

Korça ku dua të jetoj 1771



BASHKIA KORÇË



MONITORING THE APPLICATION AND OBSERVANCE OF THE LEGAL PROVISIONS

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

JANUARY 2011 - APRIL 2012

**MONITORING STUDY
ON THE APPLICATION AND OBSERVANCE OF THE LEGAL PROVISIONS**

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

JANUARY 2011 - APRIL 2012

A publication of the Center for Public Information Issues, CPII



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INTRODUCTION

“**Transparency of Local Decision-Making and Public Participation in Durres Municipal Council**” is the final product of a new initiative taken by the Center for Public Information Issues. Subject to monitoring and assessment in the framework of this research is the activity and functioning of Korça Municipal Council in two aspects, which are clearly defined by the law¹: *guaranteeing public participation in the decision-making process* and the *practical implementation of the decision-making process*, which consists of discussion, voting and announcement of the decisions. This Monitoring was conducted with the important support provided by the Open Society Foundation (SOROS) in Tirana, Albania.

The period covered by this monitoring starts on January 2011 and ends on April, 2012 (16 months). The reason for exceeding with four months the calendar year has to do with the delayed approval of the Fiscal Package and the Budget for 2012, expected to pass on January instead of April 2012. They represent the two most important decisions of a municipal council, therefore, monitoring their decision making process was of crucial importance.

The novelty of this monitoring is that for the first time it combines a *double assessment* of the public's right² to participate in the local decision-making and the obligation of the Municipal Council to conduct the decision-making process pur-

suant to the relevant provisions³ of the law 8652 “*On the Organization and Functioning of the Local Government*”, amended⁴.

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

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

ration of the decision-making and executive powers at local level, in the context of evaluating and assessing the transparency by the civil society operators or even international organizations working in Albania.

The CPII has calculated also the level of implementation⁵ of the relevant legal provisions by Korça Municipal Council itself. Concretely, subject to assessment and evaluation in the frame of this report is the implementation of the Articles 33, 34 and 35 of the organic law 8652 “On the Organization and Functioning of the Local Government”, amended. These articles set the modalities of the discussion (including the one with the public), voting process, announcement and entry into force of the decisions of the Municipal Council. The 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 (announcement-notification of the decisions enacted by the Municipal Council).

It is clear that in the context of this monitoring-research, *public access to the Council's decision* is not the same with the public access (*participation*) in the decision-making process. This clear distinction between these two concepts, even though they are in fact organically linked, provides clear methodological advantages to assess transparency during all steps of the local decision-making process. Such separation for as-

essment purposes could be considered another important input and novelty of this initiative.

The evaluation results with regard to observance level of the articles 33, 34 and 35, are presented in graphs and percentages. This assessment is also conducted for the first time in Albania. The method developed and employed by the CPII could serve as a model⁶ for other actors, too, who have an interested in the objective assessment of the implementation of specific laws or provisions at local government level.

The Municipal Council of Korca is specifically targeted by this monitoring. The findings though might be of particular interest for the municipality administration as well. Donors (governmental or non-governmental), who cooperate with the local government and community, are specifically targeted by this publication, too. Local Media in Korça might be also interested in this Report's findings, as they show a constant interest on the local government issues in the southeastern city. This report will become available through internet and other delivery means to all Korça citizens, so that they can evaluate for themselves, from a different prospective the performance of their elected representatives in the Municipal Council.

This Monitoring Report is published when less than a year remains from the deadline of implementation of the Cross-cutting Strategy of the Reform in Public Administration (CSRPA), '09-'13. Part of

the government vision stated in this important document is *"an administration based on transparent decision-making processes, which is involved and accountable to the public"*. The findings of this report provide an additional opportunity for the Central Government to evaluate how the objectives set out in the framework of the CSRPA have been met, especially with regard to *"transparent decision-making processes"*.

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

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

In the framework of the reforms that aim at decentralization, the access to local legislation has a special importance nowadays. The local government bodies, concretely Municipal / Communal Councils,

carry out today a wide range of decision-making activities. With their extensive powers recognized by law, the local government bodies could take important decisions on territory and property, local taxes and tariffs, loans, grants, etc. Such important decisions, with a direct impact on population and territory, should necessarily be under constant and close public observation. This supervision must be conducted not only prior to the decision-making process (*through consultative processes with the interested actors and public*), but also after the decisions are been taken (*through the Prefect and/or interested actors*).

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

Detailed recommendations which are carefully listed in Part IV of this paper, are a careful reflection of all the experience and the results of this monitoring.

Gerti Shella
Project Director

FIRST PART

LEGAL FRAMEWORK AND MONITORING LEGITIMACY

1

LEGAL FRAMEWORK AND MONITORING LEGITIMACY

I. DECISION-MAKING PROCESS AT LOCAL LEVEL

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

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

The Law 8652, dated 31.7.2000 "*On the Organization and Functioning of Local Government*", amended, regulates the institutional activity of the local government bodies in the Republic of Albania. According to this law, the bodies of the Local Government units

exercise their powers through decisions, ordinances and orders" (*Article 7*). These official acts are mandatory to all the subjects included in (targeted by) the official act, which are under their jurisdiction (*Article 8/"b", Law 8652*).

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

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

- a) Approves the statute of the commune or the municipality and the internal regulation of its functioning.
- b) Elects and discharges the Chairman and the Deputy Chairman of the Council.
- c) Nominates and discharges the Secretary of the Communal or Municipal Council.
- ç) Approves the organizational structure and the basic regulations of the administration of Commune or Municipality, of the units and budgetary units under the Commune or Municipality, as well as the number of their staff, applications for qualifications, salaries and the ways of 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.

cial/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 nature⁷ are approved by secret voting at all times.

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

II. PARTICIPATION IN THE DECISION-MAKING PROCESS

The main mission of the local government (authorities) in the Republic of Albania is to ensure governing at a level, which should be as close as possible to the citizens, through “*respecting the fundamental human rights and freedoms, which are sanctioned in the Constitution or other laws*”⁹. The public’s right to participation and information are both included in the “*Fundamental freedoms and Human Rights*” Chapter of the Constitution of Albania¹⁰, 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*”, amended¹¹. 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

ARTICLE 33 “THE VOTING”

1. *Voting in the Council could be open or secret. The Council decides on the cases when voting is secret. The acts of individual nature are approved by secret voting at all times.*
2. *The decisions of the Council are taken with the majority of votes of the members attending the meeting.*
3. *The decisions on cases provided for by letters “b”, “c”, “d”, “dh”, “f”, “g”, “gj”, “i” and “j” of Article 32 of this Law, are taken with the majority of votes of the total number of members of the Council.*
4. *The decisions are taken with three fifths of the total number of the members of the Council for cases provided for by Article 32, letter “e”.*
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.*

occasion pursuant to the method defined by regulation of the Council, making use of one of the necessary forms, such as open meetings with inhabitants, meetings with experts, interested institutions or non-governmental organizations or through taking the initiative to organize local referendums.

The participation of the public in the decision-making process is not the same with the access of the public to local legislation. The first implies 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 (*see more on this below*).

ARTICLE 34

“THE OPEN MEETINGS”

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

III. ACCESS TO LOCAL LEGISLATION

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

The decisions of the Council are displayed/posted in public places as defined by the Council, within the territory of the commune or municipality and, depending on the possibilities, the Council defines also other forms for their publication. The public, in every commune and municipality, can be also informed¹² based on the provisions of the Law no.8503, dated 30.6.1999 *"On the right of information about official documents"* and on the rules defined to this end by the relevant council itself (Article 35 of the Law 8652). At this point, the juridical modalities of the decision-making and those of transparency with the public are in reality organically unified with each other (or better saying, organically linked to one another).

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

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

The publication of the official acts constitutes one of the fundamental principles of governing, both at central and local level. This principle affirms the prerequisite that the physical and juridical subjects could be informed of the legal norms that are issued by the government bodies¹³ in order that they could have the possibility later on to implement /follow or atc in com-

pliance 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"¹⁴ of the public, in order to distinguish it from active information, which is guaranteed by the laws "On the right of information". In the case of the latter, the citizens themselves are entitled¹⁵ to ask for information in relation to a formal request, which is filed at the body, which has the intended information available.

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

ARTICLE 35

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 "d", "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", "d", "e", "f", "k" and "ll" of article 32 of the law. In this case, counselling sessions are recorded in minutes [1].
3. Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate, the council shall also designate other forms of their publication. Public information in each commune and municipality is done in accordance with Law No.8503, dated 30.6.1999 "On the right to information on official documents" and rules designated by the respective council for that purpose.

IV. THE GOAL OF MONITORING

Law 8652, dated 31.7.2000 “*On the Organization and Functioning of Local Government*”, amended, has carefully transposed some important constitutional principles¹⁶, 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 municipal council decisions¹⁷ with the interested public/stakeholders, attendance of the meetings in the room while they are taking place and the access to the materialized decisions of the Council. The latter is guaranteed both through proactive information (announcement of the official acts by the Municipal/Communal Council itself) and active information (through the provisions of the Law 8503 “*On the right of information for official documents*”).

The articles 34 and 35 of the Law 8652 are the practical embodiment of this organic link, which aims to guarantee a transparent and open decision-making. While the article 33 provides carefully for the voting procedure and the entry-into-force legal modalities (point 6). The strict implementation of their provisions is a juridical prerequisite¹⁸ to have a lawful and open decision-making process.

Logically, the measurement and evaluation of the implementation level of the articles 34 and 35¹⁹ automatically produces direct indicators for the objective assessment of the level of transparency and openness in local decision-making. In addition, measuring the implementation level of the article 33 indicates legitimacy of the council’s decisions and the “strength” of their juridic power. As a matter of fact, the point 6 of article 33 is strictly correlated to the point 3 of the article 35. They should have been bonded together (and must be²⁰), but, for some unknown reasons the lawmaker divided / distributed them in two different articles. For methodological purposes, the enforcement level of the point 6 of article 33 will not be included nor used²¹ as a variable in the

evaluation process through which the level of transparency and openness of the decision making in Korça’s Municipal Council will be calculated or implied.

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

In this sense²², developing a methodological tool to evaluate the level of implementation of these three articles in practice has been one of the main objectives of this project. This new monitoring and assessment method was undertaken to be developed by the CPII in the framework of this integral project, which was implemented in two of the main municipalities, concretely in Durrës and Korça. The methodological model is of the type “*Monitoring through Participation*”²³, or *MP* in short.

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

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

BRIEFLY ON KORÇA MUNICIPAL COUNCIL

The Municipal Council of Korça city has 35 members. The new Municipal Council of Durrës was mandated on June, 29, 2011, following the local elections of 8 May 2011. The members of this Council elected as their chairman Mr. Ilirian Pendavinji (from the left wing coalition “*Aliance for the Future*”), whereas Mrs. Rajmonda Nase was elected as Deputy Chairman. In the first plenary session of the newly elected Council, the reelected Meyer, Mr. Niko Peleshi, took the oath for a second term.

Other related documents and actors who address the problem

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

Crosscutting Strategy on the Reform in Public Administration in the framework of the National Strategy for Development and Integration 2009-2013

1.4.1 Proceset administrative

Në sistemin e rishikimit administrativ konstatohet deficiencë lidhur me procesin e ankimit pasi pothuajse të gjitha aktet nxirren nga titullari. Një tjetër problem ka të bëjë me faktin se vendimet normative të bashkive, degëve të ministrive etj. janë mjaft të vështira për t'u gjendur. Për më tepër, praktika tregon se haset në rezistence kur tentohet të realizohet forma elektronike e komunikimit ndërmjet institucioneve.

KAPITULLI II

2. Vizioni, prioritetet dhe qëllimet strategjike

Një administratë që bazohet në procese vendimarrëse, transparente, përfshirëse dhe e përgjegjshme ndaj publikut.

2.3.2 Në nivel rajonal/vendor

Paralelisht me decentralizimin e funksioneve, të kombinuar me delegimin e vendim-marrjes dhe përdorimin e teknologjive të reja, synohet një turrje graduale e degëve në territor.

Shumë nga njësitë territoriale do të riorganizohen, për të kryer funksione të përbashkëta, duke racionalizuar edhe realizimin e shërbimeve të veta mbështetëse.

Në procesin e riorganizimit duhet të mbahen parasysh papajtueshmëritë e mundshme ndërmjet funksioneve të ndryshme.

2.4 Përmirësimi i procedurave dhe mjeteve të vendim-marrjes dhe kryerjes së shërbimeve në administratën publike

Në këtë drejtim ka nevojë të nxitet më tej:

- transparenca në vendimarrjen normative dhe administrative,
- zgjerimi i konsultimit publik dhe i pjesëmarrjes së publikut në vendimarrjen për politikat,
- lehtësimi i përmbushjes së detyrimeve administrative nga qytetarët (one-stop shop, miratimi ne heshtje),
- akses më të mirë në informacionin publik dhe në aktet administrative,
- përmirësimi i procedurave të ankimit administrativ brenda administratës dhe më tej në gjykatat administrative,
- Përdorimi masiv i teknologjisë moderne të informacionit dhe publikimi elektronik zyrtar i vendimeve administrative.

SECOND PART

THE MONITORING FINDINGS

2

THE MONITORING FINDINGS

BRIEF EXPLANATORY

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

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

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

Unlike the articles 34 and 35 of the law 8652 which are of extreme importance in the frame of this monitoring evalu-

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

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

The vast majority of the decisions passed by Municipal Council during the 16-months monitoring period, are of individual character. This classification (distinction) of decisions into two categories, namely of individual and normative character, was an essential part of the analysis undertaken by the CPII experts 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).

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

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

In summary, one can conclude on three qualities of normative acts. These are general, provide abstract hypotheses and are not exhausted by a single act of implementation.

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

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

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

ARTICLE 33 "THE VOTING"

1. Voting in the Council could be held openly or in secrecy. The Council decides on the cases when voting is secret. The acts of individual nature are approved by secret voting at all times.
2. The decisions of the Council are taken with the majority of votes of the members attending the meeting.
3. The decisions on cases provided for by letters "b", "c", "d", "dh", "j", "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 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 year 2011, Korça Municipal Council passed in total 99 decisions. This is a smaller number compared to the year 2010.

One could suppose that the reduction of the decision making productivity happened for the cause that 2011 was an electoral year, implying the temporary interruption of the normal legislative activity due to the electoral campaign and the period of constituting the new municipal council.

During the first quarter of 2012 (until April 19th), the Municipal Council of Korça has taken (made, passed) 41 decisions in total. This period has been characterized by a rather (very) important decision making activity of the Municipal Council, such as the approval of the "Fiscal Package 2012" that determines the level of the local taxes and duties that are applied towards the subjects by the local authorities.

Both these very important decisions will be analyzed widely (in depth) in the framework of the present Report. (See below: *The participation of the public in decision making*). These are in essence the reason why this Report is not limited only with analysis of the decision making for 2011, but extends its assessment also upon the first quarter of 2012, too.

The vast majority of the decisions passed by Municipal Council during the 16-months monitoring period, are of individual character. This classification (distinction) of decisions into two categories, namely of **individual** and **normative** character, was an essential part of the analysis undertaken by the experts of CPII in the framework of this Monitoring for it is a prerequisite for assessing the level of compliance with provision 33/1²⁴ by the Municipal Council itself (read more about this argument in: *Methodology*).

The paragraph 1 of the article 33 defines that "*Acts of individual character are always approved by secret ballot*". Based on the periodic reports compiled by the team of Citizens' Transparency Office in Korça, but also on the thorough and careful evaluation of all audio-video recordings, in which all the meetings of Municipal Council are documented¹, turns out that this provision (33/1) has been observed only in cases when *nominal decisions*²⁵ were passed during the Council's establishment / constitution period (see tab 1, Anex 1, pg.43).

For all the remaining decisions of *individual character* (131), the members of the Council have casted their ballot (voted) openly. Based on the general number of decisions of individual character, CPII has assessed the observance of the rule / modality defined by the paragraph 1 of the article 33, Law 8652 by Korça Municipal Council during 16 months (Chart 1 & 2, pg. 47).

The frequent avoidance of legal procedure of the secret ballot for all decisions of individual character may be "dictated" by the inappropriate infrastructure of the hall where the meetings of the Council are held. As mentioned above, the Council "borrow" the reading hall from the City Library to hold its meetings, therefore, the eventual absence of any voting technology makes it inconvenient for the councilmen to cast their vote secretly as it would be very much time consuming.

Another reason that might explain why Korça Municipal Council approves the decisions of individual character through open voting proceedings is that the councilmen themselves have little knowledge of the provision in question. In fact, this would be a justified "*ignorantia juris*", if one takes into account that there is no manual, regulation, directive or court decision in Albania that interprets and/or defines the criteria on what and how an individual decision is distinguished from a normative one (read more on this on: *Recommendations*).

THE MONITORING FINDINGS

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

During the monitoring period, only a small number of decisions are of normative character (12 in total).

It is worth mentioning the Decision No. 13, dated 09. 03. 2011 "On the level of local taxes and Tariffs" or the Decision No. 44, dated 28. 07. 2011 "On the budget of the municipality for the year 2011". The latter was enacted only after the new Municipal Council was constituted, after the elections of May 8th, 2011. Until before this day, the Council, rejected any attempt of the Mayor of Korça, Niko Peleshi to pass the budget prepared by his administration. It is worth to mention that the Decision No. 44, dated 28. 07. 2011, "On the approval of the budget of the municipality for the year 2011", even when approved by the new Municipal Council, now with a majority belonging to the left wing coalition, was sent back for review by the Prefect, with the reasoning of "legal violations of the percentage of contribution of the Korça Municipality to the Districts Council". The new Council re-convened to re-vote "The 2011 Budget, amended", as required by the Prefect (DMC no. 47 dated 25/08/2011). Regarding the first 4-month period of 2012, the Council approved the Fiscal Package 2012 (DMC no. 2) and the 2012 Budget (DMC no. 27). Both these very important decisions were returned to the Council for review by the Prefect of Korça, A. Mano. The Fiscal Packages returned on the grounds that the decision was not enacted in full compliance with the requirements of the 8652 law, as amended (no prior consultations with stakeholders were conducted by the Council). However, on its meeting of March, 26th, the Council passed with simple voting, the 2012 Fiscal Package, yet without taking any public consultations.

The decision "On the 2012 Budget" was also returned to the Council for review by the Prefect. It was re-voted by the Council on April, 18th, passed with the votes of the left wing councilmen. In all these cases, the voting was open, and as long as these are normative decisions, this is a practice based on the law.

1.2.1 OBSERVANCE OF THE VOTING MODALITIES

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

Based on the close monitoring of the decision-making process in Korça Municipal Council, it turns out that this legal requirement (33/3) has been fully observed. In fact, at the Municipal Council prior to May 8th as well as in the one that was established after these elections, the difference between the majority and minority was determined by only a few votes. As soon as we have to do with approved decisions, this leads *a priori* to the conclusion that the provisions in Art. 33/3 of the Law 8652,

ARTICLE 32

THE MUNICIPAL COUNCIL HAS THE FOLLOWING POWERS AND COMPETENCES:

- a) Approves the statute of the municipality/ comune and the internal regulation of its functioning.
- b) Elects and discharges the Chairman and the Deputy Chairman of the Council.
- c) Elects and discharges the Secretary of the Council.
- e) Approves the organizational structure and the basic regulations of the administration of Municipality, of the units and budgetary units under the 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.
- d) Approves the acts of establishing enterprises, business companies and other judicial persons, established by the Council itself or in which it is a co-founder.
- dh) Approves the budget and its changes.
- e) Approves the changing of destination or the renting of properties to third parties.
- i) 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.
- gi) 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 law, 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 under jurisdiction of 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.

amended are fully observed; otherwise there would not have been any decision i.e. on the budget or Fiscal package. The CPII senior staff and the CTO team members in Korça, who closely observed all the meetings held by the Council, 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 provision contained in Paragraph 2 of Art.33 has been observed as the law 8502 requires.**

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 33², states in its paragraph 4 that: “Decisions are made by 3/5 of the total number of members of the council for the cases foreseen in article 32, letter “e” of the this Law, or in other words, in cases when the Council approves alienation or renting out (public) properties to third parties.

During the year 2011, the Municipal Council of Korça has passed at least 8 decisions “On changing the destination or renting out properties to third parties”, while in the first four months of the 2012, it has passed another 7 decisions of this type. In all these 15 cases, the voting has been almost unanimous. It can be affirmed that *the provision 33/4 of the Law 8652, amended*, has been fully observed during the monitoring period.

In regard to this type of decisions (“On changing the destination or renting out properties to third parties”), a double assessment needs to be made in terms of compliance with legal provisions for the voting process. One has to keep in mind that these decisions are of a pure individual nature, being referred to a concrete fact (no general and abstract rules are fixed through these acts³). Article 33/1 explicitly states that “Acts of individual character shall be approved in each case by secret voting.”

From the data extracted from periodic reports filled and provided by the Citizens’ Transparency Office in Korça, as well as from the careful monitoring of all audio-video recordings of the Council’s meetings, the CPII has drawn the conclusion that in every case when such decisions were passed, the Council did not applied the secret voting procedure.

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 when notification to its subjects occurs” (Article 33/6).

Legislator has been careful to distinguish clearly through this provision, the time of the adoption (approval) of the act from the moment of its announcement, which, in this case implies the notification of the subjects addressed by the decision, (as the councilmen themselves are familiar with the decision in question at the moment that it is ratified). The administrative act is considered as being notified by the Public Authority to the interested subjects from the moment of completion of all actions required by law in order for that act to be considered announced or promulgated²⁶.

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.

1.4.1 THE PROMULGATION OF THE DECISIONS

Based on the evaluation made by CPII, it results that the decisions of the Municipal Council Korçë are a “cacophony” regarding the modalities of announcement and entering into force. It results that none of the 140

decisions issued during the 16 months monitoring period has explicitly defined at the act’s text-body (corpus) the date of its announcement. According to legal definition, the acts of the council are announced (promulgated) within 10 days after their approval. This means that the time at the disposal of the Council to announce its approved decisions in their final form (sealed and signed by the Chairman) is no more than 10 days.

To understand it better: The Council reviews (or not) at the plenary session the draft-decisions prepared in advance and submitted for final approval. If approved, these are “transformed” into decisions of the Council. Since that moment, the Secretary of Municipal Council re-formulates the text of the decision (which could have undergone a lot (few, fairly, enough) changes during the discussion at the session) and sends it to head (chairman) of the Council for final signature (in his absence, to the deputy chairman). After that the decision is sealed. Only after this final formality, it can be considered officially a *decision of the Municipal Council*. This process takes normally 1 to 3 days. Nevertheless, the legislator has left into the disposal of the Council 10 days to perform these proceedings. The decision, now written down in its final form, signed and sealed by the chairman as such, is “ready” to be announced. After this moment, it is sent to the Prefect who must control now its legitimacy (compliance with the related laws). The latter must express his opinion on the legitimacy of the decision within 10 days from the date it is registered at the Prefecture. (Article 14, paragraph 2/b,

Law No. 8927 date 25. 07. 2012 „On the Prefect“).

As an illustration, this is a normal practice followed by Durrës Municipal Council. In the text-body of all its decision is explicitly indicated (literally noted) the date of the announcement of the decision that, does not correspond to the date of the Council's meeting (it varies from 1 to 5 days after the meeting's date). Such a modality is always followed by a second one (clause) on the decision's text-body, which defines the time-limits of the decision's entering into force (immediately or 10 days after its announcement).

Thus, the first sentence (clause) of the paragraph 6 of the Article 33 has in fact two provisions. The first is that "The acts of the Council are announced within 10 days from the day of their approval (from the council)" and the second "Acts enter into force 10 days after their announcement".

1.4.2 ENTRY INTO FORCE OF THE COUNCIL'S DECISIONS

Regarding the entering into force, it has been seen that 39 decisions of a total of 140, were fixed to enter into force immediately. This includes also decisions of a normative character that by their very nature need a time to be known in order to apply in a better way. *Such decisions of a normative character are:*

Vendim nr. 13, dt. 09.03.2011 "Per nivelin e taksave dhe tarifave vendore ne qytetin e Korces si dhe penalitetet per shkeljet apo kundravajtjet administrative"

Vendim nr. 47, dt. 25.08.2011 "Per rishqyrtimin e VKB Dr. 44 date 28.07.2011 "Mbi miratimin e buxhetit te Bashkise dhe Institucioneve te vartesis se Vitin 2011"

Vendim nr. 86, dt. 25.11.2011 "Mbi miratimin e sistemit te pikezimit per formularet e banesave sociale me qera"

Vendim nr. 2, dt. 13.02.2012 "Për nivelin e taksave dhe tarifave vendore dhe administrimin e tyre në qytetin e korçës si dhe penalitetet për shkeljet apo kundërvajtjet administrative"

Meanwhile 8 decisions do not contain in their text body the announcement date.

The entering into force of the decisions of Municipal Council is a procedure that is not described at the paragraph 6 of the Article 33. This is also due to the reason that all the decisions passed by the Council must pass

first through the legitimacy "filter" of the Prefect institution. If these acts would enter into force immediately, then the question would be raised: what would happen with the act's effects which are generated immediately by decisions of this kind, in the hypothetical case when the Prefect would send back them to the Council to further review? Would these effects be now reversible?

The Law No. 8927, date 25.7.2002 "On the Prefect", in its Article 14 "Verification of decisions legitimacy" defines (states) explicitly on its paragraph 1 that: *Application of the acts of the local government is made in compliance with the paragraph 6 of the Article 33 of the Law No. 8652, date 31.7.2000 "On the organizing and functioning of the local government", as amended.* This paragraph does not provide in any case for the immediate entering into force of the decisions of Municipal Council.

The only case (extra legal) when a decision can be "allowed" to enter into force immediately is when the chairman of the council is elected in the first constitutive meeting, because (as soon as) it is him who must sign, by the just-vested authority, the decisions passed in the first meeting of the just-established Council. In

Korça's case, this particular decision was provided to enter into force 10 days after announcement. Even in such a case the more correct definition would be:

"It is announced today on (date of the meeting) and enters into force immediately (or after the approval of the Prefect)".

Paradox of the Council's chairman

On 29.06.2011, the new Municipal Council of Korça, after the May 8th, 2011 Local Elections, convened on its first meeting to elect its steering organs. By Decision no. 28, no. 29.06.2011 "On the Organisation and Functioning of Local Government", Mr. Ilir Pendavini was elected chairman of the City Council, Korçë by the majority vote of the members of the left wing coalition "Alliance for the Future". This decision is explicitly defined to "enter into force 10 days following the announcement." At the very same meeting, the council also enacted two more decisions of individual character (nominal decisions), namely Decision No. 29 and No. 30, assigning respectively the Deputy-Chairman of the Council and its councilmen in the District Council.

These decisions are set to enter into force 10 days after announcement, even though the persons to whom these decisions addressed were present in the meeting room (they took notice immediately on the voting result). Moreover, these two decisions are signed by the just-elected Chairman of the Council, Mr. Ilir Pendavini. In fact, he can sign these decisions in this capacity only after 10 days, when the decision no.28 is set to enter into force. In other words, Mr. Pendavini will become de-jure chairman of the Municipal Council only after 10 days (on July 7, 2011), and not immediately (on June 29) when he has in fact signed in the quality of the Chairman the decisions no 29 and 30, enacted that very day, in the first constitutive meeting of the new Council. This paradox might have been avoided by the lawyers of the Municipality if they would proceed based on the legal provisions, according to which the Decisions of individual character (nature), enter into force immediately. Furthermore, the subjects addressed by these particular decisions have taken notice immediately on the decisions' dispositive, given the fact that were present in the meeting room in the moment that the voting result were made known to the Council in the first place. This paradox of procedural nature, must be addressed for solution in the frame of possible amendment to the law 8652 "On the Local Government", amended

This in fact, would have to be a standardized norm provided by the law no. 8652, amended, perhaps to be reviewed in the frame of the possible amendments.

However, regarding the decisions of a pure normative character, such as the Budget or Local Taxes and Tariffs (the Fiscal Package), these cannot enter into force immediately, as it was the case in Korça. Regarding the Decision no. 2 dated 13. 02.2012 *“On the level of local taxes and duties and their administering in the city of Korça as well as the penalties for the administrative violations and offences”*, heavier complications have been noticed, that have to do directly with the modalities of entering into force of the decision. During the monitoring, the CTO reported about the increasing complaints of Korça citizens related to the application of the new tariff on the water supply, while the Fiscal Package 2012 was not even approved by the Council. Moreover, the Decision no. 2 of the Municipal Council was sent back to the Council for further review by the Prefect, due to the legal deficiencies observed in the decision making process conducted the Council. The latter re-convened and re-voted the Fiscal Package only on March, 26, 2012. The new tariff on the water supply was increased significantly on 2012 compared to the previous year. Its application before being approved by the Council or in the time when the decision has not entered into force yet, has to be considered a serious problem, not to say a legal violation.

1.4.2 ENTRY IN FORCE OF DECISIONS OF INDIVIDUAL CHARACTER

This provision is complicated to be rigorously monitored. On the other hand, its practical enforcement by the council is even more complicated, due to a series of difficulties, implying the distinction/differentiation of the individual from the normative act's nature (char-

acter). Furthermore, during the period under monitoring, it follows that the Municipal Council has issued individual decisions which target a large number of subjects, i.e the decision *“On Citizens' List benefitting soft housing loans”*. This act of individual nature, despite returned several times for review and completion with new names by the Council, would also cause a significant waste of time, if announced individually to each and every subject included in it (about 300 citizens). Therefore, CPII recommends the abrogation of the second sentence from paragraph 6 of article 33 (*read more on this in: Recommendation VII*).

1.4.4 VENUE OF ANNOUNCEMENT – NOTIFICATION

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

Consequently, the announcement-notification of the decisions in a public stand or through publication will be evaluated below, in the frame of article 35 of the law 8652, amended. 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 (*See for more: Recommendation III, pg.56*).

EXTRA CONSIDERATIONS FOR THE TITLE “HONORARY CITIZEN”

It is worth mention in this context regarding the secret voting –for the decisions of individual nature, dissonances (disagreements) seen in case of voting among the Council for the proposal of Municipal executive for the nomination of a street upon “Myftar Grabocka”, one of known names of the former communist nomenclature in the Korça District. (Myftar Grabocka is the father of the well known stage manager Vera Grabocka) The councilman Pellumb Beqiri challenged vigorously the proposal of Municipality based on the claim that he had been a member of the former communist nomenclature in Albania. Mr. Peleshi reacted immediately, saying that he appraises some public works such as closing of the river that crossed the city, construction of the “Youth” park and so on.

Also, similar disputes have involved municipal councilmen during the voting for granting Behxhet Pacolli the title of honorary citizen, who according to them has had little to do with the city of Korça.

Both cases brought here as an illustration of the issue, we have to do with decisions of individual character. There were hot disputes in both cases and the decision making has been made openly and the decision passed due to the ballots of political force that has the majority of votes of the municipal council (the left), even that it is difficult to believe that 17 councilmen of the majority at the municipal council are unanimous, let's say for mr. Pacolli. If the legal demand (requirement) for the secret voting would be respected, the decision making perhaps would have been different. This is only one illustration for the fact that the open voting, instead of increasing the cohesion of the group for the problems of the city, erodes the cohesion of the community represented by them in the council. This case is an indicator that the open voting for the individual decisions has high burden of the “party influence”, while in fact the oath of the councilmen is on behalf of citizen and of the respect towards law and constitution.

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

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

ARTICLE 34 "THE OPEN MEETINGS"

1. Council meetings are open to the public. Every citizen is permitted to attend council meetings according to the modalities specified in the council regulation.
2. Notification about the council meeting is publicly posted in the premises designated by the council and media. It includes the date, venue, hours and agenda of the meeting.
3. The council, by voting majority of the overall number of members, shall decide on cases when the meeting is closed.

THE MONITORING FINDINGS

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

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

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

It also noticed that, in almost every meeting of the Council, ordinary citizens have participated in the plenary sessions. Many of them have addressed the Council posing concret demands or reising concerns. This situation is in deep contrast with that observed in Durres, where citizens rarely (if ever) are seen attending Municipal Council meetings and discussions taking place there.

During the period covered by this monitoring, all meetings of the Municipal Council of Korca were held at the reading room of the City Library "Thimi

Mitko". This "borrowed" meeting hall has limited capacities to accommodate citizens who would like to attend live the meetings of the Council. It is not equipped with the necessary infrastructure to conduct the voting process pursuant to the legal requirements, especially with regard to the individual decisions which must be passed by secret voting.

Such situation compromises somehow the implementation in practice of the constitutional right according to which "Everyone has the opportunity to attend the meetings of collectively elected organs" (Article 23/3 of the Constitution). Problems of infrastructure nature are common when it comes to normal functioning of the municipal /communal councils, Korça's included. This can be an indication of the little attention shown so far by the local government to all those necessary components which the decision making process consists on.

However, regarding the evaluation of the compliance with the provision 34/1 of Law 8652 by the Municipal Council of Korça, 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.

EXTRA CONSIDERATIONS

The Mayor of Korça has been present in the major part of the meetings of the Municipal Council held during the period covered by the present monitoring. The members of the Office of Transparency of Citizen have noticed that the Mayor has protagonized during the meetings of the Council either during the period when the majority of the Council belonged to the right wing coalition (before May 8th, 2011), or when the majority was re-established by the left wing coalition (Alliance for the Future). The Mayor has been always involved continuously in the communication question and answers with the councilmen. A part of the members of the Office of Citizens' Transparency think that the almost permanent presence of citizen who participated in the meetings of the Council addressing their concerns is tied more with the presence of the head of the executive of the Municipality in these meetings than with the Council itself as the decision-making institution of the city. Generally, a significant part of the meetings of the Municipal Council of Korça are held through a dialogue between the Mayor and a couple right wing councilmen., or as a dialogue between the Mayor and citizens in need of social assistance and housing. The Municipal Council itself keeps a low profile of protagonism as the decision-making institution of the city.

PROJECT OUTCOME: Video-archive of municipal council meetings

In order to effectively address for solution such problem, CPII undertook a relatively complicated process to establish an online video-archive, which would contain all meetings held by the Municipal Council, as well as the public consultation meeting held so 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 Korça was given by CPII the possibility to attend online, in audio-video all meetings of Municipal Council, via the CPII website www.infocip.org, also linked to the official website of Korça Municipality. All meetings are audio-video recorded by CPII and uploaded online to a modern video-archive. This unique approach introduced by CPII enables all citizens of Korça, within their city/country or abroad, to be continuously informed of the decision making processes carried out in their city. It provides a new dimension of transparency to the decision making activity of Korça Municipal Council, thus making it, together with Durres, the only municipalities in the Albania which broadcasts online their activities. It promotes the transparency in the decision making via new information technologies.

A strict audio-video recorded documentation of Municipal Council meetings is also substantial for the assessment by any concerned parties of legal modalities of the decision making. This video-archive represents an added value of the project. The video-archive contains all Council meetings since February 2011. Watch it at: http://www.infocip.org/al/?page_id=269

THE MONITORING FINDINGS

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

The paragraph 2 of the Article 34, provides that: *"Notification on the incoming meetings of the council is publicly posted in the premises designated by the council and media. It includes the date, venue, hours and agenda of the meeting."*

2.2.1 ANNOUNCEMENT IN PUBLIC PLACES OF THE INCOMING MEETINGS

At the main gate of the building of Municipality, Korçë, a board is placed, where acts issued by the organs of local government, district court etc., are supposed to be displayed. This board was subject to constant observation and monitoring by the Citizens' Transparency Office in Korça. In order to have a complete documentation of the results, the board was photographed almost every day during the monitoring period. Not even a single case was reported by the CTO for the display of announcements (the date, hour (time) and the agenda) on any of the incoming meeting of Municipal Council. The CTO members haven't noticed nor reported any other board, in any other public area in the city of Korça that could/would serve to display the announcements for the incoming meetings of the Council.

2.2.2 ANNOUNCEMENT IN THE MEDIA

There are three local TV stations exercising an almost vibrant activity in Korça. They broadcast a reach programming and have already a consolidated audience in Korça. These TV stations have created a "healthy media environment" in the southeastern city of Korça. Social-economic issues occupy a significant TV space in the chronicles and news editions

prepared by these TV stations. A significant space is devoted to the activity of the local government as well. Generally, every meeting of the Municipal Council has been covered widely by the TV chronicles of the three TV stations.

As for the preliminary announcements on the incoming meetings, as provided by the Article 34/2, CTO has reported only 6 cases of meetings' announcements, out of a total of 19 meetings held by the Korça Municipal Council during the monitoring period. It turns out, however, that there is not an established (permanent) practice, set or established by the Municipal Council with regard to the announcement procedures through the media outlets. Apparently, Korça citizens ask individually to find out on the dates when the Municipal Council will convene in plenary session. If this is the case, it does not count as a Council's compliance with the legal provisions in question (paragraph 2 of the Article 34), which implies the proactive disclosure / notification of the meeting's date.

2.2.3 NOTIFICATION IN OTHER WAYS AND/OR BY OTHER MEANS

BY WEBSITE - Even though not an explicit legal requisition of the law 8652, amended, one of the possible ways of notification/announcement of meetings might be via Internet. Korça Municipality has an official website, which continuously provides information on the activities of Municipality Administration. From the systematic monitoring made during a 16-months-period, it doesn't turn out that it has been used to publish any preliminary an-

nouncements on the date, time and agenda of the incoming meetings of the Municipal Council. There are only two announcements of this type, posted on this page during 2010, but they will not be counted because they fall beyond the time limits of the monitoring period. On the other hand, this indicates that the Municipality is aware and has even used in practice this notification form for the incoming Council's meetings, as the law requires.

BY TELEPHONE OR EMAILS - From the reports of the CTO in Korça, it results that the main practice followed by the Secretary of Municipal Council for notifying the meetings has been through contacting all members of the Council and other interested persons mainly via phone and/or email. Such practice however meets its objective limitations in providing notification to all possible interested persons who has an interest to attend the Council's meetings.

2.2.4 THE DATE, PLACE, TIME AND THE AGENDA OF THE MEETING

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

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

www.bashkiakorçe.gov.al/site/articles.php?cid=121

Njoftohen të gjithë të rinjtë që kanë mbaruar studimet e larta, të aplikojnë për të qenë pjesë e këtij projekti që synon nxitjen e iniciativave sipërmarrëse të të rinjve.

Idetë më të mira të biznesit si dhe biznesplanet e paraqitura do të vlerësohen nga një komision profesional dhe fituesit e projektit do të përfitojnë:

- Grand për çeljen e biznesit të tyre
- Lehtësi fiskale për biznesin gjatë vitit të parë të aktivitetit

[në vazhdim...](#)

Ftesë Festa e lakrorit

Edhe gjatë 2010-ës, Bashkia Korçë, me mbështetjen e biznesit lokal, organizon për të tretin vit Festën e lakrorit. Ejani të shijoni lakrorin në sag, traditë e spikatur e Rajonit të Korçës, së bashku me produktet e tjera të traditës sonë. Festa do të zhvillohet ditën e shtunë, në datën 24 korrik, tek sheshi i Parkut "Rinia", në orën 18:00.

Ju presim të festojmë së bashku!

takimi i Avokatit të Popullit me qytetarët e Korçës

Në ushtrim të funksioneve të përcaktuara nga ligji dhe në kuadër të përbushjes së veprimtarisë së tij për takimin e qytetarëve sa më pranë vendbanimit të tyre, Avokati i Popullit do të zhvillojë në qytetin e Korçës një ditë të hapur për pritjen e ankesave të qytetarëve.

[në vazhdim...](#)

Mbledhja e Këshillit Bashkiak 4 maj 2010

Diten e marte, date 04.05.2010, ora 9.00 në Bibliotekën "Thimi Mitko" Korçe do të zhvillohet Mbledhja e Këshillit të Bashkisë Korçe me këtë Rend dite:

[në vazhdim...](#)

Mbledhja e Këshillit Bashkiak prill 2010

Lajmërohen qytetarët se ditën e mërkure, date 14.04.2010, ora 9.00 në Bibliotekën "Thimi Mitko" Korçe do të zhvillohet Mbledhja e Këshillit të Bashkisë Korçe me këtë rend dite...

[në vazhdim...](#)

Shpallje konkurimi për vende të lira pune Maj 2010

THE MONITORING FINDINGS

2.3 CLOSED MEETINGS (Art. 34/3)

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

During the period covered by this monitoring, all meetings of the Council were held in open sessions. No reports were made on the Council voting for a closed session to be held. Consequently, the provision 34/3 cannot be subject to further observance assessment in the frame of this monitoring, as long as it was not activated in practice. It's worth mentioning that during the two-years period that CPII is working in local government level, both in Durrës and Korça, it was never reported even a single meeting to be held in closed sessions.

Recommendation:

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

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

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

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

ARTICLE 35

CONSULTATION SESSIONS WITH COMMUNITY AND PUBLIC'S RIGHT TO INFORMATION

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

THE MONITORING FINDINGS

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

Prior to the review or approval of the acts, the Communal or Municipal Council conducts consultations' sessions with the community (Article 35/1). The consultation sessions are mandatory when the Council⁴:

- dh) Approves the budget and its changes.
- e) Approves changing of property destination or renting out to third parties".
- f) Decides on local taxes and tariffs, as well as their level.
- k) Approves norms, standards and criteria for the regulation and enforcement of functions provided by law, and for the protection and guaranteeing the public interest.

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

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

During the period covered by this monitoring report, the Municipal Council of Korça has passed two Budgets, and two Fiscal Packages, respectively those of the year 2011 and 2012. CTO in Korça has reported that the Council did not call for any type of public consultations in none of the cases.

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

During the monitoring period, only 15 decisions "On changing property destination or renting out to third parties" were enacted by the Municipal Council of Korça (see Tab 2, Anex 1, pg. 35).

It results that, the Municipal Council of Korça did not organize any consultation with the relevant stakeholders (or the community), as explicitly required by paragraph 1 of the article 35, when referring the letter "e", as it is described in the Article 32. As mentioned earlier, these type of decisions are usually passed by the absolute majority of votes in the council, which indicates that prior consensus among councilmen has been sought and agreed in advance, prior to the plenary session, perhaps during discussions in the Municipal Council commissions.

Nevertheless, the work done in these commissions has not been target to monitoring by the CTO in Korça, therefore the practice followed there will be disregarded in the frame of this Report. Therefore, the observance of letter "e" will not be part of the assessments in the Graph 14, in page 49 (Third PART).

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

During the monitoring period it was not reported any case of decision making on "approval of the norms, standards and criteria for the regulation and enforcement of the functions provided for by the law to the Council", as in the sense provided by the letter "F" of Article 32. Consequently this category of decisions cannot be exposed to any possible measurement nor evaluation.

CONSULTATIONS RUN BY THE MAYOR

The Mayor of Korça, Mr. Niko Peleshi, (two consecutive mandates in the office), has been constantly involved in various initiatives on community budgeting. It is known that these initiatives aim at a better orientation of the public investment by Municipality in the framework of the draft-annual-budget submitted to the Council for final approval. However, these initiatives are limited to a harmonized compilation of the draft-decision "On the budget" by the municipal administration, which, in fact, has no decision-making attributes, but only executive ones (powers).

It is the Municipal Council that has a legal obligation to initiate and undertake consultations with

the community and all interested stakeholders. This is a direct requirement of the Law 8652, as amended. Regarding the consultations undertaken by the municipal administration during the previous years, these have to be considered as based on extra-legal procedures.

According to Article 36, letter "a", "The Mayor shall exercise all the powers in carrying out the functions of the commune or municipality, except for those that are exercised only by the Council." All competences and the functions of the Council are clearly listed in the article 32, among which, the passing of the Budget and Fiscal Package, the Property destination differentiation and setting new norms and standards. The article 35 clearly describes the obligation of the council to conduct public consultations on all the above mentioned decisions.

In Korça's case, this would mean that the Mayor has arbitrarily exercised competences vested by law to the Municipal Council.

Numerous projects initiated in this area by different actors of civil society, aiming at encouraging and assisting mayors to undertake public consultations, are of questionable legitimacy and do not serve to the promotion of a culture of compliance with the law by the local government.

This short coming of civil society organizations in developing initiatives should be discouraged also by the community of donors, as long as the latter has as its primary goal to promote the compliance with the law and encourage its enforcement in the Republic of Albania.

Article 36

THE CHIEF OF COMMUNE OR MAYOR:

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

THE MONITORING FINDINGS

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

3.2.1 ANNOUNCEMENT -NOTIFICATION OF DECISIONS THROUGH THE PUBLIC STAND

Next to the main gate of Korça Municipality there is stand, supposed to display, among other things, the decisions of the Council. Next to it, there is billboard with a list of good local governance criteria and principals, which, apparently, were left there by a donor since the times when cooperations of this type started to be implemented in this city. This stand has been subject to everyday monitoring by the CTO in Korça. Each day photos were taken in the spot to document the updating routine. In 16 month, only 3 decisions, issued on May 2011, were put in the stand, out of 140 decision issued by the Council in 16 months.

ARTICLE 35

POINT 3

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



3.2.2 ANNOUNCEMENT-NOTIFICATION OF DECISIONS THROUGH THE MUNICIPAL WEBSITE

An eventual way of informing on the Council decisions is through the official website. Municipality of Korça has a special category on its website dedicated to the Municipal Council's activities, where the decisions of the latter are supposed to be published. First and the last time a decision of the Council has been uploaded was in 2009 (decision No. 9 dated 11.02.2009).

There is also a special page in the website devoted to the municipal budget. There are three annual budgets uploaded here, concretely those of 2008, 2009 and 2010. In a category named "business", there is sub-category where fiscal packages of 2010, 2011 and 2012 are found uploaded, too (the 2012's is uploaded as a draft).

The website offers wide information about the activities of the Mayor, accompanied by a rich photo-gallery. But, as for the coverage of the activities of the Council, one can find very little information (not to say at all) in the official website of the Korça Municipality. There is much more information on pie and beer festivals, than on the Council decisions on the official website of Korça Municipality.

Given these circumstances, the CPII initiated a radical digitalization process for uploading online the Municipal Council decisions. All decisions from January 2007 up to April 2012 were digitalized by the CPII and uploaded in an modern online database, which then was donated to the Korça Municipal Council in a special ceremony (see below: *Donation of the Database*, or click at: <http://www.infocip.org/all?p=7060>).

The screenshot shows the website of the Korça Municipality. At the top, there is a banner with the text "Korça ku dua të jetoj" and the year "1777". Below the banner is the logo of the municipality and the name "Bashkia Korçë". The navigation menu includes: "E Mërkurë 18 Korrik 2012", "Faqja e parë", "Qyteti", "Bashkia", "Turizmi", "Biznesi", "Urbanistika", and "Programet".

The main content area displays a decision announcement: "Përberja, krijim, Mënyra e organizimit, kompetencat dhe detyrat e këshillit bashkiak". The decision is titled "Vendim - Nr 9 Datë 11.02.2009". The text of the decision is as follows:

Këshilli i Bashkisë Korçë në mbledhjen e tij të datës së sotme pasi mori në shqyrtim relacionin e paraqitur nga Drejtoria e të Ardhurave, bazuar në Ligjin Nr. 9632 datë 30.10.2006 "Për sistemin e taksave vendore" nëni 35 dhe në Ligjin Nr.8652, datë 31.07.2008 "Për organizimin dhe funksionimin e qeverisjes vendore" Ligjin nr 9920 datë 19.05.2008 "Për Procedurat Tatimore në Republikën e Shqipërisë" dhe Udhëzimin e Ministrisë të Financave nr 24 datë 02.09.2008 "Për Procedurat Tatimore në Republikën e Shqipërisë",

VENDOSI

LAJMERIM

Lajmërohen të gjithë Këshilltarët se ditën e Enjte datë 02.04.2009, ora 9.00 në Bibliotekën "Thimi Mitko" do të zhvillohet mbledhja e Këshillit të Bashkisë me këtë REND-DITE

1. Miratim Ndhme Ekonomike per muajin Mars 2009.
2. Miratim fondi per zbatimin e Vendimeve Gjyqesore.
3. Per dhenie ne huaperdorje te 4 ambjenteve me siperfaqe 15m2 te ndodhura ne shkollën e mesme "Raqi Qirinxhi".
4. Kalim ne privatizim.
5. Miratim fondi (tvsh)per sherbimin funeral.
6. Mbi pranimin e dhurimit te mjetit Eskavator nga "UKKO" sh.a ne pronesi te Bashkisë Korçë.
7. Per zevendesimin e anetarit e Keshillit Mbikqyres te "UKK" sh.a.
8. Relacion per emerimin e Ekspertit Kontabel te Autorizuar
9. Per Miratimin e treguesve te programit te zhvillimit ekonomik per vitin 2009 sh.a "UKK"
10. Per rishqyrtimin e VKB nr 7 date 11.02.2009 "struktura dhe niveli I pagave dhe shpërblimes se Bashkisë Korçë".

On the right side of the page, there are several widgets: "SHARE" with social media icons, "KËRKONI" search bar, "Kërkesë Ankesë" button, "ÇIP" logo (Qendra për Çështje të Informimit Publik), "DATABAZA DIXHITALE E VENDIMEVE TE KESHILLIT BASHKIAK, KORÇE 2007 - 2012", "Stop Informallitetit" button with phone number 251844, and "CLUJ INTERNATIONAL CLUB" logo.

The screenshot shows the website of the Korça Municipality, specifically the budget section. The navigation menu includes: "Faqja e parë", "Qyteti", "Bashkia", "Turizmi", "Biznesi", "Urbanistika", and "Programet".

The main content area displays the title "Buxheti i Bashkisë se Korces" (Budget of the Municipality of Korça). Below the title, there are three links for the budgets of different years:

- Buxheti i vitit 2010
- Buxheti i vitit 2009
- Buxheti i vitit 2008

3.2.3 ANNOUNCEMENT - NOTIFICATION OF DECISIONS THROUGH THE MEDIA

As mentioned above, there are 3 local TV stations in Korça. From the CTO observations, it results that, each meeting of the City Council has found ample coverage in all these three television.

Despite this fact, the announcement - notification of decisions, issued by the Council, as the Article 35/3 requires, has not been observed nor reported by the CTO team in Korça. In few cases, the decisions taken have been part of the media reporting, because the journalist themselves had an interest to report on that, and not because the council had initiated a practice of announcement the decisions through the media.

Based on the CTO reports, it does not result that the Municipal Council in Korça uses certain protocols to disseminate its decisions through any type of established media cooperation.

3.2.4 ANNOUNCEMENT - NOTIFICATION OF DECISIONS THROUGH PERIODIC PUBLICATIONS

The Municipality of Korça issue a periodic publication, titled "My City". This publication is of a magazine format and can be considered as one of the best publications issued by local government bodies in Albania. However, a careful review of this periodic publication shows that the Council decisions have never been "qualified" to occupy some space of this periodical. It would be a great opportunity to publish the most recent decisions issued by the Council, in order to enable a better access to local legislation for all Korça citizens

3.2.5 PUBLIC INFORMATION OFFICE IN THE MUNICIPALITY OF KORÇA

Korça Municipality has a modern information office with a dedicated staff that creates good relations

with the public. In essence, the information office implies the materialization in practice of the citizens' right to receive information from the public administration, exercising their constitutional and legal right. The legal basis for its establishment and operation, despite the law 8503, is the second clause of the paragraph 3 of Article 35. This article states that: "The acts of the Council have to be displayed in public places designated by the Council, within the territory of the commune or municipality and, if possible, the council also defines other forms of publication. Informing the public in each commune and municipality is conducted in accordance with the Law No. 8503, dated 30.6.1999 "On the right of information on official documents" and the rules laid down by the relevant Council for this purpose". Subject to assessment in this report is only the first clause, that assigns the obligation for posting/publishing the decisions of the Council, or otherwise the proactive disclosure of decisions. The second clause that implies active information (activated by citizens) is not subject to evaluation, as it refers directly to another law. Based on this differentiation, the performance of the Information Office, established in Korça Municipality is not subject to assessment in the frame of this report. Moreover, as long as this office is located within the premises of the Municipality, it could not be considered a "public place", in the meaning set by the provision of the paragraph 3 of the Article 35 (see for more: *Matrix of Measurement and Evaluation, in Part III*).

Also, according to the observations of the CTO in Korça, it does result that the decisions of the Council are administered or distributed by this information unit, but by the Secretary of the Council. CTO and CPII contacted the latter to attain the 2007-2012 set of decisions, in order to digitalize and then upload those in an online database.

ARTICLE 37

SECRETARY OF COMMUNAL OR MUNICIPAL COUNCIL

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

ANNEX No.1

Tab 1 - Nominal decisions of individual character

No	Act's Attributes	Entry into force	Type	voting mode
1.	Decision no. 28, dated 29.06.2011" On the organization and functioning of the Local Government"	After 10 days	IND	Secret voting
2.	Decision no. 29, dated 29.06.2011" On the organization and functioning of the Local Government dhe Funksionimin e Qeverisjes Vendore"	After 10 days	IND	Secret voting
3.	Decision no. 30, dated 29.06.2011" the organization and functioning of the Local Government"	After 10 days	IND	Secret voting
4.	Decision no. 40, dated 28.07.2011" On changing the number of members of the oversight comity of T.SH.SH.F.P Korce SH.A"	After 10 days	IND	Secret voting
5.	Decision no. 41, dated 28.07.2011" On discharging and assignment of the new comity members of T.SH.SH.F.P Korce SH.A"	After 10 days	IND	Secret voting
6.	Decision no. 42, dated 28.07.2011" On discharging and assignment of the new board members of the "Water supply and pluming, Korce SH.A"	After 10 days	IND	Secret oting
7.	Decision no. 50, dated 05.10.2011" the organization and functioning of the Local Government"	immediately	IND	Secret voting

Tab 2 - Decisions "On changing property destination or renting out to third partise

1.	Decision no. 2, dated 14.01.2011 "On the exclusion of tiny materials from the economic inventory"
2.	Decision no. 53, dated 05.10.2011" On bying the estate of 97 m2, located on district no 12, Korçe and on authorising the Meyer to signing the contract"
3.	Decision no. 79, dated 03.11.2011" Per kalim ne privatizim te banesave shtetore"
4.	Decision no. 84, dated 25.11.2011 "On the exclusion of tiny materials from the economic inventory"
5.	Decision no. 89 dated 15.12.2011 "On the exclusion of tiny materials from the economic inventory"
6.	Decision no. 91 dated 27.12.2011" "On the exclusion of tiny materials from the economic inventory"
7.	Decision no. 95 dated 27.12.2011" On the initiation of the privatization procedure of dormitory of former Transport public enterprise, property of Korça Municipality"
8.	Decision no. 97 dated 27.12.2011" "On the exclusion of tiny materials, heavy machinery and other items from the economic inventory"
9.	Decision no. 3, dated 13.02.2012 " " On the initiation of the renting procedure for the estate of 205 m2 on district no. 14"
10.	Decision no. 4, dated 13.02.2012 "On the exclusion of tiny materials and tools from the economic inventory"
11.	Decision no. 7, dated 13.02.2012 "On the exclusion of tiny materials from the economic inventory"
12.	Decision no. 9, dated 13.02.2012 "On the privatization of public houses "
13.	Decision no. 25, dated 26.03.2012 "On the privatization of public houses "
14.	Decision no. 36, dated 18.04.2012 "On the privatization of public houses "
15.	Decision no. 39, dated 18.04.2012 "On the privatization of public houses "



OUTCOME

CPII publically appeals the Municipal Council of Korça to conduct public consultations for the Fiscal Package 2012

(ARTICLE 32, LETTER "F" & ARTICLE 35, PARA. 1)

Wednesday, February 8th, 2012 - The CPII and its local branch, Citizens' Transparency Office of Korça organized in Grand Hotel premises, a large public meeting to make a strong appeal to the Municipal Council to conduct public consultation with regard to the 2012 Fiscal Package (taxes & tariffs). The CPII and its local branch, CTO of Korça asked the Council to follow and not disregard the legal requirements for such important decision making process. The public statement was read by the head of Korça Office, Mr. Ridvan Meçollari, in front of several media representatives who covered the event.

The Fiscal Package is the most important normative act the Municipal Council approves within a year along with the budget. The Package imposes the fiscal burden that every citizen should pay to the

municipality in the form of taxes and tariffs, which in other words represent a substantial portion of the Municipal Budget income. As such, the discussion of the budget income with the taxpayers (contributors) is a process that must be taken very seriously. This process affects everyone who lives and works within the territory administered by the Municipality of Korça, whether large or small businesses, or ordinary citizens.

In his public statement, CPII emphasized that "There is no better opportunity than the discussion of local taxes and fees to further promote public participation in the decision making; there is no better opportunity than this one to further enhance the transparency standards in Korça town".

During the meeting the CPII Director, Gerti Shella,





reiterated that the discussion of Fiscal Package with the community is above all a legal obligation. Law No 8652, "ON ORGANIZATION AND FUNCTIONING OF LOCAL GOVERNMENT", in its article 35 "On counseling sessions with municipality and the right of the public to be informed" expressly provides that: "Prior to the review and approval of acts, the municipal council conducts counseling sessions with the municipality. The counseling sessions are obligatory in cases provided for in article 32, letters "dh", "e", "f" and "k"; ... where in the concrete case, "f" is when the Council "decides on local taxes and fees, as well as their level"

CPII offered to provide its help to the council by organizing the public meeting with stakeholders, just as it did in Durres for the very same event. By doing so, CPII would practically help the council to comply with its legal requirements on the matter, as they are clearly stated by paragraph 1 and 2 of the Article 35 of the law 8651, amended. Despite the appeal, the council did not take the offer. A week later, the Council re-convened in plenary session and passed the Fiscal Package as it was prepared by the Municipality Administration.

The Prefect did not promulgate the Council's decision, and turned it back for reconsideration, arguing that "no legal steps were followed by the council with regard to conducting

consultations with the relevant stakeholders, thus directly violating an explicit legal requirement.

Furthermore, the Korça citizens started to complain on the increased water tariffs that they have been forced to pay by the Municipality Administration prior that such new tariffs were even approved by the Council. Such increased tariffs, could be applied upon the subject only after approval by the Council of the 2012 Fiscal Package, and in no case before this moment, as it happened in Korça. This was another indicator of the legal violation observed in this case.

This large public meeting served also the promotion of the local Citizens' Transparency Network. This network established by the CPII, is reflects all social strata living in the city of Korça, including representatives from the Roma and Egyptian community. Currently, this network comprises of 80-100 citizens. The main objective of the network is the promotion of citizens' participation in the decision making process and local governance and the enhancement of governing transparency. The organization of this massive network was made possible due to the direct commitment of CPII and of its local branch in Korça, the Citizens' Transparency Office.





OUTCOME

MORE TRANSPARENT DECISION-MAKING: CPII PROVIDES KORÇA'S MUNICIPALITY WITH THE ONLINE DATABASE OF THE COUNCIL'S DECISIONS, 07-'12

Korça, 28 March 2012 – The Municipal Council of Korça city has achieved a new standard of transparency in decision making. All decisions issued by the Council from 2007 to date are made available online by CPII. The database is also linked to the municipality official website <http://www.bashkiakorce.gov.al>

“By donating this online database of the Council's decisions, CPII and its branch in Korça, Office for Citizens' Transparency successfully managed to provide an added value which will further promote transparency of the Municipal Council decision-making. This is a special contribution which indeed fills a gap created during these years in terms of the effective access to the Council decisions and practical use

of new information technologies, directly helping the citizens”, said in his welcome speech the Chairman of the Municipal Council, Mr. Ilirian Pendavinji.

In the meantime, the Mayor Mr. Niko Peleshi, who was also present in the database donation ceremony, stated “The deeper the decentralization process, the higher the impact of decisions of Municipal Council and Municipality policies on the life quality of each citizen. These decisions should, at any time, be effectively accessible by each citizen. We are aware of the relevant challenges we had to date”.

“Currently, there are two municipalities in the Republic of Albania possessing an online database of decisions of the Municipal Council, specifically in



Korça and Durres. In both cases, uch databases was created and then donated by CPII and its local Offices of Citizens' Transparency (CTO). We are very pleased for this achievement", stated the CPII executive director, Gerti Shella. He extended his special gratitude to the members of the Office for Citizens' Transparency, Korça, who have known how to apply in practice the entire training and instructions received for increasing the public participation in the decision making processes but also to enhance the effective access to municipality acts.

The use of new technologies and opening to innovation is one of 12 Principles of Good and Democratic Governance of the Council of Europe for the implementation of which, the Municipal Council of Korça has assumed a commitment through the signature by its chairman, Mr. Niko Peleshi, of the social contract with citizens in April, 2011. Presently, due to the concrete assistance of the Office for Citizens' Transparency and CPII, this contractual commitment may be deemed fulfilled.

This unique donation that enhance access to local legislation, was made when remains little time from the deadline of the implementation of the Cross cutting Strategy in the Public Administration (CSPA), '09-'13. Part of the government vision stated in this important document is "an administration based on transparent decision-making processes, which is involved and accountable to the public".

As a matter of fact, the Government has identified as a major problem to be addressed within this Strategy the extreme difficulty one faces to identify and find local government acts. The Online Database produced by CPII can be considered a substantial contribution to achieving such important governmental objective, too. This o=also provides an additional opportunity for the Central Government to evaluate how the objectives set out in the framework of the CSPA have been met by other administrative bodies, especially with regard to "transparent decision-making processes in local level".

Databaza e Akteve te Pushtetit Lokal, Korçe ofron mundesi per te gjithe qytetarët qe te njihen me vendimet e Keshillit Bashkiak në çdo kohë, pa pagesë dhe në mënyrë efektive. Mjafton një klikim mbi titullin e vendimit dhe **Databaza** do të hapë menjëherë përmbajtjen e tij në PDF.

Çdo vendim i Këshillit Bashkiak, Korçe që nga viti 2007 e deri më sot, është dixhitalizuar nga Qendra ÇIP përmes koordinimit me degën e saj në Korçë, Zyra e Transparencës Qytetare. Motoja e kësaj Zyre është: **"Qytetarët korçarë duhet ta dëjnë çfarë vendimesh merren në emër të tyre"**.

Kjo Databazë që Qendra ÇIP i dhuron Bashkisë Korçe dhe përmes saj gjithë subjektive që ajo administrojnë, është mundësuar falë ndihmës së ofruar nga Fondacioni Sheptar për Shqiptarë e Hapur, SOROS.

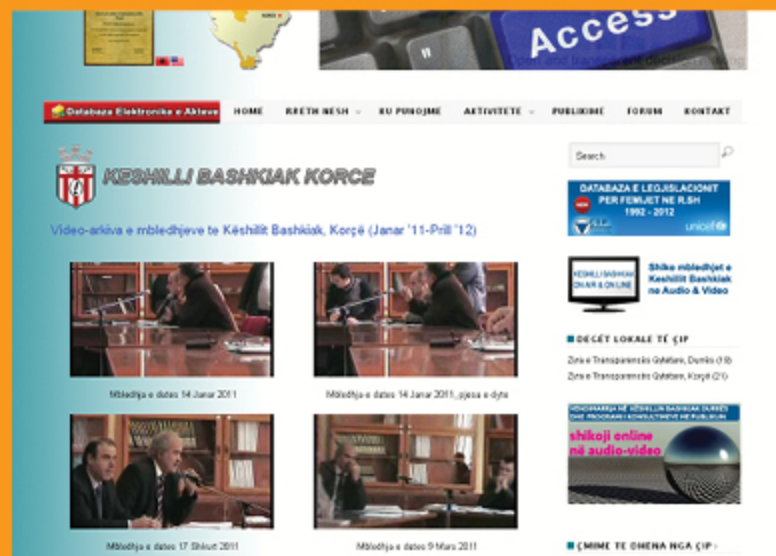
Bashkia Korçe

- Viti 2012
- Viti 2011
- Viti 2010
- Viti 2009
- Viti 2008
- Viti 2007

VIDEO-ARCHIVE OF THE MEETINGS OF THE TË MUNICIPAL COUNCIL OF KORÇA

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 by it.

By uploading all its decision-making activity online, CPII has provided anyone with access to virtually follow and take part in the decision making process as it happens. All citizens of Korça have a real possibility to attend online, in audio-video all meetings of Municipal Council, via the CPII website www.infocip.org, also linked to the oficila website of Korça Municipality.



The video-archive is a concrete application (materialization) of the new information technologies in promoting transparency in local decision making.

It provides a new dimension of transparency to the decision making activity of Korça Municipal Council, thus making it, together with Durres, the only municipalities in the Albania which broadcasts online their activities. It promotes the transparency in the decision making via new information technologies.

A strict audio-video recorded documentation of Municipal Council meetings is also substantial for the assessment by any concerned



parties of legal modalities of the decision making. It serves to verify the date used in the frame of this monitoring for assessing the level of compliance with the legal provisions of the law 8652, amended "On the Local Government". This video-archive, an in-kind contribution of CPII, represents an added value of the project. The video-archive contains all Council meetings since February 2011 till April 2012.

Watch the video-archive of Korca Municipal Council at: http://www.infocip.org/al/?page_id=269



CPII AND CTO, KORÇË DISCUS ON THE FINDINGS AND DROW THE MONITORING CONCLUSIONS

Korça, March 15, 2012 - CPII staff and members of the Citizens Transparency Office in Korça held a meeting to discuss on the final findings of the 16 months monitoring of the activity of Korça Municipal Council. The meeting, among others, aimed at the direct absorption of the opinion of all members CTO of Korça before the final structuring of the findings in the monitoring report, which would be compiled by CPII (watch it on: <http://www.infocip.org/al/?p=7676>).

In this last meeting, all the findings collected and reported by CTO, Korça were reviewed and reassessed. All the members was given the opportunity to stress one more time all the significant moments in their opinion, so that these could be clearly evidenced in the monitoring report. The participation in decision-making of the stakeholders and the observance of the legal modalities for preliminary discussion, voting and publication of decisions of the Council, subject to the measurement and assessment in this report, were carefully reviewed in this final meeting.

This event was an essential part of the interaction process between these two structures (grassroots in local level and think-tank in central level), as foreseen in the project methodology developed by CPII. The main methodological tool developed by the latter for this project was labeled PRO ACTIVE (modified acronym for: "Protocol for Assessing Transparency in Decision-Making of the City Council through Active Civic Participation"). In general, this methodology implies the interaction between a "grassroots" structure (CTO in Korça) and a think tank NGO (CPII).

During this interaction, "raw" data from the field are sent to a specialized central institution, for further processing and elaboration, in order to generate conclusions. The substance of the analysis in Korça's case was to measure and assess the level of compliance with the articles 33, 34 and 35 of the law no. 8652 by the very local decision making body (in this case, the Municipal Council of Korça). On the other hand, the "grassroots" structure is fueled by the Think Tank structure with necessary tools to conduct such monitoring, based on a detailed protocol.

It is importance to note that this methodology is based on the assumption that the legal framework that regulates the decision making process at local level provides substantially for it to be transparent. In fact, this coincides with the widespread assessment that countries like Albania have in place (adopted) good legislation, and encountered problems deriving from the insufficient (poor) implementation of this legislation. One of the most important objectives of this project was to objectively assess the level of (non) compliance with the legal provisions of the law 8652, amended "on the Local Government", by the Municipal Council of Korça, during a 16 months monitoring period. This assessment is made for the first time ever in Albania.



THIRD PART

ASSESSING COMPLIANCE WITH LAGAL PROVISIONS AND TRANSPARENCY LEVEL

3

ASSESSING COMPLIANCE WITH LEGAL PROVISIONS AND TRANSPARENCY LEVEL

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

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

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

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

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

Lets take for example *Article 35, paragraph (point) 1*, which provides literally as follows: "Prior to the review and approval of decisions, the communal or municipal council shall conduct consultation sessions with

the community. These sessions are compulsory in cases as provided by article 32, letters "dh", "e", "f" and "k" of this law". Object to assessment in this particular case is the second sentence, because it sets strict rules to be followed by the Council, whose observance can be measured objectively. The second sentence is a material provision in the real sence of the word, made of four components, each of them referring (corresponding) to four well distinct cases (type of decisions), described by the letters: "dh", "e", "f" and "k" of the Article 32, respectively "the Budget", "Property Issues", "Taxes & Tariffs" and the "Council's regulations and standards".

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

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

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

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

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

Assessment and Evaluation Matrix (AEM)

TAB 1

Art.	para.	The paragraph content	subject to compliance measurement	Separate provisions	% in article's assessment	Comparison analyses
33	1	Voting in the Council could be held openly or in secret. The Council decides on the cases when voting is secret. The acts of individual nature are approved by secret voting at all times.	Second Sentence		20%	NO
	2	The decisions of the Council are taken with the majority of votes of the members attending the meeting	Entire paragraph		20%	NO
	3	The decisions on cases provided for by letters "b", "c", "d", "dh", "f", "g", "gd", "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.	Entire paragraph		20%	NO
	4	The decisions are taken with three fifths of the total number of the members of the Council for cases provided for by Article 32/"e" of this Law.	Entire paragraph		20%	NO
	5	In cases of voting for the chairman, deputy chairman and secretary of the Council, when the required majority is not secured, voting is redone between two candidates, who got the biggest number of votes in the first round.	Non Applicable		N/A	NO
	6	The official acts of the Council are published within 10 days from the date of their approval and they enter into force 10 days after being announced. The official acts of individual nature enter into force on the date when the subjects that are included in them are notified.	First Sentence	Promulgation in text 50% Entering into force 50%	20%	NO
34	1	Council meetings are open to the public. Every citizen is permitted to attend council meetings according to the modalities specified in the council regulation.	Entire paragraph		50%	YES
	2	Announcement notification about the council meeting is publicly posted in the premises designated by the council and media. It includes the date, venue, hours and agenda of the meeting.	Entire paragraph	Notification venue 25% Through Media 25% Through Website 25% Through Tel,Email 25%	50%	YES
	3	The council, by voting majority of the overall number of members, shall decide on cases when the meeting is closed.	Non Applicable		N/A	YES
35	1	Prior to the review and approval of acts, the communal or municipal council shall conduct consultation sessions with the community. These sessions are compulsory in cases as provided by article 32, letters "d", "e", "f" and "k" of law	Second Sentence	"dh" Budget 50% "e" Non Applicable "f" Fiscal Package 50% "k", Non Applicable	33%	YES
	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.	Entire paragraph		33%	YES
	2.1	For communal/municipal council, consultation sessions with the chairmen and chairmanship of villages under jurisdiction are compulsory, in accordance with the provisions of letters "c", "dh", "e", "f", "k" and "l" of article 32 of the law. In this case, counselling sessions are recorded in minutes	not applicable		N/A	YES
	3	Council acts are displayed in public premises (places) designated by the council, within the commune or municipality territory and, as appropriate; the council shall also designate other forms of their publication.	First Sentence		33%	YES

IDENTIFICATION OF PROVISIONS WITHIN PARAGRAPHS/ARTICLES AND THE OBSERVANCE ASSESSMENT

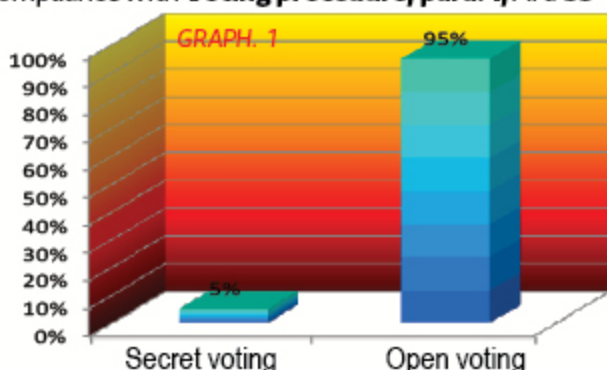
Measurement & Evaluation Matrix (AEM) is the basic tool that "filters" for the assessment purpose all provisions contained in the Articles 33, 34 and 35. In the mean time, the AEM excludes those paragraphs or provisions that cannot be subjected to assessment due to reasons related to their non-occurrence in practice (marked in red).

To understand it better: If an article has 6 paragraphs (i.e. the Article 33), then each of them has 16.6 percentage points in its observance assessment (16.6% x 6 = 100%). If any of these paragraphs is not referred to during the decision-making practice of the Council, because the situation provided by the paragraph in question has been not encountered during the monitoring time, this paragraph is excluded from the assessment process. Its specific

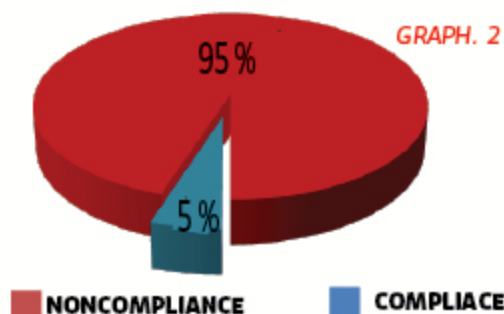
weight in the assessment is distributed to the other remaining paragraphs of the article. Specifically, the paragraph 5 of the Article 33, that provides for the repetition of voting for the election of the chairman, deputy chairman and the secretary of the Council when the required majority is not reached, was never activated during the monitoring period. The new Municipal Council derived after the elections of May 8, 2011, choose its steering members in the very first ballot attempt. Therefore, the paragraph 5 of Article 33 is not taken into account in the overall assessment of the observance of the Article 33. Its percentage points are distributed among other five remaining paragraphs, making their specific weight to increase to 20 percentage points each (100% / 5 = 20 %).

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

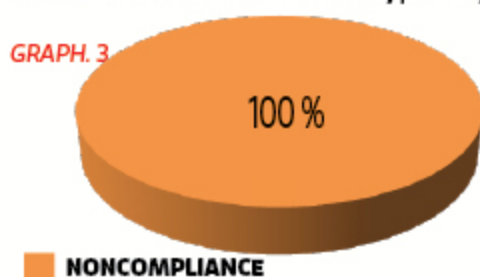
Compliance with **Voting procedure, para. 1, Art. 33**



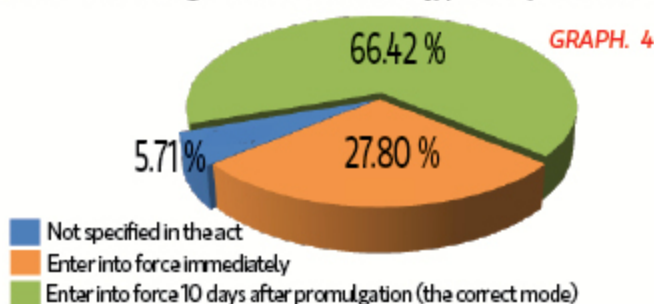
Average Level of compliance with **paragraph 1, Art. 33**



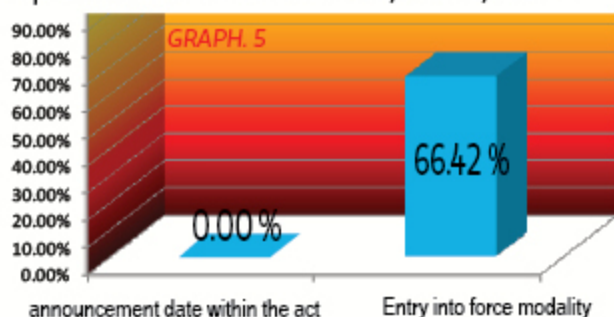
Announcement date within the act, prov. a, Para. 6, Art. 33



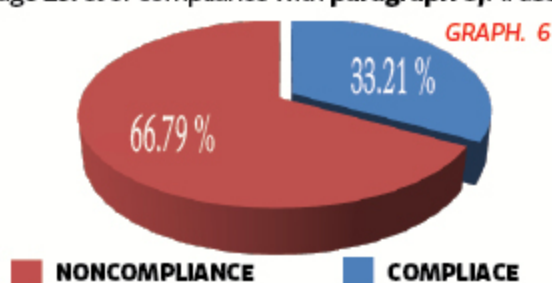
Entering into force modality, prov. b, Para. 6, Art. 33



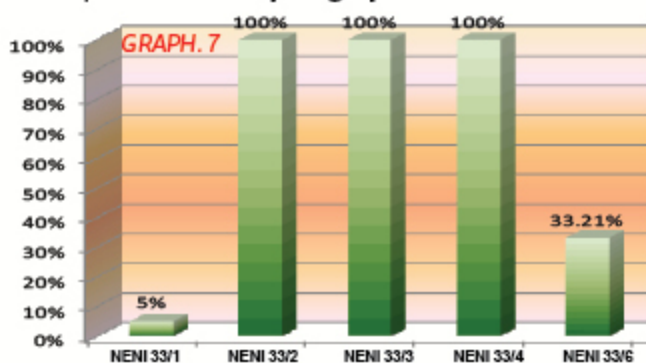
Compliance with **Provisions: a & b, Para. 6, Art. 33**



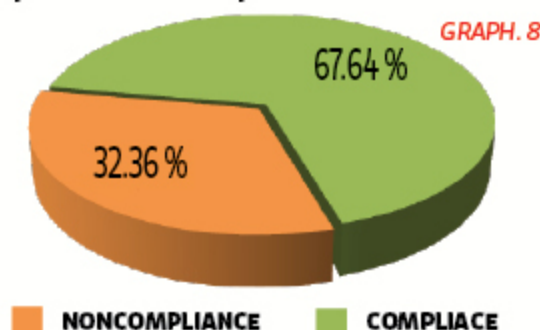
Average Level of compliance with **paragraph 6, Art.33**



Compliance with **all paragraphs of ARTICLE 33**



Compliance vs. Noncompliance with ARTICLE 33



ON DATA ELABORATION AND VISUALISATION:

Graph 1 contrasts Secret voting vs. Open voting, as observed during monitoring with regard to decisions of individual character. The article 33/4 defines that "Acts of individual character are always approved by secret ballot"

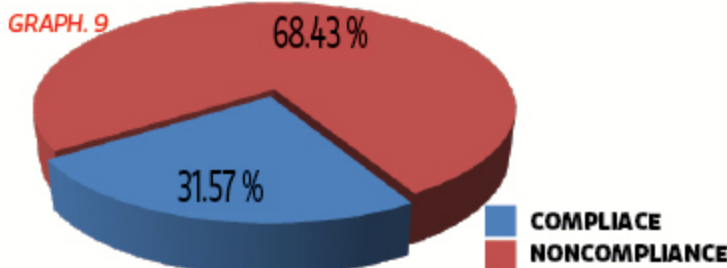
Graph 2 shows the Average Level of compliance with paragraph 1 of Art. 33.

Graph 3 visualises the level of compliance with the dispositions contained in Paragraph 6, Art. 33, concretely: a) formal announcement date in the decision's textbody, b) modalities of entering into force. Each of these provisions is quoted 50 percentage point in the assessment of compliance with the second

sentence of the paragraph 6, Art. 33. The paragraphs 2 and 3 of the Article 33 are 100% observed during this monitoring, as explained in details in pg. 23. The paragraph 4 of the Article 33, has been fully observed too, as indicated in the pg. 24. Their corresponding charts will not be included as separate ones here, for space reasons. The hundred per cent observance of these three paragraphs is reflected automatically in the Graph 5. Paragraph 5 of Art. 33 is not included because the Council never referred to it during monitoring time.

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

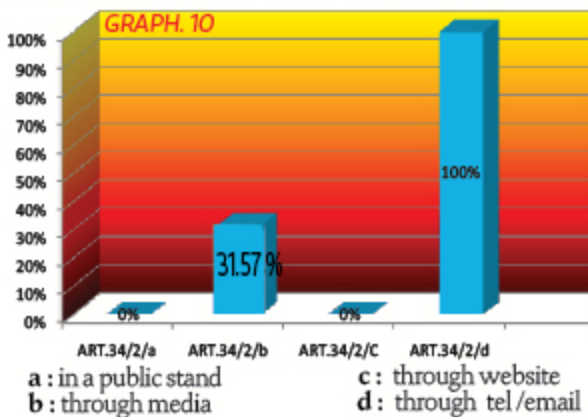
Compliance with **Provision: b**, Para. 2, Art. 34



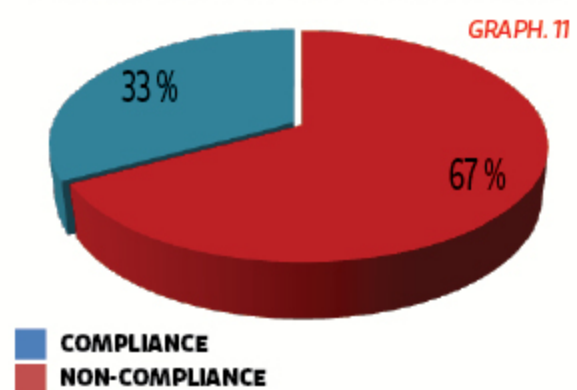
The paragraph 2, Art.34, contains 4 distinct provisions through which the announcement -notification on the Council's meetings become possible: **a)** through the appointed public stand/place, **b)** through media, **c)** through website, **d)** through tel / email.

As regards the provision "b", notice through the media, it turns out that 6 out of 19 meeting were announced through the local media. This means that the observance of the provision in question expressed as a percentage is: $6/19 \times 100 = 31.57\%$. The report compliance / noncompliance with this provision is given in graph 9, (on the left).

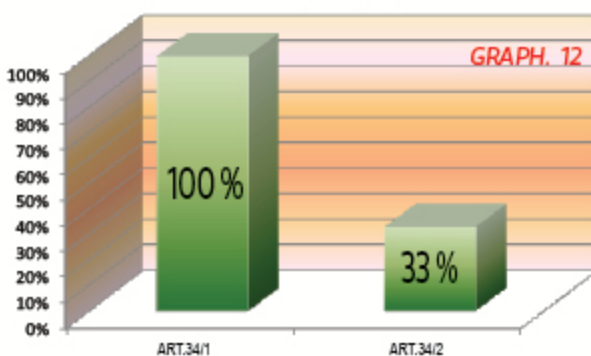
Compliance with **Provisions: a,b,c & d**, Para. 2, Art. 34



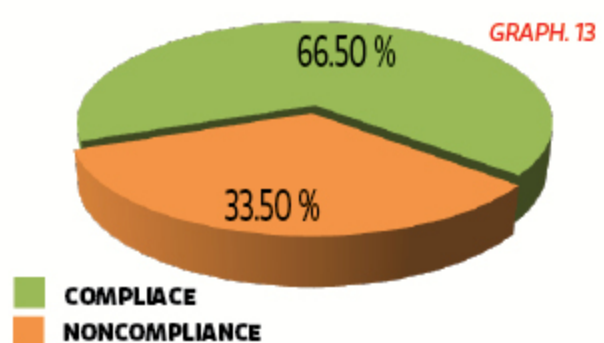
Level of compliance with **paragraph 2, Art.34**



Level of compliance with **paragraphs 1 & 2, ART 34**



Compliance vs. Noncompliance with **ARTICLE 34**



On data elaboration and visualisation: **ARTICLE 34, "THE OPEN MEETINGS"**

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

During the monitoring period, all the meetings of the Council were openly held (see more on pg. 29). Consequently, the paragraph 3 of the article 34 which provides for cases when the meeting are held in closed doors, cannot be qualified nor processed for assessment in Graph 12.

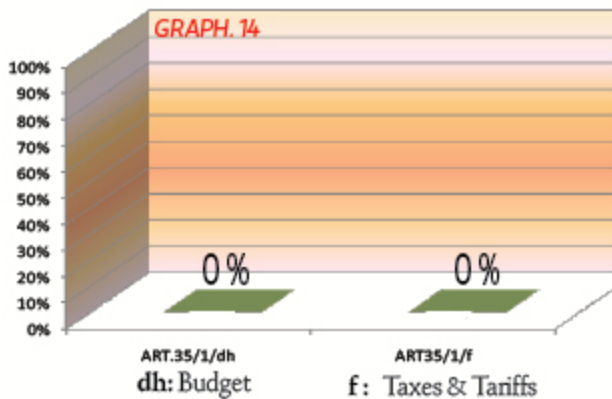
With regard to paragraph 2, Art.34, is must be emphasized that it contains 4 distinct provisions through which the announce-

ment -notification of subject on the Council's meetings become possible: **a)** through the appointed public stand/place, **b)** through media, **c)** through website, **d)** through tel / email. Each of these modes used to announce the incoming meetings has 1/4 weight in the total assessment of the observance of paragraph 2, Art. 34 (graf. 10). The compliance with the provision "b" is visualized in graph 9.

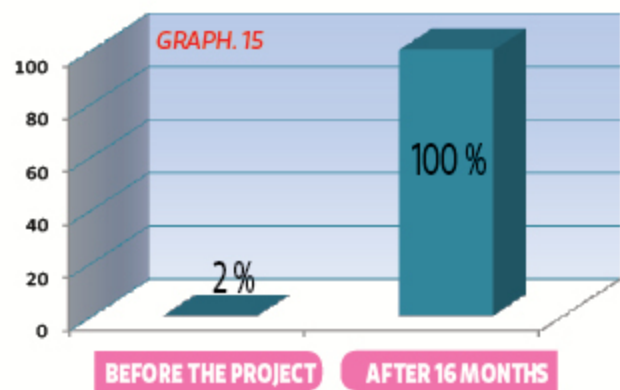
With regard to "a", its observance is 0%, because the Municipal stand was never used for this purpose. Compliance with "c" is also 0%, because no announcements were found uploaded in the official website, as it results from the monitoring findings.

3. ASSESSMENT OF COMPLIANCE WITH PROVISIONS OF THE ARTICLE 35, "CONSULTATION SESSIONS WITH COMMUNITY"

Compliance with Provisions: "dh" & "f", P1, Art 35



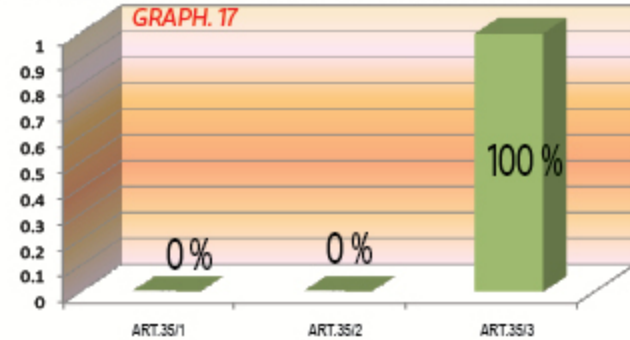
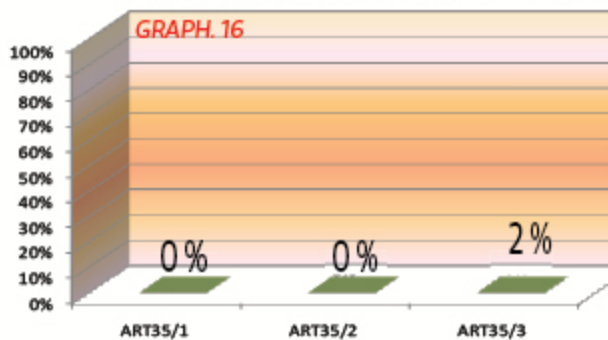
Compliance with Paragraph 3, Art 35 (announcement)



BEFORE THE PROJECT

AFTER 16 MONTHS

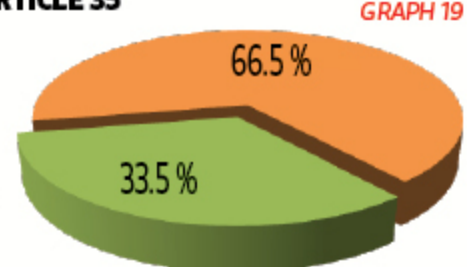
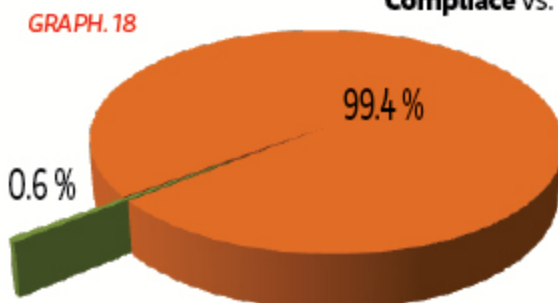
Compliance with Provisions: "dh" (budget) & "f" (taxes and tariffs) of Paragraph 1, Article 35



BEFORE THE PROJECT

AFTER 16 MONTHS

Compliance vs. Noncompliance with ARTICLE 35



On data elaboration and visualisation: ARTICLE 35, "CONSULTATION SESSIONS"

Graph 14 show the level of compliance of the Council with the legal requirements to conduct consultations on the Budget and on the Fiscal Package, respectively the letters "dh" and "f" of th paragraph 1, (second sentence) in the Article 35, as it directly refers the Article 32.

The letter "e", which is contained by the very same paragraph is not included in the evaluation, for reasons which are carefully explained in Pg. 30. With regard to the letter "k", the Council had no occasion to refer to it during the monitoring exercise.

Graph 15 shows the compliance level with the legal requirement to display in a public stand the decisions enacted by the Council (first sentence, paragraph 3, Art. 35). During all the monitoring period there were reported only three decisions issued in May 2011 which were proper-

ly displayed by the Council in the stand, as required by Art. 35/3 (see for more pg. 32). This would represent only 2% of the total of 140 decisions (see: pg. 32). During the project time, CPII fully restored this legal function of the Council through publishing all its decisions in the online database, which letter was donated to the Municipality of Korca. Consequently, the observance of this disposition was increased from 2% into 100%.

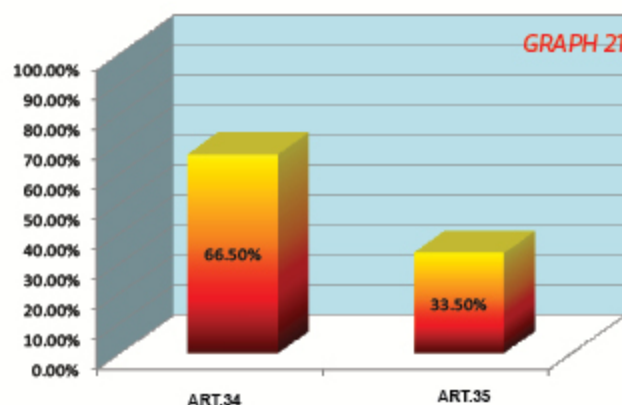
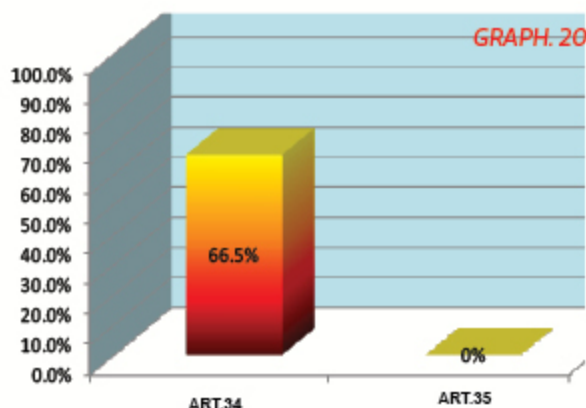
Graph 16 and 17 show the observance of the paragraphs 1,2 and 3 of the article 35, respectively Before and After the project. The paragraph 2.1 is not included in assessment too; it falls beyond the geographic location covered by this monitoring. Graphs 18 and 19 show the observance of the Article 35 in total, before and after the project.

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

BEFORE THE PROJECT

AFTER 16 MONTHS

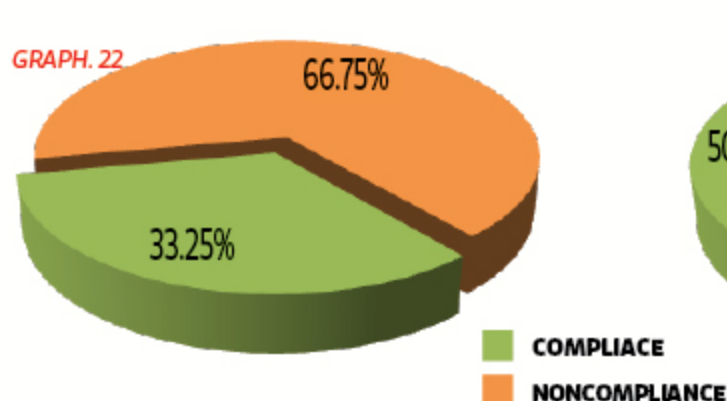
Level of Compliance with **ARTICLE 34 and 35** before and after the project (16 months period)



BEFORE THE PROJECT

AFTER 16 MONTHS

Average level of compliance with **both ARTICLE 34 and 35** ($(a+b)/2$), before and after the project (16 months)



ON DATA ELABORATION AND VISUALISATION:

The articles 34 and 35 of the Law 8652 contain detailed provisions which, if implemented in practice as the legislator intended, would guarantee a substantial participatory and transparent decision-making in local government level. Logically, the assessment of the observance of (level of compliance with) both the article 34 and 35 taken together, automatically produces a direct indicator through which is possible to evaluate the level of openness and public participation in local decision-making, as required by law 8652, amended. In the frame of this monitoring, this is equal to **TRANSPARENT DECISION MAKING**.

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

It is very interesting the fact that, after 16 months, the average level of compliance of these two articles taken together is 50%, in comparison to only 33% in the beginning. This significant increase is attributed only to the publication online of the decisions issued by the council, which was a direct project outcome (see more on the Database Donation)

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

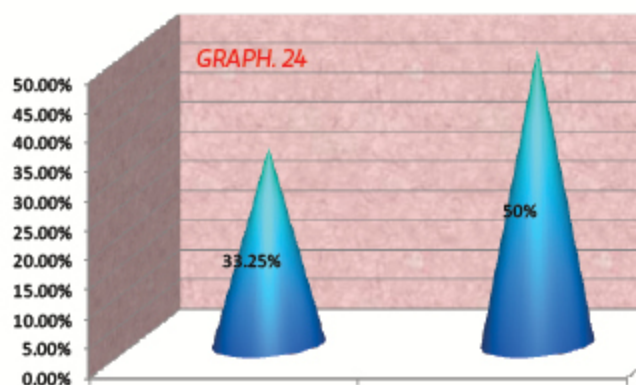
The strict observance of articles 34 and 35 is a juridical condition to have a lawful and open decision-making process in local government level. Logically, by measuring the average observance (level of compliance) of both the articles 34 and 35, one can produce direct indicators to evaluate the level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

The comparison of the *Average level of compliance with both Article 34 and 35, in the beginning of the project with that in the end of the project (as indicated by Graph 19 and 20 in pg. 46)* produces the Transparency Growth Indicator in local decision making (Graph 22). This important indicator

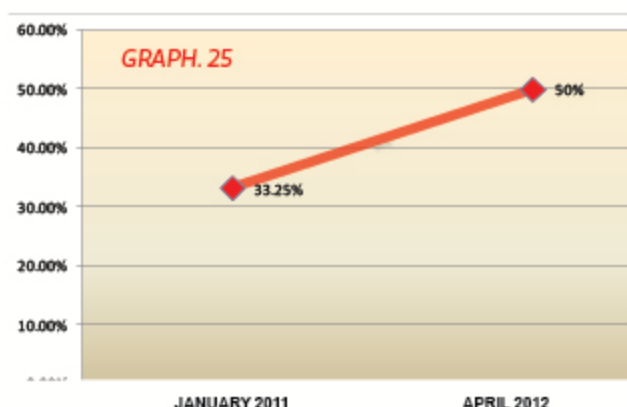
also demonstrates substantially the project outcome, in terms of positive change generated within the project time (in our case, 12 months).

The *Graph 22* indicates also that the Transparency Growth generated in 16 months in Korça is 17 percentage points ($50\% - 33\% = 17\%$). The TGI is an authentic indicator developed by CPII and is used for the first time by a civil society operator in Albania to assess in practice and evaluate the Transparency Level in local decision making. It can be applied upon each and every given municipal council, especially when ranking among them is needed or required.

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



Transparency Growth Indicator (TGI)



As a conclusion:

IN ONE HUNDRED PERCENTAGE POINTS, TRANSPARENCY INCREASED WITH 17 POINTS

ON DATA ELABORATION AND VISUALISATION:

Graph 24 offers a more clear visualization of Graphs 22 and 23 compared to one another. While, the Graph 25 shows the syntheses of three indicators in the same time:

- 1) the increase of the average level of compliance with both the Articles 34 and 35.
- 2) the improvement of openness and participation in the decision making in local level.
- 3) the positive impact generated in 16 months during CPII's Project intervention in Korça.

For all the motioned reasons, the Graph 25 is the main indicator for measuring the project positive impact (improvements generated through complying with the project objectives). In Korça's case, the increase is about 17 percentage points. This significant increase is attributed only to the publication online of the decisions issued by the council, which was a direct project outcome (see more on the Data-

base Donation). In concrete terms, this increased from 0% to 100% the observance of the paragraph 3 of the article 35.

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

The increase of GTI to 17% is however small compared to that generated in Durres by CPII (50%), in the frame of the very project intervention. This leads to the conclusion that the Council's will to cooperate with civil society actors (which was missing in Korça) remains crucial in achieving positive results.

FOURTH PART

RECOMMENDATIONS AND METHODOLOGY

4

RECOMMENDATIONS

Based on the monitoring findings, CPII has developed a series of recommendations that can be divided into three groups; those suggesting possible amendments in the law 8652, as amended, those addressing directly the Municipal Council of Korca, and those which target non-governmental organizations working at local level to promote public participation in decision-making and Good Governance (donors included).

I. PROBLEM OBSERVED /IDENTIFIED

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

I. RECOMMENDATION

Regarding the first assumption, that the compliance with the provision for applying secret voting for decision of individual character, (Article 33/1) is very low because of the lack of voting electronic infrastructure in the meeting hall, the recommended solution to the problem would be the immediate construction of a proper room for the Council to held its plenary sessions.

Korca Municipality should urgently develop such project, or to start, if possible, the reconstruction of any existing hall nearby (i.e. the old district court building, which is not in use anymore, is right next to the municipality building). This would enable the council to develop a normal decision making process, in full compliance with the law 8652 explicit requirements. Donor’s contribution would be very valuable here.

On the other hand, if presuming that the low observance level of the legal provisions that regulate the voting modalities derives from the poor understanding that the councilmen themselves 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 raising of the controlling capacities that the prefect and his/her administration exercise to ensure the lawfulness (compliance with all legal norms in force) of the Councils’ decisions.

II. PROBLEM OBSERVED /IDENTIFIED

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

This is a deficiency that has severely compromised procedural quality of the decision-making process at local level. It poses the risk "to contaminate" it with "influenza⁵" 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 narrow party interests).

II. RECOMMENDATION

The presence of qualified personnel (body), with knowledge in law (legal education) that would help the members of the Council comply with procedural aspects of the legislation governing the local government (i.e. secret ballot, etc.) is a problem, which needs to be addressed urgently for adequate solution in the frame of potential legal 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.

III. PROBLEM OBSERVED /IDENTIFIED

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

III. RECOMMENDATION

CPII recommends that the first sentence of article 35/3 "*The council acts are posted in public premises designated by the council within the commune or municipality territory and, as appropriate, the council specifies other forms of their publication*", be added as the seventh paragraph (7) in article 33. Further, this sentence might be re-formulated as for instance: ***In view of acquiring a legal effect, the newly announced acts of the council are posted⁶, 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 .

IV. PROBLEM OBSERVED /IDENTIFIED

The announcement notification of the decisions issued by the municipal council (or any other local government acts /activities) to a large number of inhabitants is also a challenge of a logistic nature. 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 city legislator (the Council) shall de facto remain separated and distant from its own citizens in exercising the decision making on their behalf. Even the latter shall not be *de facto* good citizens as long as the non-recognition of decisions by them may lead to the non-compliance with the acts, thus making it harder for the municipality administration to enforce these decisions.

IV. RECOMMENDATION

The installation of two or three "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 already in Korça, can be distributed to citizens in various city public premises. LED screens can also be used for broadcasting live important the above mentined meetings, in order to avoid over'crowding.

V. PROBLEM OBSERVED /IDENTIFIED

Public accommodation difficulties in the Council's meeting room are another observation made in Korça. 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, constructed or restored during the last 7-8 years (in Durrës, Tirana, etc.). The public or the local journalists interested to follow or cover the plenary sessions of the Council face difficulties to accommodate themselves. 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. 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.

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 citizens concerned to attend in the room premises the meetings"*.

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 on the projecting stage (during design), the access and accommodation capacities for the concerned public. It has a lawful right to attend the meetings of their local elected representatives. There would sound a demagogical approach to aim on one hand at public participation in the local decision making, and on the other hand, to have the new rooms for Councils build/restored without accommodating capacities.

VI. PROBLEM OBSERVED /IDENTIFIED

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

It provides effective access to the Municipal Council decisions for all interested parties, in a simple form, free of charge and at any time. The database is also beneficial for the Municipal Council which is bound to publicly announce its decisions, which is a legal requirement. Use of new technologies and opening to innovation constitute one of the 12 Principles of Good and Democratic Governance of the Council of Europe. In this context, the Municipal Council of Korça is one step ahead compared to all other Albanian municipalities in this respect.

VI. RECOMMENDATION

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

Why Secretaries of the Municipal Council?

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

Why municipal IT personnel?

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

VII. PROBLEM OBSERVED /IDENTIFIED

During the period covered by this monitoring, all meetings of the Council were held in open sessions. No reports were made on the Council voting for a closed session to be held. Consequently, the provision 34/3 cannot be subject to further observance assessment in the frame of this monitoring, as long as it was not activated in practice. It's worth mentioning that during the two-years period that CPII is working in local government level, both in Durrës and Korça, it was never reported even a single meeting to be held in closed sessions.

VII. RECOMMENDATION

In the framework of evaluations in this section, CPII considers that the Article 34/3 "On closed meetings", contradicts the very spirit of an open-to-all and transparent local government. Therefore, CPII recommends the abrogation of this paragraph (provision) in the frame of potential legal amendments to the law 8502.

Suggestion:

Initiatives to promote participatory decision-making at the local level are finding an increasing support from different donors in Albania. These initiatives are directed so far towards the awareness of citizens in terms of their rights to participate in decision making, as well as in modeling a more open attitude of the local rulers towards the public. However, there is a dissonance of these initiatives with the requirements of the law no. 8652, as amended, regarding the correct approach "distinctly" to their decision-making and executive functions at the local level. This deficiency must be carefully evaluated by the donors during the examination phase of the project proposals of NGOs.

Sustainability of supporting the initiatives targeting local government is a quaint problem. Because the mentality and the lack of traditions of the good governance at the local level, the initiatives aimed at recognizing, respecting and enhancing the viability of the law by local government bodies must have a necessary financial stability. In such a case it must be understood that such projects have a double target: the local government and citizens. Modifying the behavior of both target groups requires time, especially when there is not will and interest of local decision-makers in being open to initiatives aimed at restoring the legitimacy of local decision-making.

METHODOLOGY

As explained above, the rigorous enforcement of the provisions 33, 34 and 35⁷ of the Law 8652 is a legal prerequisite⁸ for having a lawful and participatory decision-making process in local level. Measuring the compliance with the above three articles produces automatically direct indicators for the objective assessment of the transparency and openness of such important processes. Developing a method for measuring the enforcement level of these three provisions and applying it in the real field, was a major objective to be reached in the first project phase, implemented in Durres. The basic method used by CPII is of the type “**Monitoring through Participation**”, or MP in short.

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

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

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

financially, the reporting template, arrangement of activities, online capabilities etc.

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

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

DETAILED DESCRIPTION OF THE PROACTIVE MONITORING TOOL

In the first project phase, a group of 5 citizens, representing different strata, professions and age groups, were carefully selected and trained by CPII on the autonomous use of certain links of the **PRO ACTIVE** monitoring tool. In addition to live attendance of every meeting of the Municipal Council to concretely test this way the guaranteeing of the right of public to participate, they should also observe some well defined components of the decision-making process, regulated by articles 33, 34 and 35 of the Law no. 8652 “*On the Organization and Functioning of Local Government*”, as amended. It is clear that under these conditions, the monitoring process of this mixed team of citizens, identified by the name of **Citizens’ Transparency Office** in Durres, was not limited to the room and during time when the meetings of Municipal Council took place. On the contrary, an important part of this process was performed prior to or after of these meetings (i.e. whilst the draft’decisions had to be subject to consultation with the community before they were adopted by the Council, or even when the decisions already passed had to be announced through notification and/or publication in order to enter into force as the law requires).

A detailed report, drafted by the team leader and

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

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

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

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

After completion of their careful examination the audio-recordings were converted into web format by CPII staff and uploaded in its official website. This represents an important added value of the entire project, because it provides a new transparency dimension in local decision making. It also offers a chance for the local authorities in Durres to verify the accuracy of the monitoring findings. Based on data collected through PROACTIVE, CPII experts’ team in Tirana evaluated on a step by step basis the level of implementation of each and every provision contained in articles 33, 34 and 35.

In the frame of this method, the average level of compliance with the provision 34 and 35 indicate in the

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

Data elaboration and visualization about each and every provision assessment is a substantial part of the methodology carried out and applied by CPII. As made known earlier in this chapter, the method is based on the 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.

MEASUREMENT & EVALUATION MATRIX

Measurement & Evaluation Matrix (AEM) is the basic tool that “filters” for the assessment purpose all provisions contained in the Articles 33, 34 and 35. In the mean time, the AEM excludes those paragraphs or provisions that cannot be assessed due to reasons related to their non-occurrence in practice (marked in red).

To understand it better: If an article has 6 paragraphs (i.e. the Article 33), then each of them has 16.6 percentage points in its observance assessment ($16.6\% \times 6 = 100\%$). If any of these paragraphs is not referred to during the decision-making practice of the Council, because the situation provided by the paragraph in question has been not encountered during the monitoring time, this paragraph is excluded from the assessment process. Its specific weight in the assessment is distributed to the other remaining paragraphs of the article. Specifically, the paragraph 5 of the Article 33, that provides for the repetition of voting for the election of the chairman, deputy chairman and the secretary of the Council when the required majority is not reached, was never activated during the monitoring period. The new Municipal Council derived after the elections of May 8, 2011, choose its steering members in the very first ballot attempt. Therefore, the paragraph 5 of Article 33 is not taken into account in the overall assessment of the observance of the Article 33. Its percentage points are distributed among other five remaining paragraphs, making their specific weight to increase to 20 percentage points each ($100\% / 5 = 20\%$).

REFERENCES

1. Mainly Articles 33, 34 and 35 of the Law 8652 "On the Organization and Functioning of Local Government", amended.
2. Article 23 of the Constitution of Albania (SECOND PART, Chapter II of the Constitution).
3. These are concretely the Articles 33, 34 and 35 of the law in question, which establish almost completely the obligation for public transparency at local level. The monitoring of their implementation by the Municipal Council generates objective indicators for the assessment of transparency on local decision-making process (see the detailed explanations below that are presented on legitimacy).
4. These provisions define juridically and factually that which is regarded today as "effective access to the decision-making process", through setting the rules and procedures on announcement and publication of official documents.
5. Or level of compliance with relevant legal provisions of the law 8652 "On the Organization and Functioning of the Local Government", amended.
6. The method is intellectual property. Its usage by other interested actors could be easily activated through a written permission issued by the author or the Center for Public Information Issues, CPII.
7. Literally translated from Albanian language: acts of individual character
8. Article 33, point 4: "Decisions are passed with three fifths of the total number of the members of the Council for cases provided for by Article 32, letter "e" of this Law."
9. Article 3, Law 8652, "On the Organization and Functioning of Local Government", amended
10. SECOND PART, Chapter II of the Constitution
11. Hereafter referred to simply as: law 8652
12. Retrieve information on decisions issued or enacted by the council
13. According to the Law 8652, dated 31.7.2000 "On the Organization and Functioning of the Local Government", amended, "The bodies of the local government units exercise their powers through the decisions, ordinances and orders (Article 7). These kinds of acts are obligatory to all the subjects under their jurisdiction, which are included in the act. (Article 8, point "b", Law 8652).
14. In some theoretical texts it may be also referred to as "passive information of the public"
15. In the case of Albania this is a right that is guaranteed by the Constitution (Article 23) and the Law 8503 "On the right of information for official documents".
16. The right of participation and information is included in the "Fundamental Human Rights and Freedoms", which are guaranteed by the Constitution of Albania, concretely in its 23 Article.
17. Discussion with the public is mandatory by law for the cases of desions on budget, fiscal package, alienation of properties and in cases of approving the norms and standards on regulation and control of the functions that Councils are provided by the law (neni 35/1).
18. Guranteeing an open and transparent decision-mking process to the public is not left at the assessment, discretion or sense of responsibility of the locally elected representatives, but it is regulated by law, mainly through Articles 33, 34 and 35.
19. The Article 34 "On the open meetings" and the Article 35 "Sessions of consultations with the community and the right of the public to be informed".
20. Read more on this arfument on the "Recommendations"
21. Will not influence the outcome on the of the transparency and openness level in Durres Municipal Council.
22. In the context that it is defined by the Articles 33, 34 and 35 taken together.
23. Read more on this on: Methodology
24. The law 8652, amended, does not specify what has to be considered a Decision of normative or individual character. In general, both the theory of administrative law and judicial jurisprudence provide with minimal solutions to this important distinction.
25. Nominal decisions are considered those electing the inner organic structures of the Council itself, i.e. the chairman, the vs. chairman, the secretary, the commissions, the representats of the councilin in other decision making structures in regional levels, etc.
26. "Administrative Right 2", Dr. Sokol Sadushi, Fourth, revised edition. PublishingHouse "Grand Print", Tiranë, Septemberr 2008.