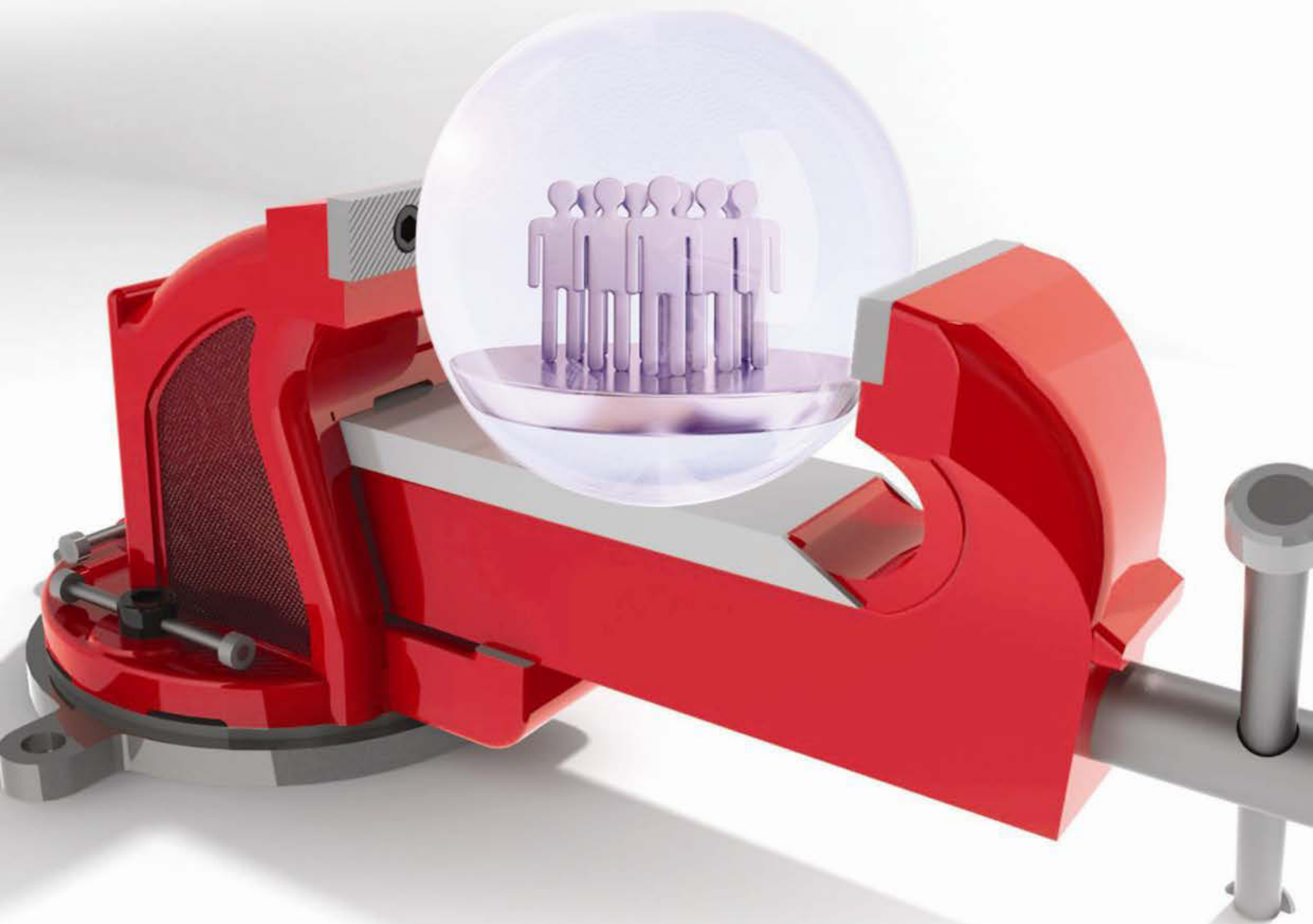


MONITORING & EVALUATION REPORT



June 2012- June 2013



LAWFULNESS & TRANSPARENCY OF DECISION-MAKING PROCESS IN DURRES MUNICIPAL COUNCIL AND THE PUBLIC PARTICIPATION

MONITORING REPORT

LAWFULNESS & TRANSPARENCY OF DECISION-MAKING PROCESS IN DURRES MUNICIPAL COUNCIL

MONITORING PERIOD:

JUNE 2012- JUNE 2013

(12 MONTHS)

A publication of the Center for Public Information Issues, CPII (iINFOÇIP)



Website: www.infocip.org
e mail: qendra@infocip.org

© copyright 2013 - Qendra për Çështje të Informimit Publik, INFOÇIP

Project Director

Gerti Shella,

Project Coordinator

Gejsi Ndoja

Team Members

Endrit Shabani
Namik Musaku
Erjon Sopi

Author of the monitoring method & legal assessment (PROAKTIV)

Gerti Shella, expert on access to legislation

Website & Database administrator

Dritjon Selmani
Ermir Tufa

Design & layout:

Altin Aliaj

* * *

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."

Supported by:

National Endowment for Democracy, NED (Washington D.C)



DISCLAIMER: Thought and opinions expressed in this publication are of the authors and do not necessarily represent those of the donor.

Content

INTRODUCTION 7

FIRTS PART

LEGAL FRAMEWORK AND MONITORING LEGITIMACY 11

The goal of Monitoring..... 11

Decision making process at local level..... 12

Participation in the decision making process..... 13

Access to local legislation..... 14

Functioning time limits of the Municipal Council 15

SECOND PART

THE MONITORING FINDINGS..... 19

OBSERVANCE OF THE ARTICLE 33..... 19

OBSERVANCE OF THE ARTICLE 34..... 22

OBSERVANCE OF THE ARTICLE 35 24

OBSERVANCE OF THE FUNCTIONING TIME LIMITS 27

THIRD PART

SUMMARY OF THE MONITORING CONCLUSIONS 33

FOURTH PART

RECOMMANDATION 39

METHODOLOGY..... 42

ACKNOWLEDGEMENTS

The Center for Public Information Issues expresses its gratitude to the National Endowment for Democracy, for the trust and substantial assistance it has provided to make possible the implementation of this initiative for the second consecutive year.

CPII would also like to extend its thanks to the Durres Municipal Council for the great cooperation provided in the frame of this initiative.

Gratitude and appreciations go to the CPII working teams in Tirana and in Durres for their great commitment and citizenship demonstrated in achieving this project's objectives.

INTRODUCTION

“Lawfulness & Transparency of decision-making process in Durres Municipal Council and the Public Participation” is a monitoring report prepared and published by the Center for Public Information Issues for the second consecutive year now. The initiative in general and the Report as a substantial part of it are supported by the National Endowment for Democracy (NED), in Washington D.C.

The monitoring aims at measuring and evaluating the compliance of the Council’s activity with the requirement of the *Law 8652, dated 31.7.2000 “On the Organization and Functioning of Local Governance”, as amended*, especially with those provisions grouped in Chapter IV of this law.

Primary object to monitoring and assessment is the observance of the articles 33, 34 and 35 of the law 8652 by the Municipal Council of Durres while performing its decision-making functions.

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 compliance with these legal provisions is a judicial and factual condition to guarantee a lawful and transparent decision-making process, through ensuring public participation and effective access to the local legislation

A second focus of measuring and evaluation in this year’s monitoring is the legal time limits that regulate the activity of the Municipal Council, as provided for in Chapter VI of the *Law 8652 “On Organization and Functioning of Local Governance”, as amended*. Expiration of these functional time limits may lead to the dissolution of the City Council.

The period covered under this monitoring was 12 months, July 2012-July 2013. The reason this period does not cover a calendar year (January 1 – December 31) but extends to two years relates to the delayed constitution of the Municipal Council of Durres once the Local Elections of May 8 2011 were over. The Municipal Council was constituted in August 2011. The first 12 months of the 4-year (2012-2015) mandate of the Municipal Council concluded with the meeting of July 6, 2012. The circulating decisions adopted by the Municipal Council on July 26, 2012, mark the opening of the second monitoring period, 2012-2013 (of the follow-up project).

In order to conduct this monitoring, the Center for Public Information Issues developed initially a specific methodological tool, called PROACTIVE, which represents one of the most important approaches and outcome 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 Governance”, as amended*.

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 between the decision-making and executive powers at local level.

In the previous year’s monitoring report, CPII calculated also the Council’s level of compliance (implementation) with the provisions contained in the articles 33, 34 and 35 of the law 8652. In this year’s Monitoring Report such a specific assessment was not conducted or applied due the reduced council’s activity (it convened only 3 times in plenary sessions to hold its meeting, instead of twelve expected).

Durres Municipal Council is specifically targeted by these monitoring, without excluding the central administration which has a legal duty to supervise how local decision making bodies are complying with their legal duties. Donors (governmental or non-governmental), which do work with the local government, are another specific target. Local media in Durres and national media are target as well. This Report is available also to all Durres citizens, so that they start to evaluate from a different prospective the performance of their elected representatives in the Municipal Council; they offered themselves a valuable contribution in providing data for evaluation in the frame of this Report.

GERTI SHELLA
EXECUTIVE DIRECTOR
Center for Public Information Issues

FIRST PART

LEGAL FRAMEWORK & MONITORING LEGITIMACY

1

LEGAL FRAMEWORK & MONITORING LEGITIMACY

I. THE GOAL OF MONITORING

EVALUATION OF DECISION-MAKING ACTIVITY

The law 8652, dated 31.7.2000 “*On the Organization and Functioning of Local Government*”, amended, integrates some important constitutional principles¹, 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 activated **at the beginning, during and at the end of** the decision-making process. Concretely, this implies the preliminary consultation of a category of official acts² 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 decisions 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 to have a lawfull and open decision-making process.

Logically, the measurement and evaluation of the implementation level of the articles 34 and 35³ 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.

To monitor the decision-making and its transparency in local level means to assess the observance level of the articles 33, 34 and 35 of the law 8652, amended; If outside this logic, each monitoring effort would be un-anapropriate, non-serioz and incompetent to “diagnose” the problems related to local decision making.

EVALUATION OF FUNCTIONAL TIME LIMITS

Law No. 8652, dated 31.07.2000, “*On Organization and Functioning of Local Governance*”, as amended, regulates the activity of the municipal councils by establishing time limits for their functioning. Application of time limits commences with the constitution of the municipal/communal councils and continues during the entire time the council exercises its mandate.

Among the most important schedules and time limits measured and evaluated by this monitoring include frequency of the regular meetings and adoption of the annual budget. Failure to abide to these functional time limits may lead to the dissolution of the Municipal Council. Such an extreme anticipation provision is made twice by the law 8652; one is in Article 31, para. 8 “*Functioning of the Council*”, and the another one in Article 38, “*Pre-mature dismissal of the Council*”.

The Monitoring Method

Developing a methodological tool to measure & evaluate the level of implementation of these three articles in practice was one of the main objectives of this project. The methodological model developed by CPII is of the type “**Monitoring through Participation**”¹⁹, or **MP** in short.

The main 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 Governance*”.

In general terms, the PROACTIVE 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.**

II. 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 113 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 grants in considerable amounts, or even very critical decisions on the territory and public properties which have been recently transferred 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 nature¹ 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*”.

ARTICLE 32

DUTIES AND COMPETENCES OF THE MUNICIPAL COUNCIL

- 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 remunerating 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.

III. 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*”¹⁹. The public’s right to participation and information are both included in the “Fundamental freedoms and Human Rights” Chapter of the Constitution of Albania², which, in its Article 23 explicitly 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*”, amended³. 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, with experts, interested stakeholders, non-governmental organizations or through organizing 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 exclusively 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 enacted decisions through their announcement.

ARTICLE 3 “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.

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.*

IV. 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 displayed/posted in public places appointed 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 can also be informed based on the Law no.8503, dated 30.6.1999 *"On the right of information about official documents"* (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 organically linked to one another.

Therefore, the compliance of the Council with these provisions is a **juridical** and **factual** prerequisite to guarantee public access to the local legislation, in the sense of effectively informing the citizens on the decisions approved by the Munic-

ipal Council, so that they can follow. Providing *Access to legislation* implies guaranteeing effective access to know the juridical-administrative norms set by the decision-making authority. In our case, the concretization of the decisions as paper-written by the City 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 these 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 bodies¹ 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 government bodies. In theory this is referred to as "proactive information" of the public, so to distinguish it from "active information", which is guaranteed by the RTI laws.

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 PBLIC'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.

V. LEGAL TIME LIMITS OF FUNCTIONING OF THE MUNICIPAL COUNCIL

Law No. 8652, dated 31.07.2000, *“On Organization and Functioning of Local Governance”*, as amended, regulates the activity of the municipal councils by establishing time limits for their functioning. While the law does not have a specific chapter on sanctions, legislators have taken heed of activating sanctions in case time limits stipulated in the law for the Municipal Council to exercise its decision-making functions are either violated or exceeded.

Application of time limits commences with the constitution of the municipal councils and continues during the entire time the council exercises its mandate. Not later than twenty (20) days after the Central Election Commission has officially announced the local election results, each Municipality Council shall conduct its first meeting (as laid down in Article 26, paragraph 1). In case the Secretary of the Municipal Council and the Prefect fail to exercise this right within the time limit stipulated in section 1 of this Article, then the council is convened on its initiative within ten (10) days (Article 26, paragraph 3).

Article 31 *“Functioning of Municipal or Communal Council”* provides important provisions with regard to time limits of the Council’s functioning. Thus, the schedule for the regular [ordinary] meetings is decided by the Council itself, but not less than one per month (Article 34, paragraph 2). The meeting is called by the Chairman of the Council, and the meeting shall be notified at least five (5) days before the meeting (Article 34, paragraph 4). When the Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. Dissolution (formal dismissal) of the Municipal Council is followed by new elections for the council and the Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning (Article 34, paragraph 8).

The Law 8652, as amended, has a specific article on the dissolution of the Municipal Council. Article 38 foresees three cases when a council is dissolved prior to the expiration of its mandate. Specifically, these cases are: a) It does not meet for an uninterrupted period of three months; b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law; and, c) It commits serious violations of the Constitution or other laws. It is obvious that the dissolution of the Municipal Council, in case of inactivity

ARTICLE 31

FUNCTIONING OF MUNICIPAL COUNCIL

8. Where a Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. Dissolution of the Municipal Council is followed by new elections for the council and the Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning

ARTICLE 38

PREMATURE FORMAL DISMISSAL OF THE MUNICIPAL / COMUNAL COUNCIL

1. The council is dissolved prior to the expiration of its mandate by a Decision of the Council of Ministers in the following cases:
 a) It does not meet for an uninterrupted period of three months;
 b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law;
 c) It commits serious violations of the Constitution or other laws.
 2. The council is dissolved even in case when the administrative boundaries are getting re-organised, as according to the article 70 of this law.
 3. In case when the decision on the council’s dissolution is to remain in force, in the given Municipality or Commune new elections are to be organized, in accordance with the Electoral Code of the Republic of Albania.

for three consecutive months, is set forth in two different articles of the very law (Article 34, paragraph 8, and Article 38, paragraph 1).

Likewise, Municipal Council’s failure to adopt the budget within three months of the deadline determined in Article 19 constitutes a reason for the dissolution of the council. In general, the administrative Albanian practice indicates that the common period to adopt the local budget is November-December, i.e., one or two months prior to the new fiscal year upon which the budget is applied. Postponement of this deadline may ‘tolerate’ until March or April at most. Adoption of the annual budget in the second half of the year, i.e., in July and later on, is, in fact, an administrative and valueless blunder and misuse from the viewpoint of producing the targeted budgetary effects.

Finally, time limits are applied not only on the council as a decision-making body but also on the council members (councilors) as individuals. The Councilor’s mandate may expire earlier, with the proposal of the mandate Commission, in case of absence from the council meetings for a period of six months (Article 27, paragraph 4, letter ‘e’).

SECOND PART

DETAILED PRESENTATION OF THE MONITORING FINDINGS

2

MONITORING FINDINGS

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

Law 8652 "On the Organization and Functioning of the Local Governance", as 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.

THE MONITORING FINDINGS

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

During the period under monitoring (July 2012 – July 2013), Durrës Municipal Council passed in total 70 Decisions; 38 of them during 2012 and the rest till July, 2013 .

The vast majority of them are of individual character (66 in total) and only 4 are of normative character. This classification of decisions into two categories, namely of **individual** and **normative** character, is essential to the analysis undertaken by CPII in the framework of this Monitoring for it is a prerequisite for assessing the level of compliance with **provision 33/1** by the Municipal Council itself. (read more about this argument in: **Methodology**). Paragraph 1 of Art. 33 requires that: "Acts of **individual** character are always approved by secret ballot".

Based on the thorough and careful evaluation of all audio-video recordings, in which all the meetings of Municipal Council are documented, it results this provision (Art 33/1) has not been observed in none of the cases when individual decisions are voted in the Council.

The frequent avoidance of this legal requirement set by Article 31/1, in the case of Durres does not seem to happen due to lack of voting infrastructure in the meeting hall. The council convenes in a modern room, equipped with a modern electronic voting infrastructure. A reason might be that the councilmen themselves have little knowledge on such specific legal requirement (Art 33/1). In the worst case, they simply choose to ignore it.

The criteria to distinguish a normative from an individual act

The individual administrative act regulates 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 only to a certain person, but on a wide group or category of 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 events to occur. To be equally applied to all subjects, the normative act is formulated in the most general and abstract manner, 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 concrete relationships where identifiable subjects or objects are involved.

"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 passed by the Municipal Council during the period covered by this monitoring (July 2012-July 2013), only a small number of them are of normative character (4 in total). The most important one is the Decision no. 123, "On the approval of General Urban Plan of Durres City". In the four cases, the voting was held openly, and, for as long these are normative decisions, such practice is fully based on the legal provisions.

It has to be mentioned here that the Municipal Council of Durres could not pass though two other very important normative decisions, such as that "On the Budget 2013", and "On the Fiscal Package, 2013". Reasons that might have led to this serious failure will be further analysed in the chapters below.

VOTING MODALITIES

The paragraph 3 of Article 33 requires that *The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gf", "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 approval of annual budget and fiscal package. Based on the close monitoring of the decision-making process in Durres Municipal Council, it results that this legal requirement (33/3) has been fully observed. The CPII senior staff and the CTO team members in Durres, who closely observed all the meetings of 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 conclusion that the paragraph 2 of Article 33 has been observed by the Municipal Council of Durres.**

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, provide in its paragraph 4 that: "Decisions are taken 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 "change of ownership or usufruct of its property to third parties".

During the 12-month period covered by this monitoring, Durres Municipal Council passed at least 5 decisions of this type. In all these cases the voting has been almost unanimous. **It can be affirmed that the paragraph 4 of Article 33 of the Law 8652, amended, was fully observed during the monitoring period (June 2012 - June 2013).**

In regard to such special decisions passed by Municipal Council, a double assessment needs to be made in order to assess the compliance with all legal provisions regarding the voting process (legal modalities). 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. Article 33/1 explicitly states that "Acts of individual character are always approved by secret ballot."

CPII has drawn the conclusion that in every case listed above the councilmen did not submit any secret ballot. Furthermore, when such decision are to be taken, the law requires from the Council to undertake consultations with stakeholders or the wide public (Art. 35, para 1). Even such a modality was not noticed to have taken place under this monitoring period.

CIRCULATING DECISIONS

Pavarësisht se mbledhja e fundit u mbajt në 11 Janar 2013, Këshilli ka miratuar me vendim qarkullues pas kësaj date nga një vendim respektivisht në 23 Janar, në 28 Shkurt, në 25 Mars dhe në 26 Prill 2011, (VKB për ndihmën ekonomike dhe pagesat e paafëtisë). Ky format vendimarrje dhe procedura që ndiqet në rastet tilla nuk parashikohet në ndonjë nga nenet e ligjit 8652, të ndryshuar. Rrjedhimisht, praktika e ndjekur përvendimet qarkulluese nga Këshilli Bashkiak Durrës, mbetet të konsiderohet ekstra ligjore.

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).

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 comple-

tion of all actions required by law in order for that act to be considered announced or promulgated.

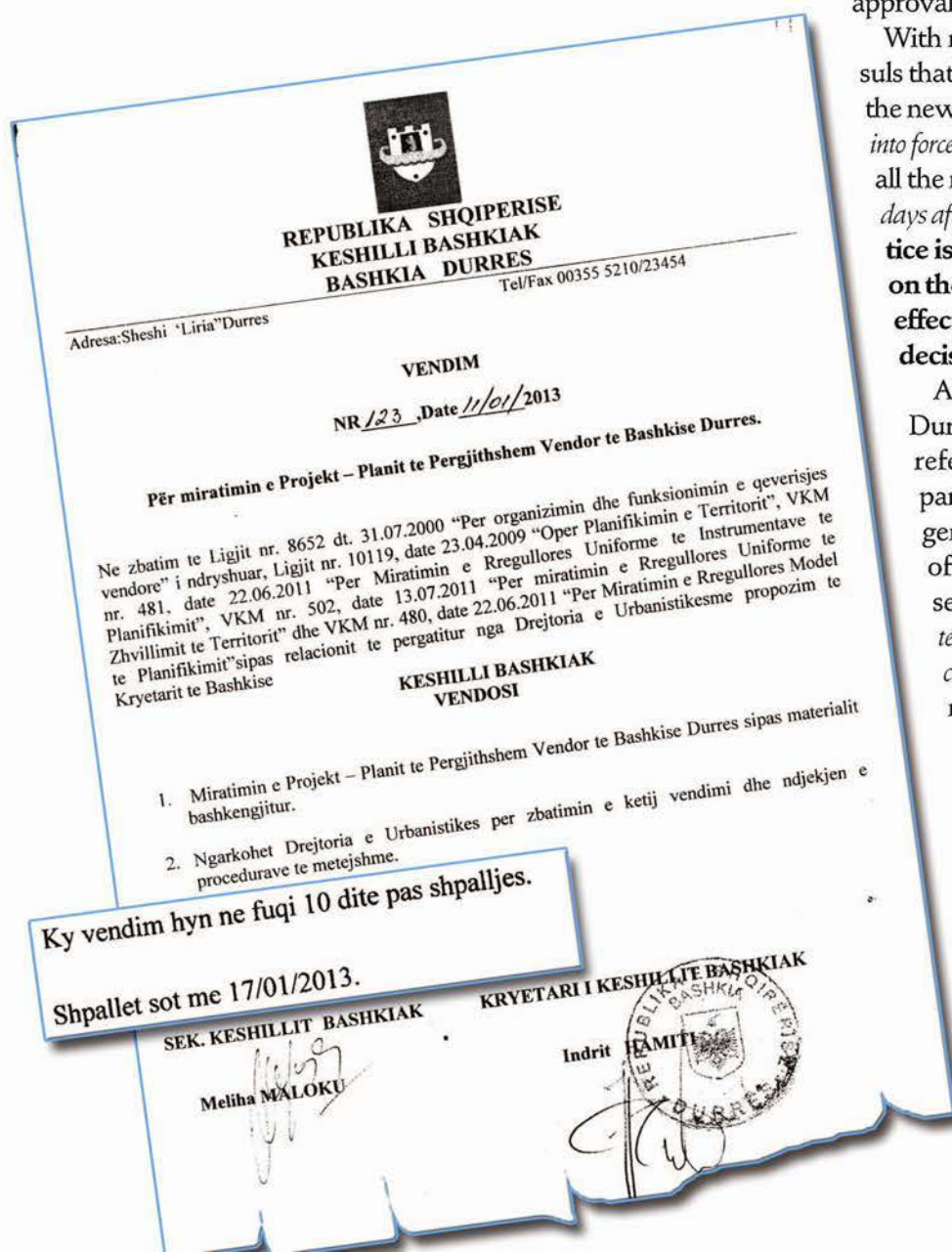
Preliminary definition of the normative or individual character of the act (*in this case decision of the Municipal Council*) is necessary in this case, too, as a prerequisite to objectively assess the modalities followed for promulgation and entry into force of the decisions of Municipal Council.

Based on CPII's careful assessment, the decisions issued by the Durrës Municipal Council provide a careful formal definition in terms of setting in the act's text body the time limits (modalities) of their promulgation and entry into force.

All decisions are provided with a separate sentence in their text body where is stated that they are to be announced within 1-3 days from their date of approval by the Council.

With regard to their entry into force, it results that all nominal decisions passed during the new Council establishment period *"enter into force after confirmation¹ by the prefect"*, while all the remaining decisions, *"enter into force 10 days after their announcement date"*. **This practice is fully based on the legal provision on the modalities and time limits for the effectiveness (coming into effect) of the decisions enacted by the Council.**

As noted, the practice followed by Durrës Municipal Council, in fact makes reference to the first sentence of the paragraph 6, Art. 33, which is of a more generalizing character. In the opinion of this study's authors, 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). The Municipal Council issues individual decisions most of the time, which target a large number of subjects. To notify them individually as the law provides and require would be such a waste of time, therefore CPII recommends the abrogation of this second sentence from the Art.33/6.



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

Law 8652 "On the Organization and Functioning of the Local Governance", as 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 THE MEETINGS (Art. 34/1)

The civic participatory program, designed by CPII, aimed at further exposing the Municipality Council activity (meetings) to as many citizens as possible. Seven to twenty citizens were facilitated each time by the local project staff in Durres to attend the meetings of the Council, as observers. Unlike a year ago when, unfortunately, very few Durres citizens were seen attending a Municipal Council meeting, public attendance of municipal council meetings increased considerably during this second year of intervention.

The Municipal Council meeting with highest public attendance was the one of January 11, 2013, in which the General Local Plan of the Municipality of Durres was adopted upon the Municipal Council (Decision No. 123). Due to the significant regulatory effects that this decision will have on the urban development of the town, a considerable attendance of citizens was registered in the meeting hall of the Municipal Council. Attendants represented the residents of the second neighborhood, which is classified as an archeological site of 'A' Category. The Citizens' Transparency network gave its valuable contribution to the increase of this public attendance. Local residents attending this meeting expressed their concerns directly to the local councilors at the plenary session of January 11, 2013. They demanded from the local councilors to include in the General Local Plan a provision that permits construction of multistory apartment buildings regardless of the fact that their neighborhood was an archeological site. In addition, they demanded that the plan included provisions that would permit reconstruction of their houses, while this practice was completely impossible to the residents of this neighborhood to date. The representative of the design studio, contracted by the World Bank to develop the General Local Plan of Durres, explained to both the public attendants and the councilors that archeological sites as well as development and conservation of houses located in them fall under the au-

thority and jurisdiction of the central government and are regulated by law adopted by the Parliament. Therefore, the design studio was legally bound to consider these requirements during the preparation and development of the General Local Plan of Durres.

Another Municipal Council meeting with high public attendance, mainly school students, was the meeting of November 5, 2012, in which a considerable number of environmental issues were elaborated and discussed.

The infrastructure of the Municipal Council meeting hall allows for limited attendance of citizens. In several cases, the INFOÇIP team was obliged to attend the meeting standing due to unavailability of seats. In addition, the team has observed that there are no sufficient seats for the municipal administration staff to be able to attend the Municipal Council meetings. Similar finding applies for local journalists that wish to report the local council meetings. This problem practically affects the guarantee of the Constitution of the Republic of Albania. Article 23/3 of the Constitution states: "Everybody is given the possibility to follow the meetings of collectively elected organs."

The infrastructure and space problems of the Municipal Council meeting rooms are quite common in Albania. This deficiency is justifiable for several local government units, which cannot afford the construction of modern meeting halls for their municipal councils, such as the Municipality of Korça, for example, but it does raise concerns for the new meeting rooms constructed or reconstructed in the last 7-8 years, such as in Tirana, Durres, etc.

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.

THE MONITORING FINDINGS

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

2.2.1 ANNOUNCEMENT IN PUBLIC PLACES

In the strict sense of legal provisions, there are no public stands in any city's public spaces that serve or have served the purpose of posting/displaying the incoming decision of the Municipal Council. The Municipality of Durres has though 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-priori as a maximal value in the graph which indicate the on the implementation level of (compliance with) article 34*).

2.2.2 ANNOUNCEMENT THROUGH 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, it has no local televisions yet. This does not make local issues and the decision-making activity of the municipality subject to constant media coverage.

Only this year (2013), a new local TV, named Adria TV, started the broadcast, but the content of its transmissions will not be evaluated in the frame of this report, even because they have been mainly movies and just little time was devoted to news reports

2.2.3 ANNOUNCEMENT THROUGH OTHER WAYS

TELEPHON, E-MAIL

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 team was informed regularly via phone, three to four days prior to the incoming meetings of the Council. This practice, although has guaranteed the *live* attendance of the meetings by the monitoring team, meets limitations on the other hand, in providing notification for all possible interested subjects to attend the Council's meetings.

WEBSITE

Even though not an explicit legal requisition, 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 Administration. 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 Council's meetings.

2.2.4 MEETING'S DATE, TIME, PLACE, AGENDA

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.

GJETJET E MONITORIMIT

2.3 MEETINGS HELD ON CLOSED DOORS (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 (June 2012 - June 2013), all the meetings of the Council were openly held. There has not been reported any case when the councilmen may have voted 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 it 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 Korrça, it was never observed even a single meeting to be held under the provisions set by this disposition of the law.

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 Governance", as 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 "l" 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, Art. 35/2)

Consultations organized by the Municipal Council itself are mandatory when it:

- 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 of the Council with the community can be organized by using one of the following forms: open meetings, simposiums with specialists, interested institutions/stakeholders and non-governmental organizations or by taking the initiative to organize local referenda (**Article 35/2**). In Durres, such process is being facilitated by INFOCIP since more than two years now.

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

During this monitoring period, the Municipal Council of Durres failed to adopt the Budget of year 2013 and the Fiscal Package of 2013, also known as Local Taxes and Tariffs, which are always adopted ahead of the Budget. This is an unprecedented and highly serious situation if one takes into consideration that we are speaking about the most important decision-making to be made by a local council.

In fact, the process of adoption of the 2013 Fiscal Package did start but it never finalized, as indicated in the official correspondence of the Municipal

Council with the Prefect. A letter to the Prefect, protocolled with no. 2114, states: "On February 20, 2013, a meeting was conducted with the heads of council groups, which reviewed the materials submitted by the local administration and agreed to hold the regular meeting of the Municipal Council of Durres on February 25, 2013. The meeting agenda included discussions on and voting of the 2013 Fiscal Package. On February 25, 2013, the Economy Committee of the Municipal Council reviewed the draft decision on the 2013 Fiscal Package submitted by the municipal administration. During this meeting, discussions revolved around the failure of administration to comply with the requirements of Article 33 of the Law No. 9632, dated 30.10.2006, amended with Law No. 10117, dated 23.04.2009, 'On Provisional Local Taxes', which was an issue raised by small businesses. At the end of this meeting, Socialist Party councilors asked for more time to deal with the legal interpretation of this piece of legislation and demanded that the Municipal Council meeting of February 25, 2013, be called off." (Local councilors were notified of this meeting electronically and from the local media (See facsimiles in page 29.)

3.1.2. PUBLIC CONSULTATION ON CHANGE OF OWNERSHIP OR USUFRUCT (LETTER "E")

During the 12-month period covered in this monitoring, the Municipal Council of Durres has adopted five decisions on change of ownership or usu-

fruct of its property to third parties. The monitoring team found out that Council did not seek public consultations (as provided for in the solicitation of public opinion on the fiscal package and/or local budget) prior to adoption of these decisions. However, we cannot rule out that closed consultations with third parties or stakeholders were not conducted by the council sub-committees on the occasion of such decisions.

3.1.3 PUBLIC CONSULTATION APPROVAL OF NORMS AND REGULATIONS... (LETTER "K")

The Municipal Council of Durres, in cooperation with CPII, organized in the premises of "Adriatic" Hotel the open public discussion / consultation on the General Local Plan (GLP). This essential consultation was attended by the Chairman of the Municipal Council, Mr. Indrit Hamiti, Director of the Urban Planning Office at Durrës Municipality, other representatives of the Municipal Administration, architects, urbanists, land property developers, other interested parties, students and citizens from Durrës. This event marked the first time such consultative meeting was called and organised by the Municipal Council in Durres, in addition to the Municipality administration which did run consultation too prior to this final consultative event.

The General Local Plan was introduced by the representative of the design studio, Eng. Urb. Dr. Athanasios Pagonis, of the T.P.Development Group.

There was a debate between Durrës Municipal Council and Municipality Administration, regarding the DLP (Detailed Local Plans) which were not included in the General Plan, which provide space for corruption to obtain development permits/licences signed by the Mayor.

An issue of concern explored by the participating architects and urbanists from Durrës was the inadequate technical challenge of the design-plan and the establishment of an Ad Hoc technical commission at the Municipal Council for the preliminary review of the plan prior to its final approval (for more on this *click on* : <http://www.infocip.org/en/?p=881> or *watch it on audio-video here*: <https://vimeo.com/55844750>).

The Municipal Council approved by majority voting the "General Local Plan and the City Regulation" on the meeting held on January 11th, 2013. The meeting lasted more than 2 hours. Due to the significant regulatory effects that this decision have on the urban development of the city, a considerable attendance of citizens was registered in the meeting hall, mainly residents of district no.2, classified as an archeological site of 'A' Category. The Citizens' Transparency network gave its valuable contribution to the increase of this public attendance. Local residents demanded from the

CONSULTATIVE DECISION MAKING



local councilors to include in the General Local Plan a provision that permits construction of multistory apartment buildings regardless of the fact that their neighborhood was an archeological site. In addition, they demanded that the plan included provisions that would permit reconstruction of their houses, while this practice was completely impossible to the residents of this neighborhood to date. The representative of the design studio, contracted by the World Bank to develop the General Local Plan of Durres, explained to both the public attendants and the councilors that archeological sites as well as development and conservation of houses located in them fall under the authority and jurisdiction of the central government and are regulated by law adopted by the Parliament (*watch more from this meeting here*: http://www.infocip.org/al/?page_id=10273).

THE MONITORING FINDINGS

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

Subject to evaluation 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.

The level of compliance with the paragraph 3 of Article 35 Nivelit i zbatimit të nenit 35 pika 3 by the Durres Municipal Council till two years ago when CPII strated its intervention there was almost zero. 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 never existed there. Other forms of publication, such as through a local Official Gazette or another periodic publication were not noticed during the time of this monitoring (two years now).

Regarding the use of the official website for decisions publication, the Municipality of Durres used till two years ago a rudimentary model, displaying just a lists of decision titles, which in no case refer to the respective content.

ONLINE PUBLICATION OF DECISION

To address this problem, which as a matter of fact, does not apply only to Durres, but to all the Municipalities and Communes in Albania, the Center for Public Information Issues digitalized and uploaded online all the decisions enacted by the Municipal Council of Durres. Moreover, CPII digitalized all decisions issued by the previous Municipal Council that exercised its mandate over the period 2007-2011.

On September 29, 2011, CPII 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 Meeting Hall of the Council in the early plenary session of that day.

In the second yera of the project intervention in Durres, during November 2012–February 2013, CPII (INFOÇIP now) entered all Municipal Council decisions, archived initially at www.infocip.org, to a brand-new platform, called: www.vendime.al. The new database is much more reliable, easy-to-use and is linked with the official website of the Municipality of Durres (<http://www.durres.gov.al/>).

What is www.VENDIME.AL

www.vendime.al is a powerful online database, used for archiving and displaying the decisions issued by the municipal councils all over Albania, free of any charge.

www.vendime.al is unique in the region. It launched in the frame of the CPII's initiative: "Open Local Government through Innovation".

www.vendime.al is the short acronym (slug) for **National Archive of Decisions of the Municipal Councils in the Republic of Albania**.

www.vendime.al is conceived and established by the Centre for Public Information Issues in Tirana. The platform allows the municipalities to autonomously upload their decisions thus being under constant updating and continuous expansion.

www.vendime.al is equipped with two powerful "search" engines; one is for simple search and the other one for advanced. Both are placed in the home page of the portal.

www.vendime.al serves not only Durres but all Albanian municipalities for publishing their respective councils' decisions. This is a direct legal obligation, (Article 35, of Law No. 8652, "On Organization and Functioning of Local Governance", as amended)

www.vendime.al serves all citizens, persons and legal entities, who exercise their activities in the territories under each municipality administration, providing them effective and free information about the local legislation.

www.vendime.al also serves the Albanian Government to better evaluate the quality and legal consistency of the local government decisions.

www.vendime.al serves all other interested stakeholders who work to promote accountable and transparent decision making in local level.



Here is where you can browse to see and download the decisions of the Council, entering directly from the Official Website of Durrës Municipality



Here you can watch on audio-video (free of charge and at any time) all the meetings held by the Durrës Municipal Council.

The video-archive is also established and administered by CPII. It contains all the meetings of the Council from 2011.



Video-archive of the meetings held by the Durrës Municipal Council

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 far 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. 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. 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

4. OBSERVANCE OF FUNCTIONAL TIME LIMITS

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

ARTICLE 19

LOCAL GOVERNMENT BUDGETS

4. The budget adoption and the close of past year budget will be made observing the dates determined in the Law no. 8379, dated 29.7.1998 "On the drafting and execution of the Budget of the Republic of Albania."
5. The local government budget is adopted by the council. The budget adoption and the annual close of accounts will be made observing the dates determined in the Law No. 8379, dated 29.7.1998 "On the drafting and execution of the Budget of the Republic of Albania".

ARTICLE 27

COUNCILOR MANDATE

4. The Councilor's mandate may expire earlier, with the proposal of the mandate Commission, in case of:
e) absence from the council meetings for a period of six months;

ARTICLE 31

FUNCTIONING OF MUNICIPAL OR COMMUNE COUNCIL

8. Where a Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. The Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning. After the dissolution, new elections must take place.

ARTICLE 38

DISSOLUTION OF THE COMMUNE OR MUNICIPALITY COUNCIL

1. The Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases:
a) It does not meet for an uninterrupted period of three months;
b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law;
c) It commits serious violations of the Constitution or other laws.
2. The Communal or Municipal Council is also dissolved after reorganization for the change of boundaries, according to Article 70 of this Law.

During the monitoring period, July 26, 2012 – July 12, 2013, the Municipal Council of Durres carried out a diminished decision-making activity for reasons to be only provided by the council itself. The monitoring activity reveals that in a time frame of 12 months, the Municipal Council convened only three times in plenary sessions, respectively on October 1, 2012, November 5, 2012 and, the last time, January 11, 2013. Since then, the Council has not convened in regular session, thus violating paragraph 2 of Article 31 of the Law No. 8652, "On Organization and Functioning of Local Governance", which states: "The schedule for the regular [ordinary] meetings is decided by the Council itself, but not less than one per month."

On April 11, 2013, the Municipal Council of Durres went beyond the last legal deadline of three successive months without convening in a plenary session, consuming the legal condition foreseen for its dissolution, as clearly stipulated in Article 38 "Dissolution of the Municipality Council", whose letter 'a' of first paragraph states: "1. The Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases: a) It does not meet for an uninterrupted period of three months;"

Likewise, paragraph 8 of Article 31 "Functioning of Municipal or Commune Council" states: "8. Where a Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. The Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning."

On April 19, 2013, the Secretary of the Municipal Council notified the Prefect about this situation with the document, protocol no. 2114, signed by the Chairman of the Council. This official correspondence is in conformity with the legal requirements and within the deadline set forth in the second sentence of paragraph 8 of Article 31. (See facsimiles, p. 29).

The text contained in this correspondence is as follows: "On February 20, 2013, a meeting was conducted with the heads of council groups, which reviewed the materials submitted by the local administration and agreed to hold the regular meeting of the Municipal Council of Durres on February 25, 2013. The meeting agenda included discussions on and voting of the 2013 Fiscal Package. On February 25, 2013, the Economy Committee of the Municipal Council reviewed the draft decision on the

2013 Fiscal Package submitted by the administration. During this meeting, discussions revolved around the failure to comply with the requirements of Article 33 of the Law No. 9632, dated 30.10.2006, amended with Law No. 10117, dated 23.04.2009, 'On Provisional Local Taxes', which was an issue raised by small businesses. At the end of this meeting, Social Party councilors asked for more time to deal with the legal interpretation of this piece of legislation and demanded that the Municipal Council meeting of February 25, 2013, be called off." (Local councilors were notified of this meeting electronically and from the local media.

As made known above, the Municipal Council of Durres also failed to pass the Fiscal Package of 2013 (including local taxes and fees) and the Budget of 2013 (including wages of local administration, public investments, etc.). In fact, these are its two most important decisions.

Failure to adopt the budget leads to the dissolution of the Municipal Council, too. This is foreseen in letter 'b' of paragraph 1 of Article 38, which states: "1. The Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases: b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law;"

July 12, 2013, marked the six-month period since Municipal Council of Durres convened for the last time in a plenary session (on January 11, 2013). The Law No. 8652, 'On Organization and Functioning of Local Governance', in letter 'e' of para. 4 of Art. 27, maintains that: "4. The Councilor's mandate may expire earlier, with the proposal of the Mandate Commission, in case of: e) absence from the council meetings for a period of six months;" INFOCIP published the results of this monitoring on July 13, 2013, one day after the expiration of this deadline. In this case, expiration of mandate applies to the local councilors as individuals, not to the council as an entity.

Facsimiles of the memo no. prot. 2114. Subject: "Request for interpretation" on the situation created as result of the Council's non-activity, brought to the knowledge of the Durrës Prefect.

**REPUBLIKA SHQIPERISE
KESHILLI BASHKIAK
BASHKIA DURRES**

Adresa : Sheshi "Liria", Durres

Nr. 2114 Prot.

Tel/ fax: 00355 52 22310 / 23454

Lenda: Kerkese per interpretim.

Durres me. 19/04/2013

Institucionit te Prefektit Durres

Sic jeni ne dijeni, mbledhja e fundit e Keshillit Bashkiak Durres eshte zhvilluar me dt 11.01.2013. Prej asaj date eshte zhvilluar nje mbledhje me kryetaret e grupeve dt 20/02/2013 e cila mori ne shqyrtim materialet e paraqitura nga administrata e bashkise dhe caktoi mbledhjen e Keshillit Bashkiak Durres me date 25.02.2013.

Komisioni i ekonomise ne mbledhjen e tij me date 25.02.2013, mori ne analize projekt paraqitur nga administrata e Bashkise "Paketa fiskale per vitin 2013". Gjate mbledhjes u diskutua fakti i mos zbatimit te nenit 33 ligji 9632 dt ligj nr.10117 date 23.04.2009 "Taksat e Perkohshme Vendore" si nje propo- vogel.

Ne perfundim te mbledhjes u kerkua kohe nga anetaret e Partise Social te nenit perkates dhe njehohesisht, u kerkua anulimi i mbledhjes se njoftuar dt 25.02.2013 (lajmerim i bere ne menyre elektronike per te gjitha anetaret e keshillit bashkiak). Deri me sot nuk kemi asnje pergjigje nga administrata e bashkise per problemin. Per sa me siper kerkojme nga institucioni juaj interpretim: A jemi ne kushtet e nenit 31 pika 8 ligji 8652 date 31.07.2000 "Per Funkzionimin dhe Organizimin e Qeverisjes Vendore" nese keshilli nuk mblidhet brenda tre muajve quket i vetshpe- cilen specifikohet "nese keshilli nuk mblidhet brenda tre muajve quket i vetshpe- a jemi ne zbatim te pikes 6 te te njejt nen, ku citohet "ne periudhen nga data e konstituimit e keshillit te ri, keshilli i meparshem komunal ose bashkiak ushtron fuqine dhe merr vendime vetem ne raste te situatave emergjente".

Duke ju falenderuar per bashkepunimin dhe mirekuptimin!

SEK.KESHILLIT BASHKIAK

Melihat MALOKU

KRYETARI I KESHILLIT

Indrit HAMIT

**REPUBLIKA SHQIPERISE
KESHILLI BASHKIAK
BASHKIA DURRES**

Adresa : Sheshi "Liria", Durres

Memo

Ne mungese te nje adrese postare te keshilltareve te depozituar ne Keshillin Bashkiak Durres, jemi te detyruar t'ju njoftojme ne menyre elektronike ne lidhje me kerkesen tuaj nr.2088 date 18.04.2013. Ne shkresen nr. 2114 date 18.04.2013 kemi kerkuar nga Institucioni i Prefektures Durres interpretimin e situates aktuale te keshillit bashkiak ne raport me nenin 31 pika 6, 8, ligji 8652 date 31.07.2000 "Per Funkzionimin dhe Organizimin e Qeverisjes Vendore". Bashkangjitur shkresa derguar Prefektures Durres. Duke ju falenderuar per bashkepunimin dhe mirekuptimin!

SEK.KESHILLIT BASHKIAK

Melihat MALOKU

KRYETARI I KESHILLIT BASHKIAK

Indrit HAMIT

THIRD PART

CONCLUSIONS SUMMARY (EXECUTIVE EXTRACT)

3

SUMMARY OF CONCLUSIONS (EXECUTIVE EXTRACT)

I. FUNCTIONING OF MUNICIPAL COUNCIL (frequency & schedules)

During the monitoring period, July 26, 2012 – July 12, 2013, the Municipal Council of Durres carried out a diminished decision-making activity for reasons to be only provided by the council itself. The monitoring activity reveals that in a time frame of 12 months, the Municipal Council convened only three times in plenary sessions, respectively on October 1, 2012, November 5, 2012 and, the last time, January 11, 2013. Since then, the Council has not convened in regular session, thus violating paragraph 2 of Article 31 of the *Law No. 8652, "On Organization and Functioning of Local Governance"*, as amended, which states: ***"The schedule for the regular [ordinary] meetings is decided by the Council itself, but not less than one per month."***

On April 11, 2013, the Municipal Council of Durres went beyond the last legal deadline of three successive months without convening in a plenary session, consuming the legal condition foreseen for its dissolution, as clearly stipulated in Article 38 *"Dissolution of the Commune or Municipality Council"*, whose letter 'a' of first paragraph states: ***"1. The Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases: a) It does not meet for an uninterrupted period of three months;"***

Likewise, paragraph 8 of Article 31 *"Functioning of Municipal or Commune Council"* states: ***"8. Where a Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. The Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning."*** On April 19, 2013, the Secretary of the Municipal Council notified the Prefect about this situation with the document, protocol no. 2114, signed by the Chairman of the Council. This official correspondence is in conformity with the legal requirements and within the deadline set forth in the second sentence of paragraph 8 of Article 31 (*See facsimiles, pg. 29*).

During this monitoring period, the Municipal Council of Durres failed to pass the Fiscal Package of 2013 (including local taxes and fees) and the Budget of 2013 (including wages of local administration, public investments, etc.). In fact, these are its two most important decisions. Failure to adopt the budget leads to the dissolution of the Municipal Council. This is foreseen in letter 'b' of paragraph 1 of Article 38, which states: ***"1. The Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases: b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law;"***

July 12, 2013, marked the six-month period since Municipal Council of Durres convened for the last time in a plenary session (on January 11, 2013). The *Law No. 8652, 'On Organization and Functioning of Local Governance'*, in letter 'e' of paragraph 4 of Article 27, maintains that: ***"4. The Councilor's mandate may expire earlier, with the proposal of the Mandate Commission, in case of: e) absence from the council meetings for a period of six months;"*** INFOCIP published the results of this monitoring on July 13, 2013, one day after the expiration of this deadline. In this case, expiration of mandate applies to the local councilors as individuals, not to the council as an entity.

II. DECISION-MAKING ACTIVITY OF THE MUNICIPAL COUNCIL

VOTING OF DECISIONS

In the 12-month course of exercising its mandate, the Municipal Council of Durres adopted a total of 70 decisions, of which 38 decisions were approved in year 2012 and the rest in year 2013. The majority (66) of these decisions were of individual affairs. The monitoring revealed that councilors voted openly in all cases, in violation of paragraph 1 of Article 33 of the Law on Organization and Functioning of Local Governance, which explicitly defines that: *“All voting for decisions of individual nature shall be made by secret ballot.”*

During the monitoring period, only decisions of the Municipal Council were of normative character, in which case voting was open in compliance with the legal provision. Municipal Council Decision No. 123, ‘On Adoption of General Local Plan of the Municipality of Durres’ was the most important decision among the aforementioned four decisions. Prior to voting, the Municipal Council had undertaken consultations with stakeholders and the public, as required by paragraph 1 of Article 35 of the Law on Organization and Functioning of Local Governance. This meeting, attended by many people at Adriatic Hotel, was organized and supported by CPII (INFOÇIP) with its own structures in Durres, in the framework of a partnership established with the Municipal Council of Durres more than two years ago.

DECISIONS ADOPTED ON THREE-FIFTH VOTING

The Law on Organization and Functioning of Local Governance, as amended, provides only one case in which decision-making requires 3/5 of the votes of all Municipal Council members. This case is set forth in letter ‘e’ of Article 32 of this law, ‘Approve the change of the ownership or giving in use [usufruct] to third parties of its property’. During the 12-month period covered in this monitoring, the Municipal Council of Durres has adopted five decisions on change of ownership or usufruct of its property to third parties. In all these cases, the voting has been almost unanimous in conformity with the paragraph 4 of Article 33 of this law.

In the case of these decisions, paragraph 1 of Article 35 of the Law on Organization and Functioning of Local Governance, as amended, charges the Municipal Council with the obligation to hold public hearing sessions with the community in each and every case. The monitoring team found out that no such sessions have been held during the monitoring period.

Likewise, the manner of voting should also be considered carefully in the case of these decisions, which, unless they are individual affairs, must always be by secret ballot. Similar to the case above, the Municipal Council did not comply with the legal requirement stemming from paragraph 1 of Article 33 of the Law on Organization and Functioning of Local Governance

CIRCULATING DECISIONS

Irrespective of the fact that the last meeting was conducted on January 11, 2013, the Municipal Council resumed adoption of decisions of circulating practice beyond this date, respectively on January 23, February 28, March 25, and April 26, concerning economic assistance and disability benefit payments. Such decision-making practice and the procedure followed in these cases are not foreseen in any of the articles of the Law on Organization and Functioning of Local Governance, as amended. This practice, utilized by the Municipal Council of Durres in year 2012 as well, remains to be considered extralegal.

CITIZENS’ PARTICIPATION

The monitoring finds that the Municipal Council meetings have been open to the public, in pursuance of the provisions of Article 34 of the *Law 8652 “On Organization and Functioning of Local Governance”*. Citizens, including those mobilized by CPII, have normally attended meetings of the Municipal Council. The highest attendance was observed in the meeting of January 11, 2013, in which the General Local Plan of the Municipality of Durres was adopted upon Municipal Council Decision No. 123. More than 20 residents of second neighborhood (an archeological zone of ‘A’ Category) attended the meeting and appealed directly to local councilors to include in the General Local Plan a provision that permits construction of new dwelling units or, at least, reconstruction of the existing buildings in their zone, regardless of the fact that their neighborhood was an archeological site.

The infrastructure of the Municipal Council meeting room allows for limited attendance of citizens. The CPII team note that there are no sufficient seats even for the municipal administration staff in order to be able to attend the Municipal Council meetings. Similar finding applies for local journalists that wish to report the Council meetings. This issue practically affects the guarantee of the Constitution of the Republic of Albania. Article 23/3 of the Constitution states: *“3. Everybody is given the possibility to follow the meetings of collectively elected organs.”*

ANNOUNCEMENT OF MUNICIPAL COUNCIL MEETINGS

The Secretary of the Municipal Council of Durres has mainly used email and phone to inform councilors and other stakeholders of Municipal Council meetings. INFOCIP and Citizens' Transparency Office of Durres have been regularly informed by phone 3-4 days in advance of any Municipal Council meeting. While it ensured normal conditions for attendance to the monitoring team, this practice poses objective limitations in terms of giving notice to all interested parties to attend Municipal Council meetings in the practical sense as well as in the meaning provided for in the second paragraph of Article 34 of Law on Organization and Functioning of Local Governance.

While not specifically required by the law, internet would be one of the potential ways to make announcements on Municipal Council meetings. CPII (INFOCIP) monitored the official website regularly during the monitoring period and found out that the website of the Municipality of Durres was never used to make announcements on the date, time, and agenda of the Municipal Council meetings.

With regard to notice in media, this practice will be verified in the coming months, because until February 2013 the city of Durres did not have a local TV that could be used to make announcements on Municipal Council meetings, as stipulated in the law concerning this procedure

DATE, PLACE, TIME AND AGENDA OF MUNICIPAL COUNCIL MEETINGS

Another provision (second sentence) of paragraph 2 of Article 34 of the Law on Organization and Functioning of Local Governance, as amended, states: "The announcement contains the date, place, time, and agenda [of the meeting]. An assessment of all announcements made during the monitoring period reveals that the Secretary of the Municipal Council has fully complied with this legal requirement.

PUBLICATION OF DECISIONS

Article 35 of the Law on Organization and Functioning of Local Governance explicitly provides that "The council shall have the obligation to announce all decisions in public places within the territory of the commune or municipality and [according to its possibilities] the council also uses other forms to publicize its decisions." In consideration of the concerning situation, in 2001, CPII (INFOCIP) digitalized the decisions of the Municipal Council of Durres. All decisions, from year 2007 to date are published and accessible online.

Early this year (2013), the digital database of the Municipal Council decisions was re-entered from starch into the new online portal, www.vendime.al, which provides important advantages compared with the old archive system, particularly with regard to query/search decisions with key words. The webpage customized for Durres, (www.vendime.al/durres/) is linked to the official website of the Municipality of Durres. In cooperation with the local structures of INFOCIP, the Secretary of Municipal Council has delivered for online publication at www.vendime.al all the decisions adopted by the Municipal Council during the monitoring period, in conformity with the requirements of Article 35 of the *Law on Organization and Functioning of Local Governance, as amended*.



FOURTH PART

RECOMMENDATIONS AND METHODOLOGY

4

RECOMMENDATIONS

→ I. MAIN PROBLEM IDENTIFIED

CPII (INFOÇIP) finds out that the Municipal Council of Durres lost its legitimacy of functioning during the period covered in this monitoring. Article 38 of the Law on Organization and Functioning of Local Governance states that the Municipal or Communal Council can be dissolved by the Council of Ministers before the termination of the regular mandate in the following cases: a) It does not meet for an uninterrupted period of three months; b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law; and, c) It commits serious violations of the Constitution or other laws. Concretely speaking, the Municipal Council of Durres *'slipped'* to the conditions set forth in letters 'a' and 'b' of the paragraph 1 of this article due to its failure to act.

Likewise, July 12, 2013, by which time this monitoring came to an end, marked the end of the six month period of nonfunctioning of the Municipal Council, whose last plenary session meeting was held on January 11, 2013. The Law No. 8652, 'On Organization and Functioning of Local Governance', in letter 'e' of paragraph 4 of Article 27, explicitly states that: "The Councilor's mandate may expire earlier, with the proposal of the Mandate Commission, in case of: e) absence from the council meetings for a period of six months;" autonomously.

→ VI. PRIMARY RECOMMENDATION :

CPII (INFOÇIP) gives the following recommendations:

1. Superior authorities recognize officially the dissolution of the Municipal Council (dissolution by the competent authority) because of failure to exercise functions for a period beyond legal time limits;
2. Call new elections for Municipal Council of Durres as soon as possible in compliance with the Electoral Code of the Republic of Albania;
3. In the period from the election date until the constitution of the new council, the dissolved council must resume exercising limited functions and adopt decisions only in urgent cases as foreseen in Article 36/1 of the Law on Organization and Functioning of Local Governance.

→ II. OBSERVED / IDENTIFIED PROBLEM

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.

→ II. 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.

→ III. OBSERVED / IDENTIFIED PROBLEM

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" from the political parties. 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).

→ III. 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 amendments. 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.

→ IV. OBSERVED / IDENTIFIED PROBLEM

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.

→ IV. 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 council are posted², 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 **law 8653, 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 framework of evaluations in this section, CPII considers that the paragraph 3 of Article 34 "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 amendments which can be made to the law 8502, amended .

→ V. OBSERVED / IDENTIFIED PROBLEM

The city of Durrës has a high demographic rate in the last 16 years and a substantial geographical extension due to the increase of its population, which still continues 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 explicitly 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.

→ V.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 would render the Council acts better announced and therefore better enforced by the subjects. In this context, it must be re-affirmed 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 mentioned meetings, in order to avoid over'crowding.

→ V. OBSERVED / IDENTIFIED PROBLEM

Public accommodation difficulties in the Council's meeting room are another observation made in Durrës. 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 rooms/halls that are built or restored during the past 7-8 years (in Durrës, Tirana, etc.). The latter 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, better ensuring 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 built/restored without accommodating capacities.

METHODOLOGY

EVALUATION OF DECISION MAKING ACTIVITY

As explained earlier, the rigorous compliance with Articles 33, 34 and 35 of the Law 8652 is a legal prerequisite for having a lawful and participatory decision-making process in local level. Measuring the Council's compliance during its activity with these three articles produces automatically direct indicators for the objective assessment of transparency and openness in decision making processes.

Developing a method for measuring the enforcement (observance) level of these three provisions and applying this method in the real field, was a major objective to be reached in the frame of this two-years project, implemented by CPII in Durres.

The methodology model is of the type "**Monitoring through Participation**", or MP in short. The 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.

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. In general, the PROACTIVE combines in a single block the **monitoring of legitimacy of the decision-making process of the Municipal Council through active citizens participation and reporting**.

DETAILED DESCRIPTION OF PROAKTIV

A group of local citizens, representing different strata, professions and age, were carefully selected and trained by CPII on the autonomous use of certain links of the PROACTIVE tool. In addition

to live attendance of every meeting of the Municipal Council to concretely test this way the guaranteeing of the right to participate, they should also observe some well defined components of the decision-making, regulated by articles 33, 34 and 35 of the Law no. 8652 "*On the Organization and Functioning of Local Governance*", 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 "checked and approved" by the members of CTO after each meeting of the Council, was 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 from those 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 Council's compliance with the legal provisions (especially of Art/ 33, 34 and 35).

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 compliance with the provision 34 and 35 indicate in the level of transparency in the decision making process as performed by the Municipal Council.

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 presumption 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.

EVALUATION OF FUNCTIONAL TIME LIMITS

The Law No. 8652, dated 31.07.2000, "*On Organization and Functioning of Local Governance*", as amended, regulates the activity of the municipal councils by establishing time limits for their functioning. Application of time limits commences with the constitution of the municipal/communal councils and continues during the entire time the council exercises its mandate.

Among the most important schedules and time limits measured and evaluated by this monitoring include frequency of the regular meetings and adoption of the annual budget. Failure to abide to these functional time limits may lead to the dissolution of the Municipal Council.

The Article 31 has important provisions with regard to time limits of the functioning of the Municipal Council. Thus, the schedule for the regular [ordinary] meetings is decided by the Council itself, but not less than one per month (*Art. 31, para. 2*). The meeting is called by the Chairman of the Council, and the meeting shall be notified at least five (5) days before the meeting (*Art. 31, para. 4*). Where a Council is unable to function due to a lack of a quorum for a period of three consecutive months, starting from the last meeting date, the Council is dissolved. Dissolution (dismissal) of the Council is followed by new elections for the council and the Secretary of the Council notifies the Prefect ten (10) days after the three months of nonfunctioning (*Art. 31, para 8*).

The Law on Organization and Functioning of Local Governance, as amended, has a specific article on dissolution of the Municipal Council. Article 38 foresees three cases when a council is dissolved prior to expiration of its mandate. Specifically, these cases are: a) It does not meet for an uninterrupted period of three months; b) It is not able to adopt the budget three months after the deadline determined in Article 19 of this Law; and, c) It commits serious violations of the Constitution or other laws. It's obvious that the dismissal of the Municipal Council, due to its inactivity for three consecutive months, is set forth in two different articles of the law (*Art. 31, para. 8, and Art. 38, para. 1*).

The method consists in the post-factum comparison of the real activity and functioning of the Municipal Council with the legal provisions laid down in the *Law No. 8652, "On Organization and Functioning of Local Governance", as amended*. A comparison of the reality with the legal provisions produces unquestionable solid results. This is the first time a specialized operator of Albania's civil society monitors the abidance to legal time limits.

