantly involved

in various initiatives on community budgeting. It is known that these initiatives aim at a better orientation of the public investment by Municipality in the framework of the draft-annual-budget submitted to the Council for final approval. However, these initiatives are limited to a harmonized compilation of the draft-decision *"On the budget"* by the municipal administration, which, in fact, has no decision-making atributes, but only executive ones (powers).

It is the Municipalit Council that has a legal obligation to initiate and undertake consultations with the community and all interested stalehold-ers. This is a direct requirement of the **Law 8652, as amended**. Regarding the consultations undertaken by the municipal administration during the previous years, these have to be considered as based on extra-legal procedures. According to Article 44, letter "a", *"The Mayor shall exercise all the powers in carrying out the functions of the commune or municipality, except for those that are exercised only by the relevant Council."* This means that public consultations that are a legal competence of the Municipal/Communal Council (Article 35) cannot be in any case the power of dhe Head of administration of the Municipality.

Numerous projects initiated in this area by different actors of civil society, aiming at encouraging and assisting mayors to undertake public consultations, are of questionable legitimacy and do not serve to the promotion of a culture of compliance with the law by the local government. This shortcoming of civil society organizations in developing initiatives should be discouraged also by the community of donors, as long as the latter has as its primary aim the promotion of the compliance with the law and its enforcement in the Republic of Albania.

These findings made in the first months of implementation of the initiative constituted a very important moment that redefined the focus of the interaction initiated in Durres with the Municipal Council. In full coordination with the new Head of Municipal Council, Indrit Hamiti, we agreed to address ourselves to a definitive solution for all inherited deficiencies concerning the strict fulfillment of the legal obligation that Municipal Council has to organize consultations with the interested stakeholders and public, especially in the framework of adoption of the Budget and Fiscal Package. This led to the modification of some of project targets being implemented[51] in Durres with the support of the National Endowment for Democracy (NED).

Part of the new targets taken over by the CPII were already the organization and/or public consultation process, facilitation of the public consultation process with the actual protagonist the Municipal Council in Durres. This process aimed at restoring the legitimacy of functioning for the Municipal Council, regarding the dimension of contact with the public during the period of its mandate as the decision maker of the city. Until this moment the contact with citizens has been limited to the period of electoral campaign, when the interest of the local representatives was in question more than the one of the

Public Reaction made by Citizens' Transparency Office

The Citizens' Transparency Office in Durrës, local branch of CPII, reacted on Friday, 9 September 2011, through a declaration about serious delays for the approval of 2011 municipality budget. The declaration was read in front of the building of Durrës municipality before a large number of media representatives who publicized such a feedback.

The declaration stated "Budget approval is a responsibility and legal obligation for the Municipal Council". According to the declaration, the Municipal Council must promptly carry out its primary duty as a city parliament, namely, the budget approval.

Further, the Citizens' Transparency Office in Durrës asked from the Municipal Council to not disregard any of the steps of discussion of budget approval, particularly those related to the drawing of public opinion. The city needs investigation while citizens should be informed about the destination and use of taxes they pay.

The Citizens' Transparency Office in Durres publicly requested from the municipality and municipal council to shortly allocate the draft budget to the concerned parties, so that they would have an effective opportunity to be informed of the draft. Likewise, the Citizens' Transparency Office in Durrës claimed the publication of the draft budget in the official website of Durrës municipality, so that not only the concerned parties but also citizens shall have an effective opportunity of being informed about the budget.

Article 36

THE CHIEF OF COMMUNE OR MAYOR:

a) exercises all powers in discharging the commune or municipality functions, save those being exclusive competence of the respective council;
b) implements council acts;
c) takes measures forthe preparation of meetings' materials for the communal or municipal council, in accordance with the agenda set out by the council and for any issues, upon own request;
ç) reports to the council about the economic-financial situation, at least every six months or more often, whenever requested by the council;
d) reports to the council, upon request, about other issues related to the commune or municipality functions;
dh)is a member of the district council;
e) appoints and dismisses the commune or municipality deputy chairman/deputy chairmen;
ë) appoints and dismisses the heads of subordinate enterprises and institutions.
f) appoints and dismisses other non-management officials of the structures and units under the subordination of the commune or municipality, unless otherwise provided by Law No.8549, dated 11.11.1999 "On status of civil servant";
g) exercises powers and ensures the fulfilment of all obligations assigned to the commune or municipality as a legal entity;
gj) takes measures for the qualification and training of the administration personnel, educational, social, cultural and sports institutions;
h) returns decisions to the council for review, only once, when observing that they violate community interests.

citizens. Breaking this stereotype became the main purpose of the work of the CPII and CTO in Durres.

At the foundation of establishing a model of consultations, which would be directly led by the Municipal Council, was to set the legal definition, according to which *"The consultation with the community is done using one of the necessary forms, such as open meetings with residents, meetings with experts, interested institutions and non-governmental organizations or by taking the initiative to organize local referenda (Article 35/2, 8652)."*

This model of public consultation led by the Municipal Council, as it is provided for by the legislator, would lay the foundations of a tradition to have been consolidated, as well as should demonstrate to other municipalities in the Republic of Albania the capacities of Municipal Councils themselves for undertaking successfully such initiatives.

Secondly, this process would have to draw also the attention of the community of donors to better orientate their support for such processes, in compliance with the legal requirements in the Republic of Albania.

Thirdly, the model of consultations in Durres would have to prove the efficiency of the interaction between dynamic structures of the civil society (in compliance with the interconnected structure of Center-local network set up by the CPII) and the decision-making bodies at the local level (Municipal Council).

3.1.2 PUBLIC CONSULTATION ON CHANGING PROPERTY DESTINATION OR RENTING OUT TO THIRD PARTIES", (LETTER "E")

During the monitoring period a series of decisions were enacted "**On changing property destination or renting out to third parties**" (8 altogether). Seven of them are issued during the second half of 2011. Object of these decisions is mainly the exclusion from the municipal inventory list of amortization. In two other cases, (*Decision no. 32, dated 20-12-2011 and Decision no.47, dated 06-04-2012*) the council has decided "on renting out real estate property to third parties". This is an intensive practice taking place in Albanian municipalities, since the legal framework for forwarding (transferring) such important competences from the central institutions to the local authorities was completed by the parliament some years ago. In case when real estate properties are removed from the Municipality inventory list, they are transferred to their former rightful owners. The latter, due to their eventual interest, are in close contact with decision-making process that is "forged" generally in the permanent commissions that function at the Municipal Council, especially the Commission of Public Properties, Transport and Road Traffic, the Commission of the Urban Development and Land Usage and the Commission of Finance, Budget and Taxes & Tariffs. Based on the information collected through contacts with Council members and the Municipality staff, it

turns out that the commissions do contact or get get contacted by the beneficiary persons. Nevertheless, the work done in these commissions has not been target to close monitoring by the CTO in Durres, therefore the practice followed there will be disregarded in the frame of this Report. Further more, during the monitoring period, the Council did not pass any decision on changing the property's destination to a thirt party, which might have been of special interest to follow in term of compliance with the legal provisions with regard to undertaking public consultation. Therefore, observance of letter "e" will not be part of assessment in Graph 11 & 12, pg 45.

3.1.3 APPROVAL OF NORMS, STANDARD S AND CRITERIA FOR THE REGULATION AND ENFORCEMENT OF THE FUNCTIONS VESTED BY LAW , AND PROTECTION OF THE PUBLIC INTEREST (LETTER "K")

During the monitoring period it was not reported any case of decision making on *"approval of the norms, standards and criteria for the regulation and enforcement of the functions provided for by the law to the Council"*, in the sense of the letter "f" of Article 32. Consequently this category of decisions cannot be exposed to any possible evaluation.

THE MONITORING FINDINGS

3.2 PUBLIC DISPLAY OF THE DECISIONS (*Art. 35/3*)

The evaluation target in the framework of this report will be only the first part of the provision, namely that which addresses the pro active display of the decisions of the Council. The second part that refers to the Law *no. 8305 dated 30. 06. 1999 "On the right of being informed of official documents"* and which is in fact an active information of the public (activated at the request of the latter), is not analyzed by the methodology used in this monitoring report.

With regard to the display of the decisions, in the sense of an action directly taken by the municipal administration on a board fixed in a public place, it could be said that such a practice is not noticed. Also, other forms of publication, such as the publication in the local Official Gazette or another periodic publication of the local government were not noticed during the time of this monitoring.

Regarding the official website in internet, the Municipality of Durres has adopted a model of publication of the title of the decisions made during the time interval of one year. These are in fact lists of titles, which in no case refer to the contents of the decision of Municipal Council, thus not effectively serving to guarantee a real access to the decisions of Municipal Council (their content remained unknown). Moreover, this procedure, even so incomplete as it has been, was stopped in 2010 (i.e., before this monitoring started).

As a conclusion it can be stated that the Council's level of with the Article 35/3[52] till this monitoring started[53] to be implemented, was simply "in-existent".

ARTICLE 35, POINT 3

Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate, the council shall also designate other forms of their publication. Public information in each commune and municipality is done in accordance with Law No.8503, dated 30.6.1999 "On right of information on official documents" and rules designated by the respective council for that purpose.

ONLINE DATABASE OF DECISIONS

To address this problem, which as a matter of fact, does not aply only to Durres, but to all the Municipalities and Communes in Albania, the Center for Public Information Issues decided to digitalize and provide online all the decisions enacted by the Municipal Council, in the course of exercising its decision-making powers. Moreover, it was decided that all decisions issued by the previous Municipal Council that exercised its mandate over the period 2007-2011, should be part of this database.

On 29 September 2011, the Center for Public Information Issues and its Durrës branch, Office for Citizens' Transparency, provided to the Municipality of Durrës and to all Durrës citizens the online database of the Municipal Council Decision. This ceremony was officially launched in the Sesion Hall of the Council in the early plenary session of that day.

The database of decisions of the Municipal Council contains all decisions issued since 2007

up to date. This Database was also linked to the official website of Durrës Municipality.

It provides effective access to the Municipal Council decisions for all interested parties, in a simple form, free of charge and at any time. The database is also beneficial for the Municipal Council which is bound to publicly announce its decisions, which is a legal requirement. Use of new technologies and opening to innovation constitute one of the 12 Principles of Good and Democratic Governance of the Council of Europe. In this context, the Municipal Council of Durrës actually represents a European model of open and transparent decision making process.

Currently, there are only two municipalities[51] in the Republic of Albania possessing their own regular online database of the Council Decisions: Durrës dhe Korça. In both cases, databases are produced and then provided to the respective Councils by the Center for Public Information Issues and its local branches, referred to as Offices for Citizens' Transparency. This is also a new approach model for the civil society organizations regarding the promotion of good governance and transparency, in full respect of the standards established by law.

ARTICLE 37
SECRETARY OF COMMUNAL OR MUNICIPAL COUNCIL

1. The council secretary is appointed and dismissed from the municipal or communal council on the basis of the proposal of the council chairman, with the voting majority of the overall number of members. Dismissal of the secretary may be also proposed by 1/3 of the council members.
2. The secretary of communal or municipal council is responsible for:
a) maintenance of official documents of the council;
b) follow-up of work for the preparation of meeting documents according to the agenda;
c) notification about the conduct of council meetings;
ç) announcement and publication of notifications and acts issued by the communal or municipal council;
d) preparation of counseling sessions with the community;
dh) supervision of observance of the council functioning regulation.
3. The communal or municipal council secretary shall discharge any other functions assigned by the council.

46. *The right of participation and information is included in "Fundamental Human Rights and Freedoms", guaranteed by the Constitution of Albania in its article 23:*
1. The right of information is guaranteed.
2. Everyone has the right, according to the law to receive information on the activity of governmental bodies, as well as of the persons who exercise state functions.
3. Everyone is provided with the opportunity to attend the meetings of collectively elected bodies.
47. *The Municipality of Durres has an information office for the citizens, which is located on the right of the main entry gate in this institution.*
48. *These are some of the letters of article 32, of the law no. 8652,as amended*
49. *The monitoring results in this section of the Report will be listed chronologically and not according to their location suggested by the letters in the article 32 of this act.*
50. *Fiscal Package 2011 was approved on 17.01.2012 by Municipal Council Decision no. 39*
51. *The primary target of the project has been the stimulation of participation and monitoring, observance of legal requirements regarding the modalities of decision-making process by the Municipal Council. This implies a passive role of the CTO, which had to simply document deviations or violations of legal provisions and not to have a pro active role to help the Council in organizing public consultations.*
52. *The provision 35/3 has two sentences. Only the first sentence is subject to evaluation in this report, which defines the obligation of displaying/publishing of the decisions of the Council. The second sentence, that is not a subject to evaluation explicitly states: "The information of the public in each commune and municipality is made according to the act no.8503, dated 30.6.1999 "On the right to be informed on official documents" and fixed rules by the respective council itself for this purose"*
53. *The acquaintance with the situation of the announcement of the decisions and its evaluation started from the time of presentation of the proposal on NED, at the beginning of 2011. This evaluation of the situation continued three months after the project starts, the time in which the online database of the Decisions of Municipal Council, Durres from 2007 until the present was prepared.*
54. *Tirana Municipality has published online the decisions of the Municipal Council till 2011, but the practice has stoped without any known reason. Nevertheless, Tirana Municipality is governed by a special organic law, and not by the law wich defines the legitimacy of this monitoring (8652).*

OUTCOME

The public discussion of Fiscal Package 2012

(ARTICLE 32, LETTER "F")

DURRËS MUNICIPAL COUNCIL AND CPII ORGANIZE THE DISCUSSION OF FISCAL PACKAGE 2012 WITH THE GROUPS OF INTEREST

Durrës Municipal Council, supported by CPII and its local branch, Office for Citizens' Transparency, organized on Wednesday, 21st December 2011, a large public meeting with the topic: "Fiscal Package 2012 – discussion of the Municipal Council with groups of interest and the public".

The meeting was attended by representatives from Durrës Chamber of Commerce and Industry, Builders' Association, small business community, fason industry community. Furthermore, a large number of municipal advisors and tens of citizens attended the meeting.

After expressing his gratitude to CPII, the Municipal Council Chairman, Indrit Hamiti, emphasized that the meeting was an indicator of the extensive public use, in full respect of the law, produced by the cooperation between local decision makers and specialized stakeholders of the civil society, such as CPII, for a more transparent decision-making process.

As the CPII representatives highlighted, similar public discussions are a pure legal obligation according to Law 8652, assumed to the Municipal Councils and not mayors (as it is generally mis-implemented to date). Actually, the discussion of Fiscal Package 2012 with the groups of interest in Durrës was organized for the first time, with the Municipal Council in the main focus, re-setting the latter as an example of lawfulness and transparency for all other

local decision-makers in Albania.

In the course of discussion many proposals emerged about amendments to the fiscal package draft, such as the removal or reduction of hotel accommodation tax, reduction and differentiation of the cleaning fee, right to use private beaches under a competition basis, reduction of small business taxes, fiscal regionalization of the city etc. The whole meeting was audio-video recorded and was uploaded in the CPII website www.infocip.org, which is directly linked via the website of Durrës Municipality http://www.durres.gov.al/

DURRËS, FISCAL PACKAGE APPROVED, RECOMMENDATIONS WITH THE GROUPS OF INTEREST ACCEPTED

Following the public discussion with the groups of interest of Fiscal Package 2012, CPII and its Durrës branch, Office for Citizens Transparency transcribed all recommendations of the meeting. A comprehensive file containing the minutes of the meeting, presentations, requests, meeting room discussions and an extract of recommendations was made available to the Advisors, aiming at an in-depth information about the recommendations of this public discussion prior to the time of decision making process. The file also included a DVD where the whole activity was audio-video recorded.

On 17 January 2012, the Municipal Council of Durrës approved the Fiscal Package, making amendments to the Municipality draft, based on recommendations of the meeting with the groups of interest. Some of local taxes and fees were not increased, thus maintaining the level of 2011.

The approach of double information to both groups of interest and decision makers which was applied for the first time in Durrës, proved its effectiveness in favor of the stakeholders but also of the Council, which had the opportunity to strictly enforce the law 8652 and simultaneously to harmonize its decision making on local taxes and fees.

Such a process would have been almost impossible without the assistance and good will demonstrated by the chairman of the Municipal Council, Mr. Indrit Hamiti, who was personally involved in all stages of this process, turning it into a model of success of public consultations directly launched by the Municipal Council, the real city decision maker. In the meantime, the Method of Double Information (MDI) is another innovation CPII successfully introduced in the framework of its interaction with local decision makers, which may serve as a genuine model for all other organizations.

OUTCOME

The public discussion of the Municipal Budget 2012

(ARTICLE 32, LETTER "DH")

CPII AND MUNICIPAL COUNCIL OF DURRËS ORGANIZE THE ENVIRONMENTAL ROUND TABLE WITH THE GROUPS OF INTEREST

The Municipal Council of Durrës, in cooperation with CPII and its local branch, Office for Citizens' Transparency organized on Friday, 09 March 2012, the meeting with the topic: "Environmental Round Table with interested stakeholders- in the framework of the preparation of Durrës Municipality budget for 2012". This large meeting aimed at the promotion of participation and interaction between the interested stakeholders in the decision making for the 2012 Budget of Durrës Municipality. This makes it the first large public meeting focused on budget discussion ever held in Durrës city, where the Municipal Council is the main stakeholder, in full cooperation with the civil society.

Some of the key issues raised in the meeting included the construction of a landfill for collection and processing of wastes, use of alternative energies, effectiveness of tax collection for city cleaning, greenery, rehabilitation of polluted environments etc.

This round table sets a new standard and model not only at local but also at national level, where at all levels the process of budget consultations is directly managed by the Municipal Council, which is the exclusive decision maker of the local budget. Above all, this is a pure legal obligation (article….Law 8653) for the Municipal Council and not for the mayors, who have occasionally led extra-legal consultation processes, although they actually have no legal decision making power, but they are merely executors of budgets allocated by the Municipal Council.

PUBLIC CONSULTATIONS WITH SCHOOL DIRECTORS AND STUDENTS ON BUDGET ON EDUCATION

CPII, in cooperation with Durrës Municipal Council, organized the public consultation "On the Education Budget 2012". This meeting was attended by the municipal council chairman, Indrit Hamiti, deputy mayor of Durrës, Ardian Çela, director of the educational directorate of Durrës, Filip Gjoncaj, almost all school directors of Durrës city (a total of 90 participants).

The meeting was specially organized in the concert hall of the Artistic School "Jan Kukuzeli". This school, though representing the earliest tradition for the education of young generation in Durres, is currently facing urgent needs for the reconstruction of the too old building.

Most of the participants openly stated that the figure of six per cent in the 2012 budget assigned by municipality administration was inadequate. During the meeting, claims were raised about the increase of that figure up to 10 % of the annual municipality budget.

The large public meeting for education closed the central series of public consultations for the 2012 budget, organized in partnership between the Municipal Council and the Center for Public Information Issues and its local branch, Office for Citizens' Transparency, Durrës.

DURRËS: APPROVAL OF MUNICIPAL BUDGET 2012. SUCCESS OF COUNCIL AND CPII: EDUCATION INCREASED, FROM 6 TO 10 PER CENT

After a debate of about six hours, the Municipal Council approved the 2012 Budget of Durres Municipality. This has definitely been the most important aspect of the decision making activity of Durrës Municipal Council. The advisors decided to increase the item of investments in the education budget (school reconstruction) with about 51 million and 300 thousand ALL. Practically, this increased the education item from 6% to 10%, strictly corresponding to the request of teachers from Durres, who openly shared their opinions during the consultation meeting organized by CPII and the Office for Citizens' Transparency, Durres, two weeks before the Council meeting where the Budget was approved.

Of this bonus on education budget, about 25 million ALL were allocated for the reconstruction of "Sami Frashëri" school, while 26 million and 300 thousand for the reconstruction of "Jan Kukuzeli" school.

In general terms, the municipal budget of Durrës was increased from about 1 billion and 729 million to 1 billion and 784 million ALL, mainly for investments in the areas required from citizens during the program of public consultations organized by the Municipal Council of Durrës in close cooperation with CPII and the Office for Citizens' Transparency, Durrës.

THIRD PART

ASSESSING COMPLIANCE WITH LAGAL PROVISIONS AND TRANSPARENCY LEVEL

3 ASSESSING COMPLIANCE WITH LEGAL PROVISIONS AND TRANSPARENCY LEVEL

Subject to monitoring and assessment in the frame of this report is the observance of the Articles 33, 34 and 35 of the organic law 8652 *"On the Organization and Functioning of the Local Government", amended.* These articles contain carefull provisions (dispositions) for the ***discussion*** (within the Council and with the public), ***voting***, and ***announcement / notification*** of the decisions of the Council.

The compliance of the Council itself with these provisions is a judicial and factual condition to guarantee a lawfull, open-to-all and a transparent decision-making process. It also ensures efficient public access to the local legislation (effective knowledge of the decisions enacted by the Municipal Council). The observance of these three articles implies unequivocally good governance at local level.

Measuring at what extend the Municipal Council in Durres has exercised its decision making function pursuant to articles 33, 34 and 35 of the ***law 8652, amended*** was a major objective of CPII in the frame of this initiative. The assessment method developed by CPII is one of its kind, because it's *"tailored made"* to the relevant Albanian legislation on the Local Government.

In the frame of this method, the average level of compiace with the provisions contained in articles 34 and 35 indicate in the mean time the level of transparency in the local decision making provided by the Municipal Council, as long as the articles in question substancially provide for it. This type of evaluation is conducted for the first time in Albania.

Each of the Articles 34 and 35 contain paragraphs (indicated by points or letters), which, in some cases are made of more than one sentence and each of the given sentences set clear rules to be followed (provisions). In such case, the assessment is applied upon each and every rule, as a distinct component of the Paragraph /Article itself.

Lets take for example ***Article 35, paragraph (point) 1***, which provides literally as follows: *"Prior to the review and approval of decisions, the communal or municipal council shall conduct consultation sessions with the community. These sessions are compulsory in cases as provided by article 32, letters "dh", "e", "f" and "k" of this law"*. Object to assessment in this particular case is the second sentence, because it sets strict rules to be followed by the Council, whose observance can be measured objectively. The second sentence is a material provision in the real sence of the word, made of four components, each of them referring (corresponding) to four well distinct cases (type of decisions), described by the letters: "**dh**", "**e**", "**f**" and "**k**" of the Article 32, respectively "**the Budget**", "**Property Issues**", "**Taxes & Tariffs**" and the "**Council's regulations and standards**".

In such case, the method requires that the assessment has to be conducted upon each and every of these ***letters***. In Durrws case, only the Budget ("**dh**") and Tax & Tariffs ("**f**") became effectively object to monitoring and assessment (no decisions based on **"e"** and **"k"**, were taken by the council during the monitoring period).

The results (values) obtained for **"dh"** and **"f"**, are further processed to calculate in percentage the average value for the observance of (level of compliance with) the second sentence of paragraph 1 of the Article 35.

Based on the same ascending logic, provisions within one paragraph (*point or letter*) are processed to assess the observance of the paragraphs, and so on, the paragraphs are processed to assess in the end the observance of the entire Article, subject to monitoring.

In case of the articles 34 and 35, this assessment is applied for both the beginning and the end period of the project. The comparison of respective values indicate the level of positive (negative) impact generated through the project intervention with regard to transparency and openness.

The tab. in the next page, provides in a more comprehensive mode what are the provisions, sentences, paragraphs and articles, which this type of assessment is applied upon. The results are provided graphically and in percentages in the next-to-tab pages for each of the articles 33, 34 and 35.

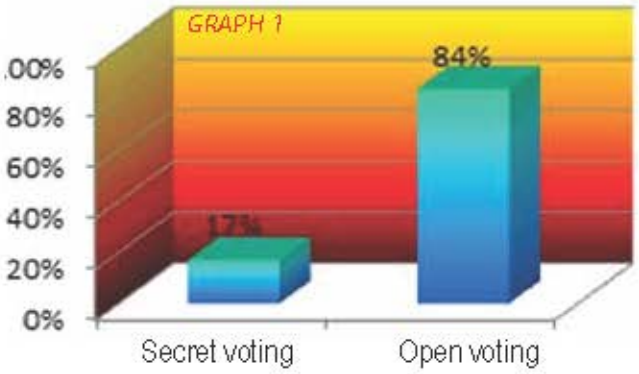
Assessment and Evaluation Matrice

TAB 1

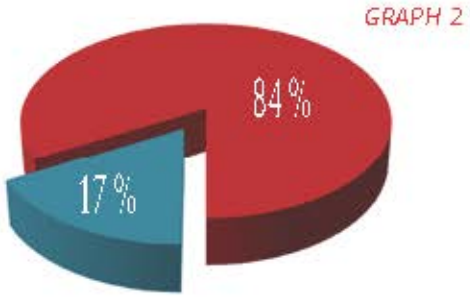
Article	Point (letter)	Provisions content	Components subject to assessment within the provision	% in provision's assessment	Subject to Comparison analyses
33	1	The acts of individual nature are approved by secret voting at all times.	The entire provision	100%	NO
	2	The decisions of the Council are taken with the majority of votes of the members attending the meeting	The entire provision	100%	NO
	3	The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gj", "i" and " j" of Article 32 of this Law, are taken with the majority of votes of the total	The entire provision	100%	NO
	4	The decisions are taken with three fifths of the total number of the members of the Council for cases provided for by Article 32/"e" of this Law.	The entire provision	100%	NO
	5	In cases of voting for the chairman, deputy chairman and secretary of the Council, when the required majority is not secured, voting is redone between two candidates, who got the biggest number of votes in the first round.	N/A	N/A	NO
	6	The official acts of the Council are published within 10 days from the date of their approval and they enter into force 10 days after being announced. The official acts of individual nature enter into force on the date when the subjects that are included in them are notified.	Formality within act's text- body	50%	NO
			Factual promolgation (venue)	50%	
34	1	Council meetings are open to the public. Every citizen is permitted to attend council meetings according to the modalities specified in the council regulation.	The entire provision	100%	Yes
	2	Announcement notification about the council meeting is publicly posted in the premises designated by the council and media. It includes the date, venue, hours and agenda of the meeting.	Venue(place)	25%	Yes
			Through media	25%	
			Through website	25%	
			Through Telephone,Email	25%	
	3	The council, by voting majority of the overall number of members, shall decide on cases when the meeting is closed.	N/A	N/A	Yes
35	1	Prior to the review and approval of acts, the communal or municipal council shall conduct consultation sessions with the community. These sessions are compulsory in cases as provided by article 32,letters "dh", "e", "f" and "k" of this law.	Letter "dh", M. Budget	50%	Yes
			Letter "f", Fiscal Package	50%	
	2	In each case, consultations with the community is done according to the modalities specified in the council regulation, applying one of the required forms such as open meetings with the inhabitants, meetings with experts, interested institutions and non-governmental organizations or launching the initiative for the organization of local referenda.	The entire provision	100%	Yes
	2.1	For communal/municipal council, consultation sessions with the chairmen and chairmanship of villages under jurisdiction are compulsory, in accordance with the provisions of letters "ç", "dh", "e", "f", "k" and "ll" of article 32 of the law. In this case, counselling sessions are recorded in minutes	N/A	N/A	Yes
	3	Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate; the council shall also designate other forms of their publication.	The entire provision	100%	Yes

1. ASSESSMENT OF COMPLIANCE WITH PROVISIONS OF THE ARTICLE 33, *"THE VOTING"*

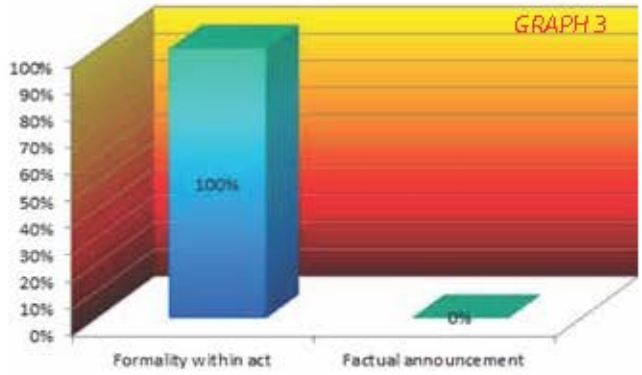
Compliance with **Provisions of para. 1,** Art. 33



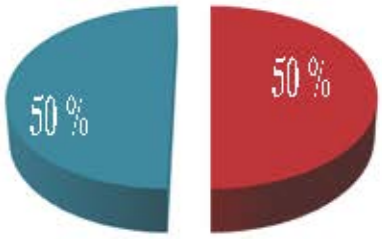
Average Level of compliance with **paragraph 1,** Art. 33



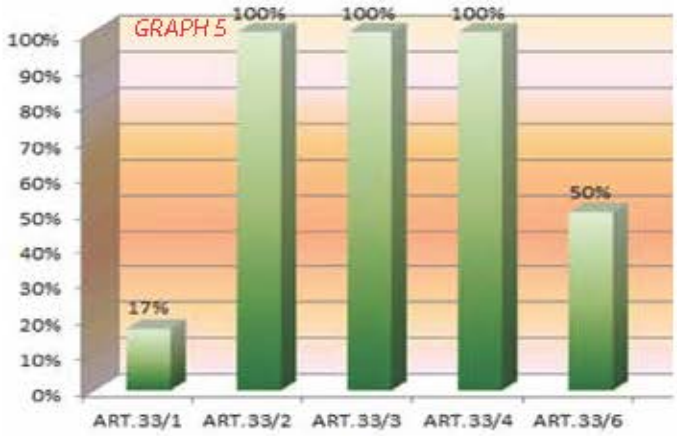
Compliance with **Provisions: a & b**, Para. 6, Art 33



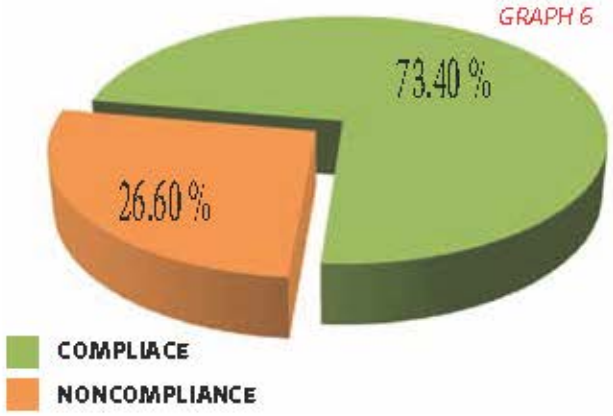
Average Level of compliance with **paragraph 6,** Art. 33



Compliance with **all paragraphs** of ARTICLE 33



Compliace vs. **Noncompliance** with ARTICLE 33



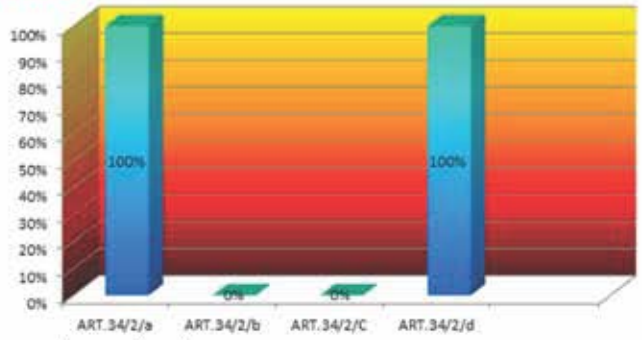
On data elaboration and visualisation:

The paragraphs 2 and 3 of the Article 33 are 100% observed during this monitoring, as explained in details in pg. 23. The paragraph 4 of the Article 33, has been fully observed too, as indicated in the pg. 24. Their corresponding charts will not be included as separate ones here, for space reasons. The hundred per cent observance of these three paragraphs is reflected automatically in the Graph 5. Paragraph 5 of Art. 33 is not included because the Council never referred to it during monitoring time.

2. ASSESSMENT OF COMPLIANCE WITH PROVISIONS OF THE ARTICLE 34, *"THE OPEN MEETINGS"*

Compliance with **Provisions: a,b,c & d,** Para. 2, Art. 34

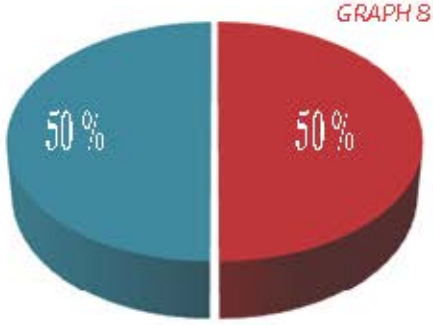
GRAPH 7



a : in appointed venue
b : through media
c : through website
d : through tel /email

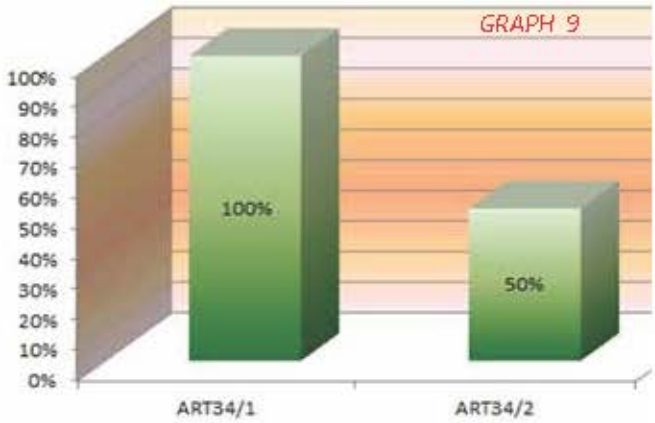
Level of compliace with **paragraph 2, Art.34**

GRAPH 8



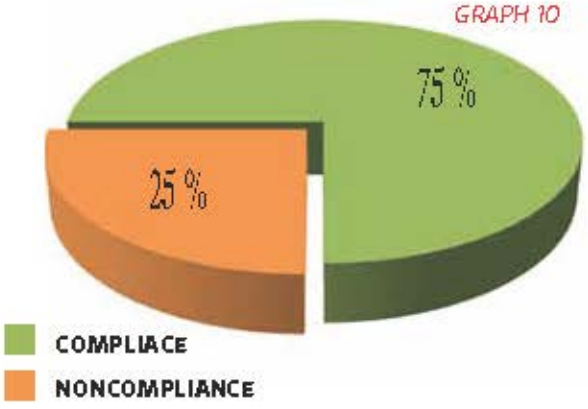
Level of compliance with **all paragraphs** of ARTICLE 34

GRAPH 9



Compliace vs. **Noncompliance** with ARTICLE 34

GRAPH 10



On data elaboration and visualisation:

ARTICLE 34, *"THE OPEN MEETINGS"*

The paragraph 1 of the Article 34 is 100% observed during this monitoring, as explained in details in pg. 26. Its corresponding chart will not be included here, for space reasons. The hundred percent observance of this paragraph is reflected automatically in the: Graph 9.

During the monitoring period, all the meetings of the Council were openly held (see more on pg. 28). Consequently, the provision 34/3 which provides for cases when the meeting are held in closed doors, cannot be qualified nor processed for assessment in Graph 9.

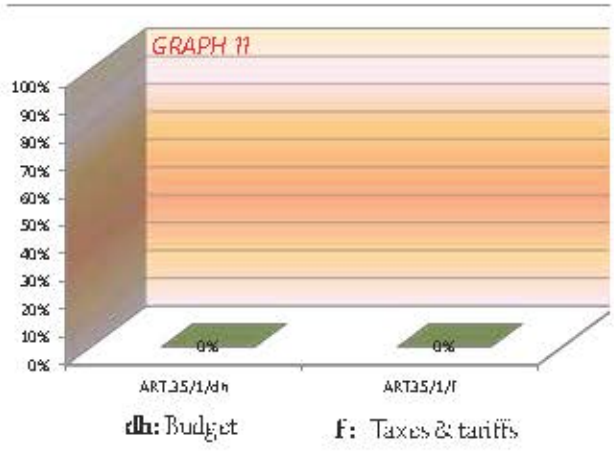
ARTICLE 35, *"CONSULTATION SESSIONS"*

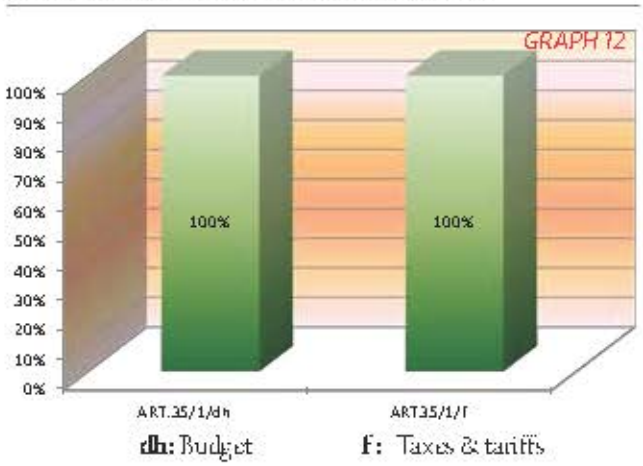
The public consultations, conducted by the Council, in compliance with its legal obligation (Article 35), became possible only due to CPII's full assistance, provided to the Durres Municipal Council, after the project started. Before this moment, the observance of such important legal obligation was simply at 0 level; after 12 months it was restored at 100%. Graph 11 and 12 (provisions on Taxes & Tariffs and the Municipal Budget for 2012, as explained thoroughly in pg. 33-37) indicate the drastic positive change generated. Graphs for compliance with paragraphs 2 and 3 are identicly the same; they are not included due to limited space. The paragraph 2.1 is not included in assessment too; it falls beyond the geografic location covered by this monitoring.

3. ASSESSMENT OF COMPLIANCE WITH PROVISIONS OF THE ARTICLE 35, "CONSULTATION SESSIONS WITH COMMUNITY AND THE PUBLIC'S RIGHT TO BE INFORMED"

BEFORE THE PROJECT **AFTER 12 MONTHS**

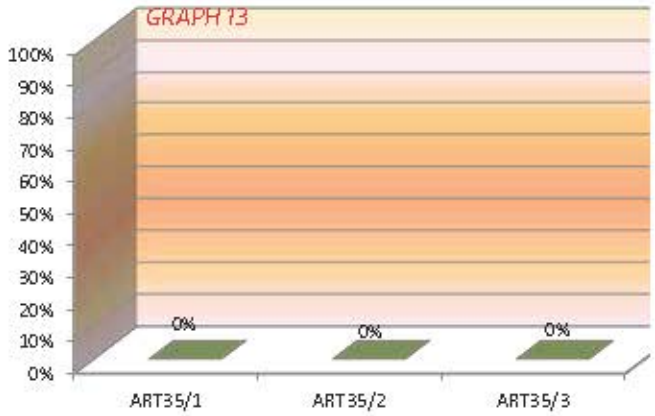
Compliance with **Provisions: "dh"** (budget) **& "f"** (taxes and tariffs) of Paragraph 1, Article 35

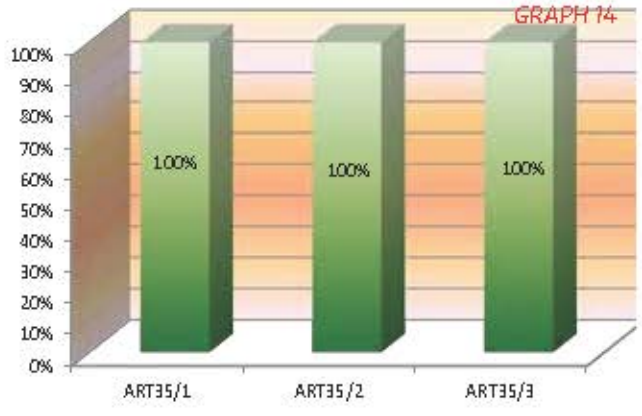




BEFORE THE PROJECT **AFTER 12 MONTHS**

Level of compliance with **all paragraphs** of the ARTICLE 33





BEFORE THE PROJECT **AFTER 12 MONTHS**

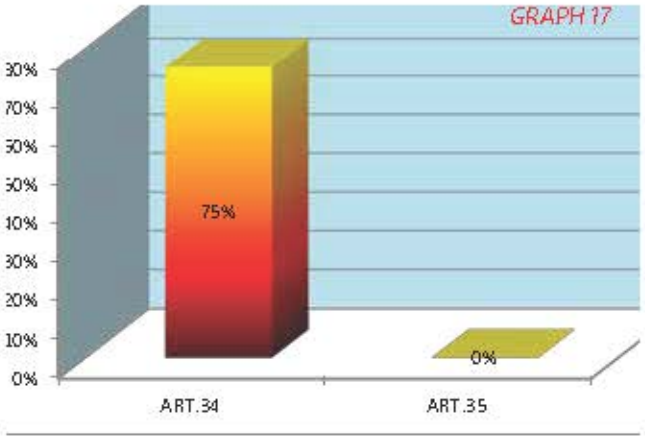
Compliace vs. **Noncompliance** with **ARTICLE 35**

4. COMPARISON ANALYSES: **OBSERVANCE OF THE ARTICLES 34** AND **35 BEFORE AND AFTER PROJECT IMPLEMENTATION**

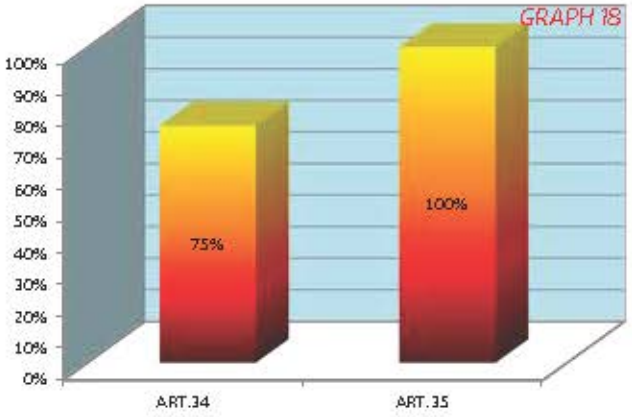
BEFORE THE PROJECT **AFTER 12 MONTHS**

Level of Compliance with **ARTICLE 34 and 35** before and after the project (12 months period)

GRAPH 17



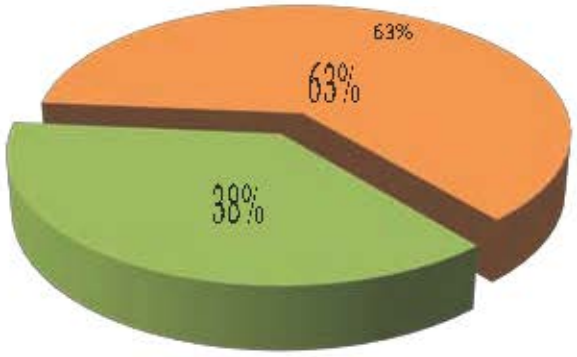
GRAPH 18



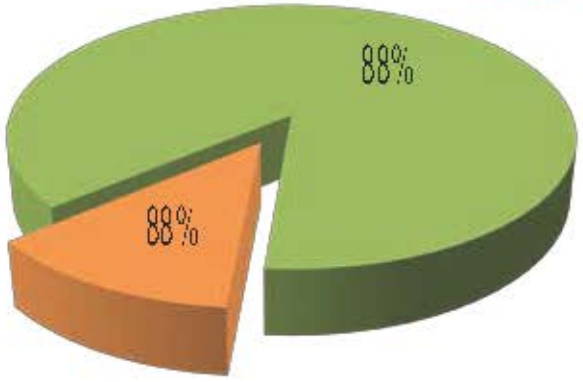
BEFORE THE PROJECT **AFTER 12 MONTHS**

Average level of compliace with **both ARTICLE 34 and 35** (a+b /2), before and after the project (12 months)

GRAPH 19



GRAPH 20



COMPLIACE
NONCOMPLIANCE

On data elaboration and visualisation:

The articles 34 and 35 of the Law 8652 contain detailed provisions which, if implemented in practice as the legislator intended, would guarantee a substancial participatory and transparent decision-making in local government level. Logically, the assessment of the observance of (level of compliance with) both the article 34 and 35 taken together, automatically produces a direct indicator to evaluate the level of openness and public participation in local decision-makin which in the frame of this monitoring, means TRANSPARENCY.

Further more, the method used by CPII enables effective comparison of compliance values of these two articles, both separately (graphs 17 & 18) and taken together as an average value (Graphs 19 & 20).

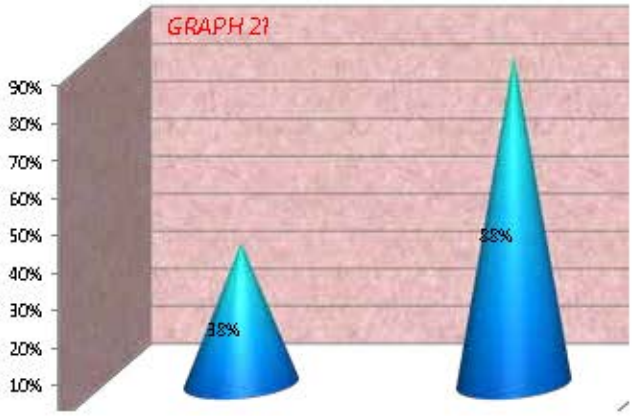
5. INDICATION OF TRANSPARENCY LEVEL AND IMPROVEMENT GENERATED IN 12 MONTHS

The strict observance of articles 34 and 35 is a juridical condition to have a lawfull and open decision-making process in local government level. Logically, by measuring the averobservance (level of compliance) of both the articles 34 and 35, one can produce direct indicators to evaluate the level of transparency and openness in local decision-making.

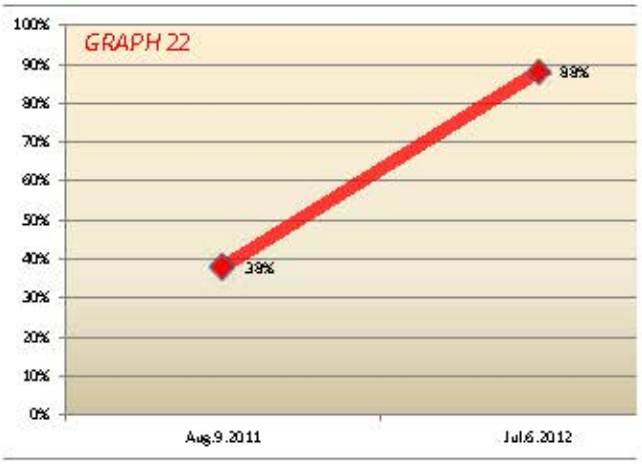
The comparison of the ***Average level of compliace with both Article 34 and 35, in the beginning of the project with that in the end of the project (as indicated by Graph 19 and 20 in pg. 46)*** produces the Transparency Grouth Indicator in local decision making (Graph 22). This important indicator also demonstrates substantially the project outcome, in terms of positive change generated within the project time (in our case, 12 months).

The ***Graph 22*** indicates also that the Transparency Grouth generated in twelve months is 50 percentage points (88% -38% = 50%). The TGI is an authentic indicator developed by CPII and is used for the first time by a civil society operator in Albania to assess in practice and evaluate the Transparency Level in local gevernment. It can be applied in several occasions, upon each and every given municipal council, especially when ranking among them is needed or required.

Level of transparency Before and After the project intervention in Durrës by CPII



Transparency Grouth Indicator (TGI)



As a conclusion:

IN ONE HUNDRED PERSENTAGE POINTS, TRANSPARENCY INCREASED WITH 50 POINTS

On data elaboration and visualisation:

As a matter of fact, the paragraph 6 of Article 33 is strictly correlated to the paragraph 3 of Article 35. They should have been bonded together (and must be), but, for some unknown reasons the lawmaker divided / distributed them in two different articles. For methodological purposes, the compliance with (enforcement level) paragraph 6 of Article 33 will not be included neither used as a variable in the assessment process through which the level of transparency and openness of the decision making in Durres is calculated or implied.

FOURTH PART

RECOMMENDATIONS AND METHODOLOGY

4 RECOMMENDATIONS

I. PROBLEM OBSERVED /IDENTIFIED

As results from the monitoring findings, the frequent avoidance of legal procedure of the secret ballot for all decisions of individual character, as provided by Article 33/1, in the case of Durres does not result that was "dictated" by the missing infrastructure of the hall, where the meetings of the Municipal Council are held. As a matter of fact, the council convenes in a modern hall, equipped with a modern electronic voting infrastructure. A reason that might explain why Durres Municipal Council generally approves the decisions of individual character through open voting could probably be that the members themselves have little knowledge of the provisions of the ***Law 8552, amended***. In fact, it would be a justified *"ignorantia juris"*, if one takes into account that there is no manual, regulation, directive or court decision in Albania that interprets and/or defines the criteria on what and how an individual decision is distinguished from a normative one.

I. RECOMMENDATION

Presuming that the low implementation level of the legal provisions which regulate the voting modalities may derive from the poor understanding that members of the council have on the law itself, a legal education campaign or program can be prepared and implemented in local level, having as primary target the members themselves, including secretaries of the Council and maybe other relevant actors which have an interest in monitoring. The primary goal would be to substantially increase the quality and lawfulness of the decision making process through providing real opportunities to know the legal obligations that have to followed by the Council during such process.

In the mean time, CPII recommends to raise the controlling capacities that the prefects and their administration exercise in order to ensure the lawfulness (compliance with all legal norms in force) of the Councils' decision making activity.

II. PROBLEM OBSERVED /IDENTIFIED

It should be noted that municipal councils in Albania are not assisted by any special administration (experts), which would take care of and/or address accordingly any technical aspects of the decision-making process. The law provides that all the tasks related to the administration of the decision-making process should be performed in by a single person, the Secretary of Municipal Council, who does not necessarily must have a legal professional education or training.

This is a deficiency that has severely compromised procedural quality of the decision-making process at local level. It poses the risk *"to contaminate"* it with *"influenza[55]"* from the political partes. This would contradict with the citizens' interests, for which the members of the Council have taken solemnly the oath to defend and promote (and not their party interests).

II. RECOMMENDATION

The presence of qualified personnel (body), with knowledge in law (legal education) that would help the members of the Council comply with procedural aspects of the legislation governing the local government (i.e. secret ballot, etc.) is a problem, which needs to be addressed urgently for adequate solution in the frame of potential legal amendaments. This can also be addressed through introducing capacity building programs which aim to provide qualified human resources which can be initiated and/or implemented by specialized donors. These programs can be piloted initially in some main municipalities of the Country, aiming at establishing a lawfulness tradition.

This second approach, despite generating more legitimacy of the decision making process, would also be contributing to employing new people in the end of the day, thus serving a double purpose.

III. PROBLEM OBSERVED /IDENTIFIED

In the framework of evaluations in this section, CPII deems that the distribution in articles 33/6 and 35/3, of the modalities required for the announcement and entry into force of a decision (time, venue), is a technical negligence of the lawmaker, which, as also proven by the findings, has not served well their correct implementation.

III. RECOMMENDATION

CPII recommends that the first sentence of article 35/3 "*The council acts are posted in public premises designated by the council within the commune or municipality territory and, as appropriate, the council specifies other forms of their publication*", be added as the seventh paragraph (7) in article 33. Further, this sentence might be re-formulated as for instance: ***In view of acquiring a legal effect****, the newly announced acts of the councilare posted*[56]*, in public premises designated by the council, within the commune or municipality territory and, as appropriate, the council specifies other forms of their publication".*

We should stress out that the announcement itself as a concept implies (as per definition) other subjects to which the act was addressed. As long as the public is generally absent in the Council meetings, the announcement shall necessarily imply a venue in which the act is announced through posting or publication. Only in this way we may refer to a comprehensive process of proactive public information by the institution. In the end, it is the Municipal Council to be mainly interested that the decisions it takes be disclosed to the citizens, for the purpose of their implementation.

Based on the same rationale, CPII deems that the reference made by ***law8653, as amended,*** to ***law 8653,****"On right of information about official documents"* is not necessary when it refers to the recognition of Council decisions by the citizens .

Suggestion:

In the frame of evaluating potential legal amendaments, CPII considers also that the Article 34/3 "On closed meetings", contradicts the very spirit of an open-to-all and transparent local government. **Therefore, CPII recommends the abrogation of this provision**

IV. PROBLEM OBSERVED /IDENTIFIED

The city of Durrës has a high demographic rate in the last 15 years and a substantial geographical extension due to the increase of its population, which still continuous to grow in number. The territory administered by Durrës Municipality has almost doubled compared to '90s, before which the migratory (demographic) movements were too limited.

To notify/ announce the local government activities to such a large number of inhabitants is already a challenge of a logistic character. The Law 8652, as amended, provides explicitely that: *the Council acts are posted in public premises designated by the council within the commune or municipality territory...* As reported by the on-site verification, no postings were established in public premises; such premises where the Council acts are displayed, do not exist at all, in Durrës.

Identification and later on, the implementation of new acts' announcing systems to as much as possible citizens, is currently both a legal and practical necessity. Otherwise, the Municipality legislative shall de facto remain separated and distant from its own citizens in exercising the decision making on their behalf. The latter shall not be *de facto* good citizens as long as the non-recognition of decisions by them may lead to the non-enforcement of acts.

IV. RECOMMENDATION

The installation of "LED" screens in certain highly populated public places would properly address for solution the issue in question. These "LED" screen would serve as a announcing notification system. It wold render the Council acts better announced and therefore better enforced by the subjects. In this context, it must be reafirmed that a transparent behaviour with the public remains the best ally of each elected representative and public senior official during exercising his/her duties.

For important meetings, such might be those "On general urban planning", or "on the Budget", or "on the Fiscal Package", flyers can be printed in advance and, through the Citizens' Transparency Network, established by CPII in Durrës, can be distributed to citizens in various city public premises. LED screens can also be used for broadcasting live important the above mentined meetings, in order to avoid over'crowding.

V. PROBLEM OBSERVED /IDENTIFIED

Public accommodation dificulties in the Council's meeting room are another observation made in Durres. The problems of infrastructure nature of the Council's meeting rooms are common in Albania. This deficiency is justifiable for some of municipalities that have failed to invest in the construction of modern halls for Municipal Councils (e.g. in Korça), but raises important questions for the new roms/halls that are built or restored during the past 7-8 years (in Durres, Tirana, etc.). The later do face difficulties to accommodate the public or the local journalists interested to follow or cover the plenary meetings of the Council. It is inexplicable, even subject to criticism, that, at a time when these important principles should have been embodied in concrete products, citizens were not part of the equation that was about to be solved. Apart from the local government, this makes responsible even the donor community itself that has funded the construction of **cities' parliaments,** which unfortunately do not enable an effectively direct participation of the public.

V. RECOMMENDATION

To address this problem, CPII recommends, in the framework of potential amendments of *Law 8652, as amended,* a third sentence to be added next to clause 1 of article 34, to explicitly provide that: *"The Council is obliged to provide the required accommodation infrastructure for the concerned citizens to attend in the room premises the meetings it conducts".*

As regards Durrës case, under the current situation, a minimum investment (three rows with 7 or 8 chairs each) would restore the accommodation capacity of the Municipal Council's meeting room, betterensuring their public attendance.

As far as various donors are concerned and the projects financed by them in respect of the establishment of room infrastructure of the municipal/ communal councils, it is appropriate to evaluate since the stage of design, the access capacities for the concerned public which has a lawful right to attend the meetings in the room premises. There would sound a demagogical approach to aim on one hand at public participation in the local decision making, and on the other hand, to have the new rooms for Councils build/restored without accommodating capacities.

VI. PROBLEM OBSERVED /IDENTIFIED

The database of decisions of the Municipal Council contains all decisions issued since 2007 up to date. This Database, developed by CPII, is also linked to the official website of Durrës Municipality.

It provides effective access to the Municipal Council decisions for all interested parties, in a simple form, free of charge and at any time. The database is also beneficial for the Municipal Council which is bound to publicly announce its decisions, which is a legal requirement. Use of new technologies and opening to innovation constitute one of the 12 Principles of Good and Democratic Governance of the Council of Europe. In this context, the Municipal Council of Durrës actually represents an European model of open and transparent decision making process.

VI. RECOMMENDATION

In order to make sustainable the decision uploading process into the online database after the project ends, a capacity building program, targeting Secretaries of Municipal Councils and IT personnel of the municipalities is necessary to be implemented by CPII. Scanner machines and other related equipment must be donated to the Secretaries of the ***the Municipal Council*** and IT personnel.

Why Secretaries of the Municipal Council?

According to article 37, paragraph 2 of the law 8652, *the Secretary of the municipality Council is responsible for:* a) to keep all official documentation of the municipality Council; b) to prepare all materials needed for each Council's meeting, according to the pre-established agenda; c) to prepare announcements on the next-coming meeting; d) to announce (display) and publish decisions of the Municipal Council; e) to prepare all consultative sessions with the community;

Why municipal IT personnel?

By inner rules and regulations, the IT personnel is responsible for the development and maintenance of the network and online systems within each municipality. Once the database id donated to each of the municipalities, the TI personnel, in close cooperation with the Secretary of Municipal Council will have to conduct data-entry process autonomously (upload the relevant decisions of its own municipality).

METHODOLOGY

As explained above, the rigorous enforcement of the provisions 33, 34 and 35[57] of the Law 8652 is a legal prerequisite[58] for having a lawful and participatory decision-making process in local level. Measuring the compliance with the above three articles produces automatically direct indicators for the objective assessment of the transparency and openness of such important processes. Developing a method for measuring the enforcement level of these three provisions and applying it in the real field, was a major objective to be reached in the first project phase, implemented in Durres. The basic method used by CPII is of the type "**Monitoring through Participation**", or MP in short.

The main methodological tool developed by CPII was named **PROACTIVE** (modified acronym for: ***"Protocol for Assessing Transparency in Decision-Making of the City Council through Active Civic Participation"***. This monitoring protocol is *sui-generis*, which means that is *"tailor-made"* for the relevant legislation in force in the Republic of Albania, concretely the Law 8652 *"On the Organization and Functioning of the Local Government", amended*. **PROACTIVE** is specifically designed also to assess and evaluate the level of proactive disclosure not only of the enacted decisions, but of the entire decision making process, as activated and provided by the public decision making body in local level (municipal council).

In general, the PROACTIVE approach combines in a single block the **monitoring of legitimacy of the decision-making process of the Municipal Council through the active participation and reporting of the citizens.** The MP methodology and especially its PROACTIVE approach hint at the necessary interaction between a "grassroots" organization and a think-tank one, with a strong vocation for monitoring and advocacy.

In its interaction with structures of the local level, the one in the field generates data which are then forwarded to the central specialized structure to be further processed for generating conclusions based on solid evidence. On the other hand, the "grassroots" structure is "fueled" by the think-tank NGO according to a detailed protocol, on which basis the interaction with the Municipal Council must be built. This protocol is in fact, a part of the complete Kit that includes training, support both in expertise and financially, the reporting template, arrangement of activities, online capabilities etc.

It is important to stress that this methodology is based on the pre-assumption that the legal framework that regulates the decision-making process at the local level is complete and provide guarantees. In fact this coincides with the widespread judgment that countries as Albania have adopted a good legislation and the problems that are faced are due to the insufficient (bad) enforcement of this legislation.

It is also of importance to stress that MP methodology implies the continuous feedback being received during all the time of the project. Inevitably, some of the planned activities as well as the new ones are bound to change, depending on new circumstances created and some new activities are added without being planned.

DETAILED DESCRIPTION OF THE PROACTIVE MONITORING TOOL

In the first project phase, a group of 5 citizens, representing different strata, professions and age groups, were carefully selected and trained by CPII on the autonomous use of certain links of the PRO ACTIVE menitoring tool. In addition to live attendance of every meeting of the Municipal Council to concretely test this way the guaranteeing of the right of public to participate, they should also observe some well defined components of the decision-making process, regulated by articles 33, 34 and 35 of the Law no. 8652 *"On the Organization and Functioning of Local Government", as amended.* It is clear that under these conditions, the monitoring process of this mixed team of citizens, identified by the name of **Citizens' Transparency Office** in Durres, was not limited to the room and

during time when the meetings of Municipal Council took place. On the contrary, an important part of this process was performed prior to or after of these meetings (i.e.whilst the draft'decisions had to be subject to consultation with the community before they were adopted by the Council, or even when the decisions already passed had to be announced through notification and/or publication in order to enter into force as the law requires).

A detailed report, drafted by the team leader and collegially "checked and approved" by the members of Durres CTO after each meeting of the Municipal Council, was to be submitted to CPII for further evaluation. The template of this report in a structured-in-advance format aimed at collecting data such as: ***participation of city councilmen in voting sessions, approved decisions, the voting modalities and results, the announced agenda of the Municipal Council meeting and its modifications in plenary session, participation of other citizens (who are not members of the CTO) in the room where meetings of Council are held and the issues addressed by the Council.***

Later on, the data of this reports were rearranged in a divulgated and laconic way also in journalistic style, published afterwards online at the official website of the CPII: www.infocip.org, already linked in official website of the Municipality of Durres. This journalistic style report serves two purposes: First, to provide information from a different prospective for every citizen and internet user, including the municipal administration,with regard to the activity and functioning of the Municipal Council, while the later is being monitored by the civil society (in our case, CTO in Durres).

Secondly, this kind of reporting serves the promotion of an online media reporting culture of citizens involved in local monitoring initiatives. This new culture goes along with the presentation of innovatory ways for the increase of transparency through new media,today more and more available to civil society operators.

Also, to enable and guarantee the most possible detailed and objective evaluation by CPII experts in Tirana, all the meetings of Municipal Council held during the monitoring period were audio-video recorded. This rigorous documentation is very important for the final evaluation of the legal modalities of the decision-making process and compliance with the legal provisions in force. Concretely, in the first project intervention the audio-video recordings have been decisive regarding the assessment of the compliance articles 33, 34 and 35 of the Law no. 8652 "On the Organization and Functioning of Local Government, as amended (*find more on*: http://www.infocip.org/al/?page_id=269).

After completion of their careful examination the audio-recordings were converted into web format by CPII staff and uploaded in its official website. This represents an important added value of the entire project, because it provides a new transparency dimension in local decision making. It also offers a chance for the local authorities in Durres to verify the accuracy of the monitoring findings.

Based on data collected through PROACTIVE, CPII experts' team in Tirana evaluated on a step by step basis the level of implementation of each and every provision contained in articles 33, 34 and 35.

In the frame of this method, the average level of compiace with the provision 34 and 35 indicate in the mean time the level of transparency in the local decision making by the Municipal Council, as long as the articles in question substancially provide for it. This type of evaluation is conducted for the first time in Albania. The comparison between the average level of compliance with these two articles in the beginning and in the end of the project (first 12-months phase), if put in a scale and expressed in percentages, produces a special indicator on the improvement (positive impact) generated by the project intervention with regard to transparency and openness of the decision making process, in the meantime, the main goal of the project.

Data elaboration and visualization about each and every provision assessment is a substantial part of the methodology carried out and applied by CPII. As made known earlier in this chapter, the method is based on the presumtion that ***Law 8652, as amended,*** has sufficient regulatory components through the application of which a satisfactory level of transparency during decision making process could be guaranteed. Measurement and assessment of the implementation (enforcement) level of the provisions in question indicate an objective evaluation of the transparency level in local decision making.

56. *Used here as a word-play, instead of "influence"*
57. *The following may be also added: "after obtaining the consent of the prefect"*
58. *Guaranteeing an open and transparent decision making process to the public is not left in the judgement, discretion or conscience of locally elected people, but it is regulated by law, mainly through articles 33, 34 and 35.*
59. *This provision puts into action also a part of the letters of the Article 32 of the Law no. 8652, as amended, concretely "dh", "e", "f", and "k".*