

Development of Codes of Conduct for Local Government Officials in Serbia: A Beginner's Case*

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The purpose of this paper is to present the current state of affairs in the process of adoption of codes of conduct for local government officials in Serbia. On the basis of a model drafted under the auspices of the Serbian local government association, 130 Serbian municipalities (out of 167) have adopted such codes. The paper tries to picture the environment in which the codes are being adopted, i.e. anti-corruption efforts on the national level, the framework in which Serbian local governments function, process of drafting of the model code and consequent adoption in municipalities. Finally, it attempts to present as critical as possible an evaluation of this process in Serbia, as well as recommend or project further steps necessary for internalisation and full implementation of these codes. To achieve the abovementioned, the paper refers to Serbian legislation and adopted codes of conduct, empirical data collected from municipalities, results of surveys and opinion polls conducted in Serbia in the period from 2001 to 2005, data on other countries available in English, as well as academic texts.

Raktažodžiai: *elgesio kodeksai, vietos valdžia, savivaldybių tarnautojai.*

Keywords: *codes of conduct, local government, local government officials.*

Introduction

The question “Why codes of ethics for politicians?” might be peculiar in some of the Western European countries, United States or Canada, and even countries on some other continents, since over the past two decades such codes have been adopted and implemented as a natural part of anti-corruption packages. These appear on different levels of government – national, regional, or local – and apply to different target groups within the public sphere – politicians, judges, civil servants etc.

However, in Serbia and probably some other Central or Eastern European countries or the so-called “countries in transition”, you would probably hear such a question – not only from those to whom these documents are supposed to apply, but also from ordinary citizens. In other words, “we saw little posi-

tive changes from proper legislation, what is a code which has no sanctions going to change?”

At the very beginning, since the largest part of this paper is about codes for politicians, or in terms of the Serbian code “elected, appointed and nominated local government officials”, it is necessary to point out that the “sanctions issue” should apply only for those codes, since it is common understanding that a breach of civil servants’ codes

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The intention of the author was to be as objective as possible in description and evaluation of the processes related to drafting, promotion and consequent adoption of codes of conduct, since she currently works for the Standing Conference of Towns and Municipalities (SCTM), the organisation which drafted and promoted the Code in Serbia. The author would like to thank her colleagues in the SCTM, especially Ms. Marija Sosic, who manages the project of the National campaign for adoption and implementation of a democratic code of conduct for elected and appointed representatives in Serbia, for her support and assistance in collecting data for this paper.

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of conduct do produce disciplinary sanctions¹ and this is a standpoint shared by the author.

In the literature, we find different arguments *pro et contra* codes of conduct or codes of ethics². The case against “sanction less” codes is an easy one – why would one change his/her corrupt or abusive behaviour just because there is a code which, for that matter, poses no threat to the culprit, i.e. no legal sanction. From this perspective – when no sanctioning mechanisms are in place – only those who anyway act ethically will take notice of the code. On the other hand, since the codes contain only rules, some authors stress the purpose of such codes is not to punish, but to create awareness on the obligation to respect standards of ethical behaviour in political life, to acquaint officials with these standards and inform the public on what kind of behaviour they can expect and demand. At the end of the day, the persons to whom the codes apply are supposed to perform their function in the public interest, *pro bono publico* and for the citizens. Also, it is said that public officials might need some guidance in so-called “grey areas” and, moreover, that the codes might serve an educational role – so the values of the codes would be internalised and thus, respected in the future³.

In this sense, the codes do not bring anything new, no new instances requiring legal sanctions. They are a reminder for the officials to whom they apply and a demand list for citizens and the media.

Finally, coming back to the issue of sanctions, it needs to be noted that sanctions for disrespecting ethical norms and principles do exist – they are moral or ethical and can be enforced by

the public – citizens who go out to vote and pressure exerted through the media. In contrast to legislation, ethical codes are set as acts of self-regulation by bearers of public functions. Providing a combination of legal and ethical norms and standards, these rules are above all self-obliging acts by which bearers of public functions inform the public that they are aware of the responsibility connected to performance of a public function and ready to oblige themselves to respect these rules of conduct in everyday political life. The ultimate aim is securing legality of officials’ work and, equally important, establishing trust between citizens and public officials.

However, coming back to the case of Serbia, one cannot go by without noticing that codes, having a fragile “sanction less” nature, are not a solution in themselves. The whole anti-corruption package needs to exist and function – the adequate legislative framework needs to be in place and implemented and all levels of government need to define and respect the same legal and ethical standards. Also, what always comes in handy is a historical tradition of ethical governance, a rooted democratic and anti-corruption culture and practice. For post-communist European countries, where truly free parliamentary elections have a 15-year tradition at the most – this component is sure to pose problems in implementation and internalisation of codes of ethics. Moreover, the problematic or unclear strategic and legal framework might harm the reputation and implementation of adopted codes of ethics, since codes might bring expectations they probably will not be able to fulfil. This particular aspect will be addressed in more detail in the coming parts of the paper concerning current state of affairs in Serbia.

1. Codes for Local Government Officials

Speaking of the local level, the need for such codes of ethics might be even bigger than for the central level. Local government is the closest to citizens and is practically in every day contact with them. Following the subsidiarity principle, citizens are in direct contact with municipal administration and local politicians much more than with central government authorities. How many people ever see a government minister in person?

In the specific Serbian circumstances, anti-corruption efforts at the local level have a specific role of restoring the reputation of and trust in local government in general. Serbian towns and municipalities, after decades of quite wide autonomy – as much as this is possible in a single-party political

¹ See, for instance, the model code appended to Recommendation (2000) 10 on codes of conduct for public officials of the Council of Europe Committee of Ministers.

² Some authors differentiate between “codes of ethics” and “codes of conduct”, where “codes of conduct” have some form of a sanction behind them. See e.g. Hine, David, “Codes of conduct for public officials in Europe – common label, divergent purposes”, *paper delivered at the International Conference on “Governance and Political Ethics”, Centre for Canadian Governance and Citizenship, University of Montreal, May 2004*. In other texts, “codes of conduct” apply to civil servants, while “codes of ethics” apply to elected representatives. In this paper, these terms are used as synonyms to describe a set of (ethical) norms and principles expected to be respected by local government officials in the performance of their function -and even before and after that. As such, they are without legal sanctions. Moreover the title of the Serbian code under examination here is “Code of conduct for local government officials”.

³ Ibid.

regime – and great competences during the former Yugoslavia, during the 1990s lived to be completely degraded⁴. During the Milosevic regime, the state was strongly centralised as an effort of the regime to completely marginalise towns and municipalities in which opposition parties won elections in the mid-1990s. Local governments were deprived of their property and most of their revenues⁵.

Public opinion polls conducted in the past few years still show resistance to municipalities as alienated, corrupt and privatized feuds of the former regime. A poll conducted in May 2003⁶ showed that healthcare institutions, the church, schools, and even the police, enjoyed a lot more trust than any local government institution. For instance, 4/5 of the interviewed had little or no trust in most of representatives of executive power in municipalities. A huge 80% of the citizens had no or little trust in the president of the municipal executive board⁷ while 79% did not trust the municipal executive board as a whole. Further 74% did not trust the president of municipal assembly

⁴ Serbia has a mono-type, single-level local government consisting of 167 municipalities. The current system is based on 2002 Law on Local Self-Government (Official Gazette of the Republic of Serbia, No. 9/02), which fully came into force after the September 2004 local elections.

⁵ By way of the 1995 Law on Assets of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 53/95, amended 3/96, 54/96 and 32/97) property all assets used by local authorities has been transferred to the Republic. For all acts of disposal of such property, local governments have to ask for permission of the Republic Directorate for Property, whose average response to requests from municipalities is 3 years and 10 months (Data from the unpublished Study of Economic costs related to lack of local government property, realised by Economic Institute and G17 Institute from Belgrade, for the purposes of SCTM Initiative for the establishment of local government property). Also, most local governments were made dependent on funds transferred from the central budget – for some municipalities these transfers make up to 80% of their annual budgets. The 2002 Law on local self-government (s.n. 5) provided a basis for decentralisation as it transferred substantial competences to local governments, but the process of fiscal decentralisation is not rounded up yet.

⁶ Empirical research of an opinion-poll type: Citizens' Trust in Institutions and Organisations in the Local Community was conducted by the Centre for Free Elections and Democracy (CeSID) during May 2003, on a representative sample of 1310 adult citizens of Serbia in 92 municipalities. Detailed results of the research are available at www.cesid.org.yu.

⁷ In the previous system, in force before the 2004 local elections (*see s.n. 4*), the town/municipal executive board was the bearer of the local government executive function. Now, the bearer of the executive functions is a directly elected mayor (president of municipality).

and 65% did not trust nor had little trust in municipal civil servants. However, it was indicative that citizens had the least trust in elected representatives – deputies in the municipal assembly (council). They had the most trust in municipal enterprises and municipal civil servants.

A more recent poll, conducted in January 2005⁸, even though it addressed a different issue, showed that the trust in local government institutions is still low. However, it might be a consolation for local governments that they enjoy a much higher trust than the Republic Government or Parliament, large national and international companies, the NGO sector and even business sector associations. Looking at these results, as well as comparing them to similar polls conducted in 2002 in several CEE countries⁹, we are very close to concluding that the average Serbian citizen's motto is "Trust no one!"

Finally, a survey of citizens opinions on corruption conducted shortly after democratic changes in Serbia, in January 2001¹⁰, showed that citizens believed that a majority of public officials, on both central and local level, participated in the practices of corruption. Moreover, citizens believed that over 3/4 of all officials and civil servants were involved in some form of corruption. It was also noted that there wasn't much difference in perception of corruption on the Republic and local level. Corruption was viewed not only as widespread, but as a generality. This shows that the "corruption project"¹¹ of the previous regime was successfully implemented. So successfully that less than a half (45%) of the interviewed Serbian citizens believed that corruption is never justified, while 13% believed that it to be sometimes justifiable, while another 12% did not know the answer or were undecided. Finally, this survey, conducted at the very inception of the first Serbian democratic government's term in

⁸ The public opinion poll "Understanding of and attitudes towards Responsible Business" was conducted in January 2005, by the Strategic Marketing and Research Institute (SMMRI), for the purposes of the Responsible Business Initiative (RBI) on a sample of 2212 adult citizens of Serbia without Kosovo. For complete results of the poll, see <http://www.smartkolektiv.org/ISTRATIV.PPT>

⁹ E.g. Hungary, Russia, the Czech Republic, Poland and the Ukraine - *Ibid*.

¹⁰ Public opinion research of corruption was conducted by the Centre for Liberal-Democratic Studies (CLDS) in January 2001, on a sample of 1632 adult citizens of Serbia without Kosovo. Results of the survey are available in Serbian at <http://clds.org.yu>.

¹¹ A metaphor used in the Freedom House report Nations in Transit 2005: Serbia and Montenegro. Available at <http://www.freedomhouse.org/research/nattransit.htm>

office, showed that 60% of the citizens expected that the new authorities would be less susceptible to corruption than the previous - no doubt, a difficult task for the new Government.

2. Serbia Central Level Anti-corruption Efforts

Indeed, the new Government had a difficult task ahead of them. The previous centralised and corrupt regime disappeared and the new one was not established yet. Institutions were weak and susceptible to corruption. Legislation was not applied and prosecution and the courts were often inactive or not efficient enough.

In December 2001, the Government established the Anticorruption Council¹², with an aim to inform the Government of large-scale corruption cases inside and outside the administration. The Council initially consisted of renowned persons – well-known and respected for their personal and professional integrity¹³. However, during the first two years of its operation, the Council did not receive government funding and eight of its members resigned. On the other hand, the current government did provide funding to the Council, but did not react to the four reports it published during 2004¹⁴.

On the other side, the work on necessary strategic and legislative documents was slower. In 2003, the Serbian Prime Minister was assassinated while the persons currently tried for the

crime were closely connected to the previous regime and held positions e.g. in the state security service, believed to be designed to support corruption along with organised crime¹⁵.

It took almost four years for the “set of anti-corruption laws”¹⁶ to be adopted – Law on Public Procurement¹⁷, Law on Financing Political Parties¹⁸, Law on Prevention of Conflict of Interest in Conducting Public Functions¹⁹ and finally, Law on Free Access to Information of Public Interest²⁰.

However, Serbia can hardly be proud of results of previously existing or newly passed legislation in the fight against corruption. For instance, under Serbian criminal law, bribery – giving and receiving bribe - has been criminalised for a long time and an additional set of the so-called “corruption criminal acts” was introduced in 2001²¹. However, according to statistical data from 2000-2003, these crimes formed 4-5% of the total acts reported, while only 15% of those lead to indictments²². Most of the newly adopted acts did not go much further than establish-

¹⁵ See Freedom House report (s.n. 11).

¹⁶ The expression “set of anti-corruption laws”, in different countries, included different pieces of legislation – e.g. in Slovenia it also included an Anti-corruption law and in Montenegro – a Law against money laundering. By no means does this mean that Serbia does not need other legislation to sustain and eradicate corruption than the ones designated to be inside the “set”.

¹⁷ Adopted in July 2002 and amended once, in May 2004, Official Gazette of the Republic of Serbia, No. 39/02 and 55/04.

¹⁸ Adopted in July 2003, Official Gazette of the Republic of Serbia, No. 72/03.

¹⁹ Adopted in April 2004, Official Gazette of the Republic of Serbia, No. 43/04.

²⁰ Adopted in November 2004, Official Gazette of the Republic of Serbia, No. 120/04.

²¹ The Serbian Criminal Code – in force since 1977 (Official Gazette of the Republic of Serbia, No. 26/77) and amended several times – has always included the crimes of “accepting bribe” (Article 254 of the Code) and “giving bribe” (Article 255). The first of the three amendments of the Criminal Code which came about after 2000 – in 2002 (published in the Official Gazette of the Republic of Serbia, No. 10/02) - introduced nine of the so-called “corruption criminal acts”, namely, corruption in administrative bodies, non-justifiable spending of budgetary resources, corruption in public procurement, corruption in the privatisation process, corruption in the judiciary, abuse of the function of a defender or legal representation, corruption on healthcare, corruption in education and contracting the outcome of a competition.

²² According to National Strategy for Fight against Corruption of the Republic of Serbia, available in Serbian at the web-site of the Ministry of Justice (<http://www.mpravde.sr.gov.yu/>).

¹² The official web-site of the Serbian Anti-corruption Council - <http://www.antikorupcija-savet.sr.gov.yu/>

¹³ For more on the initial idea behind the Council, read: Djelic, Bozidar, “Anti-corruption council – a successful innovation”, available at the web-site of the Anti-corruption council (http://www.antikorupcija-savet.sr.gov.yu/Attach/djelic_savet_eng.rtf.pdf). Bozidar Djelic was the Minister of Finance in the first democratic Government after 2000, headed by Zoran Djindjic.

¹⁴ According to Freedom House report Nations in Transit 2005: Serbia and Montenegro (s.n. 11)

The Anti-corruption Council issued more than several reports on issue concerning privatization legislation and its application, as well as individual cases like the ones concerning the affair surrounding the exports of sugar to the EU, bankruptcy and privatization of the Sartid steel factory, the National Savings Bank, Mobtel mobile phone operator etc. All of the reports are available at the Council’s official web-site in Serbian (<http://www.antikorupcija-savet.sr.gov.yu/izvestaji.htm>) and in English (<http://www.antikorupcija-savet.sr.gov.yu/eng/izvestaji.htm>). For a favourable comment on the Council’s work, see: Serbia and Montenegro: Compliance with obligations and commitments and implementation of the post-accession programme – Eighth Report of the Council of Europe (SG/Inf(2005)13).

ment of new bodies entrusted in their monitoring – and, for that matter, all with a considerable delay. According to Transparency Serbia, Law on Public Procurement remains the only one which truly began its implementation and whose institutions function operationally²³. The Commissioner for Information waited several months for an office²⁴ and most of central government institutions did not appoint persons obliged to answer requests for information²⁵. Similarly, the Republic Board for Solving Conflict of Interest was constituted with a seven-month delay, but was not given office space and remained inactive by the end of 2004²⁶.

All of the newly passed anti-corruption legislation applies to local level officials. However, bearing in mind their slow implementation in general, even less of their effect was felt at the local level.

Finally, it seems logical to conclude the not so bright impression of the Serbian anti-corruption legislation with citizens' perceptions of their existence and effects. In June 2005, it was presented that 22.7% of citizens know that access to information belongs to everyone, 22.9% believe that this right is conditioned by stating reasons for requiring information, while 11.5% are aware that a law on public access to information has been adopted²⁷. Similarly, 26% of Serbian citizens properly define "conflict of interest", while 44.7% confuse it with "abuse of position/power" and 17.6% to taking bribes²⁸.

²³ Jovanovic, Predrag, "Javne nabavke u Srbiji, Decenija za dve i po godine", *Transparentnost*, No. 7, January 2005 (http://www.transparentnost.org.yu/bilten/bilten_07.pdf)

²⁴ Office of the Information Commissioner became operational in mid-July 2005, eight months after the Law on Access to Information of Public Importance.

²⁵ In December 2004, Transparency Serbia initiated a survey on this matter and now maintains a list of contact information of persons appointed by different public institutions to deal with request for information. At the moment of conclusion of this paper, e.g. only 8 republic ministries (out of 17), 9 public enterprises and 43 local governments (out of 167) appointed such persons and communicated the fact to Transparency Serbia.

²⁶ According to Freedom House 2005 Nations in Transit: Serbia and Montenegro Report (s.n. 11).

²⁷ Results of a survey conducted by Transparency Serbia, presented on June 14, 2005 at their regular press conference on "Anti-corruption legislation and their application". Presentation of the whole survey available at <http://www.transparentnost.org.yu/dokumenti/prezentacija.ppt>

²⁸ Results of a survey on citizens' opinions towards conflict of public and private interests, conducted by Transparency Serbia and presented on July 12, 2005 at their regular press conference. Available at http://www.transparentnost.org.yu/aktivnosti/pouzdanost/prilozi/Prezentacij_a_Pristup_informacijama.ppt

Strangely enough, the National Strategy for Fight against Corruption came quite late – in May 2005. It was adopted by the Government and endorsed by the Minister of Justice. However, all sources seem to point that it was not drafted by, or with participation of the previously mentioned Anticorruption Council²⁹. The role of the Council is uncertain, since the text of the Strategy does not mention it, but envisages the establishment of a separate anti-corruption agency.

The content of the Strategy is, of course, very general in its nature and is going to be elaborated on by the announced action plan on its implementation. However, from the viewpoint of this paper two of its aspects need to be presented – attitude towards local level aspects of fight against corruption and attitude towards codes of ethics (codes of conduct) on different levels and for different target groups. When it comes to the local level, it is not specifically or separately addressed, but in a chapter titled "The system of state administration, territorial autonomy, local self-government and public services"³⁰. As far as codes of ethics are concerned, the Strategy does envisage them and recommends them for MPs and employees of the National Assembly, bearers of judicial functions, civil servants and the businesses. In several places, it also mentions "integrity plans" – e.g. for the administration, public service and the businesses – but without clarification of their purpose and content. It must be noted here that the Strategy left out to recommend codes of ethics for bearers of executive functions – on all levels - as well as local and provincial elected representatives – local councillors and members of Vojvodina Assembly.

Still, in 2004, Serbia and Montenegro ranked between 97th and 101st – out of 146 countries - in the Transparency International's annual report and its Corruption Perception Index is 2.7. This might not seem as satisfactory or enough from the viewpoint of states which have a higher ranking or e.g. an index of over 9, but it seems convenient to note here that, in 2003, Serbia and Montenegro ranked 106th.

At the moment, there are no codes of ethics or similar sets of ethical norms adopted or implemented for central level functionaries – MPs or Government ministers. When it comes to civil servants, some cen-

²⁹ See the Council of Europe Eighth monitoring report (s.n. 14). The report also states that the Council of Europe has been broadly consulted on the text of the Strategy.

³⁰ A similar approach was used in the Public Administration Reform Strategy, adopted by the Serbian Government in October 2004, where decentralisation and local government issues are treated as a part of the reform of public administration in general.

tral level institutions (e.g. the Customs Administration³¹ or the Police³²) have adopted their own codes. However, a uniform code of conduct for civil servants does not exist, probably partly due to the fact that Serbia did not yet pass a new Civil Servants Act.

The Council of Europe, in its recommendations for adoption and implementation of ethical rules at the local level³³ – both for officials and civil servants – stress the obligation of the states to prepare model codes defining the minimum standards which have to be respected by all local governments and on the basis of which individual local authorities adopt their own codes. No such model came from the Serbian central state.

Drawing from the same Council of Europe recommendations which point out a specific role for local government associations, the Standing Conference of Towns and Municipalities “took over” the state’s role and recommended model codes to Serbian towns and Municipalities. However, baring in mind the whole of this chapter, some open questions remain – Is there a designated “order of business” in adoption of codes? Should the central level lead? Will the absence of central level codes or recommendations from the central level harm or marginalise the adopted local level codes?

3. Ethical codes in Central and Eastern Europe

This part of the paper attempts to form some kind of an impression of solutions adopted in other countries of Central and Eastern Europe, with which Serbia shares a similar communist and authoritarian regime heritage. In these countries, perhaps more than in other European countries, ethical norms and codes

can serve as tools in attempts to restore citizens’ trust in the state and bearers of public functions. Many of these countries have adopted some kind of ethical rules - mostly for civil servants.

Looking at their Western European counterparts, it was natural for the “new democracies” in Central and Eastern Europe to follow their example in the field of anti-corruption – they adopted anti-corruption strategies and legislation and embarked upon adoption of codes of ethics – for politicians and for civil servants.

Civil servants’ codes were usually a part of the public administration reform process. Ethical norms followed or were included in the new Civil Service Acts³⁴. Many of these codes were defined at the central level and apply to all civil servants – employed at central and local level.

On the other hand, cases of codes for politicians - elected representatives (or “officials”, as referred to in the Serbian model code to be discussed below), the practice is not so widespread. This is true both for the central³⁵ and the local level. In other words, it seems that politicians were reluctant to pose obligations of such nature on themselves³⁶.

Local level codes of ethics - for local officials - appear in isolated cases and apply, almost exclusively, to local councillors. Examples exist in Latvia, Poland and Russia³⁷. However, these are isolated cases of councillors’ codes adopted in individual municipalities, seemingly without any kind of coordination or initiative from the central level. It is often stressed that these isolated cases of adopted codes usually originate from projects initiated and funded by international organisations. Similarly, efforts by local NGOs to establish codes for local councillors produced poor results – e.g. in Poland, Russia, Slovakia and Latvia.

³¹ Code of Conduct of the Customs Administration, passed in November 2003, by the Minister of Finance. Since the beginning of 2002, the Customs Administration is an organisational part of the Ministry of Finance. During the previous regime, it was viewed as one of the most corrupt state organisations. The abovementioned 2001 opinion poll on perception of corruption (s.n. 10) presented it as the most corrupt, ahead of the Tax Administration, Judiciary and the Police.

³² Instruction on Police Ethics and Performance of Policing Tasks, passed in April 2003, by the Minister of Police. The reorganisation of the Serbian Police Service was widely supported by the OSCE Mission in Serbia and Montenegro.

³³ Specifically, the CLRAE Recommendation 60 (1999) on political integrity of local and regional elected representatives and the Committee of Ministers Recommendation (2000)10 on codes of conduct for public officials. See: Model initiatives package on public ethics at local level, Steering Committee on Local and Regional Democracy (CDLR) of the Council of Europe.

³⁴ See for instance: Palidaukaite, Jolanta, “Codes of conduct for Public Servants in Eastern and Central European Countries: Comparative perspective”, paper presented at EGPA Annual Conference, Oeiras, 2003 (<http://www.Fernuni-hagen.de/POLALLG/EGPA/Papers/Palidaukaite.pdf>).

³⁵ For a rare case of central level codes, see: Kudrycka, Barbara, “The ethical codes of Polish Public Officials”, *LGI Discussion Papers*, No. 8, Local Government and Public Service Reform Initiative, Open Society Institute, 1998 – on the Code of Deputies’ Ethics applying to deputies of the Polish Sejm.

³⁶ See: Kudrycka, Barbara, Combating conflict of interest in local governments in the CEE countries, Budapest: LGI/OSI, 2004 or Kudrycka, Barbara, “Conflict of interest regulations at local governments”, paper presented at EGPA Annual Conference, Oeiras, 2003 (<http://www.fer-nuni-hagen.de/POLALLG/EGPA/Papers/Kudrycka.pdf>)

³⁷ Ibid.

However, authors have noted that actual implementation of such texts is weak and that their existence does not exert much influence on the behaviour of elected officials (or civil servants, to that effect). Similar to the previous set of Council of Europe's recommendations, it is stressed that adoption of codes for local elected representatives needs to be set as an obligation, setting minimum norms and standards and, moreover, that it needs to be supported with sanctions for violations³⁸.

However, bearing in mind that codes of ethics for elected representatives are actually a form of self-regulation, it is questionable that such a position – especially the latter on imposing sanctions – would provide a guarantee of their actual implementation.

4. Adoption of ethical codes of conduct in Serbian towns and municipalities

Finally, this part of the paper will present the process of drafting of the Code of Conduct for Local Government Officials in Serbia, its content, the process of adoption in Serbian towns and municipalities and the first steps in its implementation and monitoring.

In 2003, when Serbia and Montenegro entered into full membership of the Council of Europe³⁹, the Standing Conference of Towns and Municipalities (SCTM), translated the European Code of conduct for the political integrity of local and regional elected representatives⁴⁰ and sent it to all towns and municipalities in Serbia, with an aim for them to adopt similar ethical standards. However, only four municipalities reacted to this effort and their assemblies (councils) adopted such acts. The reason for this was obvious - the Code was not adapted to the needs and circumstances of Serbian municipalities and, moreover, it was not explained or promoted to them. In order for municipal officials to adopt and later internalise ethical norms, they needed to somehow participate in their defining.

In 2004, SCTM started with the implementation of the project National campaign for adoption and implementation of a democratic code of conduct for elected and appointed representatives in Serbia⁴¹. The

project was widely supported by a pool of international donors⁴² – similar to some other CEE states.

The initial text of the Code was drafted by a working group, appointed by SCTM Presidency⁴³, consisting of presidents of municipalities (mayors) and experts – representatives of project partner organisations. The Working Group used as a basis for its work the model code adopted by the Congress of Local and Regional Authorities of Europe and tried to adapt it to Serbian circumstances and set the maximum of ethical standards possible to be expected from local officials in Serbia.

The Draft code which resulted from their work was then presented in a series of 20 regional public debates organised during August and September 2004. Participants of the debates were local councillors, heads of districts, representatives of local NGOs, media and citizens from surrounding municipalities. Presidents of municipalities who participated in the Working Group acted as promoters of the Code.

It happened that the presentations of the Code coincided with the campaign for the September 2004 local elections. Candidates for local councillors and heads of municipalities⁴⁴ often actively participated in these debates and, almost as a rule, welcomed the Code and promised that they will respect them after coming into office. Some even went so far to state that the Code completely reflects their electoral programmes.

However, it was often heard that, even though the text of the code is not to be questioned, its implementation is questionable since it does not contain sanctions. This typical argument could be heard from all participants of the debates – both politicians and citizens. It was stressed that there needs to be a form of

drafted, using the same methodology and based on a Council of Europe Recommendation (2000)10. However, due to the unresolved legislative framework relating to civil servants in Serbia – which, naturally has to be done by the central level institutions – the SCTM General Assembly did not formally adopt the model, but nevertheless recommended municipalities who desired to adopt ethical norms for civil servants to utilise the model developed by the association.

⁴² The project was supported by: European Commission, Open Society Institute, Konrad Adenauer Stiftung, Serbia Local Government Reform Program of the USAID.

⁴³ Presidency is the main executive body of the association. It has 21 members – 20 mayors and presidents of municipalities elected by SCTM General Assembly for a 2-year mandate and the SCTM Secretary General by function. More on SCTM structure at <http://www.skgo.org>.

⁴⁴ Presidents of municipalities and mayors are, under the 2002 Serbian Law on Local Self-Government, directly elected by the citizens.

³⁸ Ibid.

³⁹ Serbia and Montenegro entered into full membership of the Council of Europe on April 3, 2003.

⁴⁰ Text of the Code is an appendix to the Recommendation 60 (1999) on political integrity of local and regional elected representatives of the Congress of Local and Regional Authorities of Europe (CLRAE).

⁴¹ The project also envisaged the drafting of a model code of conduct for local civil servants. A model code was

independent oversight over the work of local government – and, specifically implementation of the Code – and even proposed that the SCTM, as a local government association, could provide a body to follow the Code’s implementation. Also, it was suggested that irregularities in Code’s application should be presented in the form of regular reports. Finally, many of the participants stressed that such codes need to exist for central level authorities as well – especially, for those who bear functions in deconcentrated posts of central level organisations and institutions (e.g. heads of districts, directors of healthcare and social care institutions etc.). Also, there were a number of remarks and suggestions on individual articles and their formulation⁴⁵.

The Code was unanimously adopted by the SCTM General Assembly⁴⁶, on December 15, 2004. By adopting the text of the Code, the General Assembly recommended its adoption to local councils and called upon local officials in Serbia to acknowledge an abide by its rules⁴⁷.

The Code consists of a Preamble and 29 articles. The 29 articles are separated into three main chapters – Subject and Main Principles; Standards in Performance of Function; and Relations with the Public. The second chapter is divided into six sub-chapters – Basic principles; Conduct prior to taking of office; Holding office; Supervisory measures; Relations with local government employees and Relinquishing of office.

The content of the Code has been evaluated as “comprehensive and soundly based” and “sophisticated in incorporating the provisions underpinning the code’s provisions”, drawing from the experiences of the Council of Europe’s model code⁴⁸.

Without delving in too much detail into the text of the Code, it needs to be stressed here that it applies to all “local government officials”, i.e. all elected, nominated or appointed representatives in municipal-

ity or town authorities, as well as public enterprises, institutions and other organisations founded by the municipalities and towns⁴⁹. In comparison to codes adopted in other CEE states – usually applying only to local councillors - the Serbian code aimed at covering the widest possible circle of “officials” and subjecting them to the same or as much similar as possible set of ethical norms and standards. In terms of Serbian legislation it covers: local councillors, heads of local governments, members of municipal (town) boards, heads of local administrations, directors of local enterprises and institutions, i.e. all those established by the local government – practically leaving only local civil servants out of its reach. It is also wider than, for instance, the Serbian law on conflict interest prevention, since it also encompasses bearers of functions in institutions and municipal enterprises.

After setting basic principles and standards in the performance of a function⁵⁰, the Code practically guides an official from electoral campaign⁵¹, through his/her mandate⁵² all through the termination of mandate⁵³, with a separate title on relations with the public⁵⁴. As an act of self-regulation, the Code demands of a public official to familiarise him/her with its provisions and declare in writing that he/she shall comply with it⁵⁵. Finally, in terms of a first step towards the code’s implementation, the SCTM model recommends that the local council may establish a monitoring body with a task to follow-up on the Code’s implementations and provide explanation on its subject matter and particulars of its implementation to officials, citizens and the media⁵⁶.

After the Code was recommended by the SCTM Assembly, the process of its adoption in individual towns and municipalities started. At the time of the conclusion of this text⁵⁷, 130 local councils – out of the total 167 – adopted the Code⁵⁸.

Most of the municipalities followed the text of the model when adopting their own codes, i.e. adopted

⁴⁵ Remarks and comments from public debates were systematised and presented to the SCTM Presidency, which approved them and included in the final draft of the Code which was presented to SCTM General Assembly for adoption.

⁴⁶ SCTM General Assembly consists of all members of the association which, at the moment, SCTM has full membership, i.e. gathers all towns and municipalities in Serbia, without Kosovo.

⁴⁷ Text of the Code is available in Serbian and English at SCTM web-site – <http://www.skgo.org/upload/SITE/Dokumenti/SKGO/First%20Draft%20Code%20of%20Conduct.doc>

⁴⁸ According to a report of Standard Board for England to the Westminster Foundation for Democracy, resulting from a visit of Standard Board’s representatives to Serbia, during the first week of June 2005.

⁴⁹ Article 1 of the Code.

⁵⁰ Articles 2-9 of the Code.

⁵¹ Chapter 2 of the Code (Articles 10-11).

⁵² Chapters 3-5 of the Code (Articles 12-23)

⁵³ Article 24 of the Code.

⁵⁴ Title III of the Code.

⁵⁵ Article 27 of the Code.

⁵⁶ Article 29 of the Code.

⁵⁷ August 10, 2005.

⁵⁸ On its Eleventh Session, held on July 27, 2005 in Belgrade, SCTM Presidency called upon the remaining municipalities to adopt the Code. A list of all towns and municipalities who have adopted the Code so far is available at SCTM web-site, <http://www.skgo.org/code/navigate.php?Id=58#850>

the Code in the same text. However, some of the municipalities added or decided not to include all the provisions – e.g. one of the councils stroke out the provision by which local officials were supposed to undertake to familiarize themselves with the provisions of the Code and provide a written declaration accepting its provisions. Bearing in mind that the whole idea of an ethical code lies upon the fact that it is adopted by the very persons to whom they are supposed to apply – as an act of self-regulation – the absence of such a provision can harm the very implementation of the code. In other words, the code is supposed to apply to all of the envisaged local officials and not only the councillors who voted for it, as well as the ones elected and appointed in any of the following terms in office – as long as the municipality exists.

In most municipalities, the codes were adopted without votes against – in most unanimously and in some without the presence of some of the councillors. However, even though unanimous adoption can be viewed as an indication of a consensus built between representatives of different political parties and groups, it is peculiar that in some of the councils the codes were also adopted without any debate. Some municipal staff even believes that the councillors are not aware of the Codes implications, i.e. that it was only formally adopted⁵⁹.

However, there are more positive examples of the Code's adoption, in a sense that some municipalities already lead in code implementation, i.e. they either formed separate bodies or gave a mandate to existing council bodies – mainly standing commissions of the municipal council – to follow the Code's implementation. Probably the most positive example is provided by Mladenovac municipality – one of Belgrade town municipalities. Mladenovac was the first municipality to adopt the Code and its mayor actively supported the SCTM's project since its inception. After the Code was adopted by the municipal council, the mayor⁶⁰ established a code monitoring board, consisting of 5 councillors appointed to the board by the full council in March 2005. The monitoring board has a set of rules, meets monthly, or more if required, and shall provide an annual report to the council on

its work. The board has the support of the mayor and includes the former Mayor of Mladenovac.

SCTM continues to promote the Code and its contents and expects the remaining municipalities to adopt it until the end of 2005. In parallel, it is preparing to start a project within which monitoring boards based on the Mladenovac model will be established in five pilot municipalities and additional presentation and training on implementation of ethical standards will be realized – both for local officials and for media and NGO representatives. Further work will be done in promotion of ethical standards for local level civil servants, together with initiatives for the establishment of a proper legal framework for this target group⁶¹.

Conclusions

Drawing from the experience of other states, as well as recommendations of international organisations, it is obvious that the Serbian state needs to continue with overall anti-corruption efforts – to adopt the necessary strategic and legal documents and provide a greater impetus to their implementation.

From the viewpoint of Serbian local governments, some guidance or at least a positive signal from the side of central state would certainly assist the existing local efforts – namely, a confirmation that they should continue with the adoption and implementation of ethical rules for elected representatives and civil servants.

Even though there are positive examples of efforts in individual municipalities to prepare for concrete code implementation, due to the fact that almost all of the 130 codes of conduct for local officials were adopted in the first half of 2005, it is almost impossible to project their effects in concrete every-day local politics. Until now, we haven't had instances of reported Code breach or calling upon Code provisions in individual instances.

It is certain that much more work needs to be done on the promotion of the Code and ensuring that similar mechanisms to ones described above are in place in order to expect any kind of results from the widely formally adopted codes.

⁵⁹ Staff of SCTM Secretariat is at constant contact with municipalities and the comments presented here were heard during some of them.

⁶⁰ In Belgrade municipalities, presidents of municipalities (mayors) are not directly elected by the citizens, but elected by the municipal assembly and perform the function of the assembly's speaker. This is a peculiarity provided by the 2002 Law on Local Self-Government for towns and municipalities out of which they were composed.

⁶¹ Recently, the Serbian Government determined a proposal of a Law on Civil Servants, which is going to apply only to central level civil servants, while for the local level the old legislation (passed in 1991) is going to apply to local level civil servants, until a separate law is applied. In that respect, on its 11th session, held in Belgrade, on July 27th 2005, the SCTM Presidency formed a working group whose task is to define the association's proposal for a draft law on local level civil servants.

Also, it is yet to be seen if the codes adopted during the term of office of present municipal assemblies are going to be respected by the newly elected and appointed officials – after the 2008 elections.

If, as projected, the codes are adopted in all Serbian municipalities, the fact will possibly send a unique message to the central level – that local officials are ready and willing to adopt and respect a set of ethical standards in the performance of their functions.

Returning to the opening parts of this paper, by adopting and abiding to the Code, local officials in a great majority of municipalities sent an important message to their citizens that they are prepared to work on restoring the trust in each of them individually and in local government in general. For that reason, it is important to work further on raising awareness of the Code and education of local officials, media representatives, NGOs and the public at large.

Still, until anti-corruption legislation is fully implemented and similar codes for central level officials and central and local level civil servants are in place, the local codes – no matter how widely adopted – remain fragile and their implementation hugely jeopardized.

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Elgesio kodeksų savivaldybių tarnautojams kūrimas Serbijoje

Straipsnio tikslas – įvertinti elgesio kodeksų savivaldybių tarnautojams kūrimo Serbijoje ypatybes. Remiantis Serbijos Savivaldybių asociacijos parengtu rekomendaciniu elgesio kodeksu, dauguma šios šalies savivaldybių (130 iš 167) yra pasitvirtinusios savivaldybių tarnautojų elgesio kodeksus. Bendruoju antikorupcinės veiklos aspektu straipsnyje analizuojama ir kritiškai vertinama tų kodeksų rengimo ir taikymo aplinka bei prognozuojama, kokie turėtų būti tolesni jų įgyvendinimo žingsniai. Toje analizėje remiamasi Serbijos teisine baze ir panaudojama iš savivaldybių gauta informacija bei 2001-2005 metais Serbijoje atliktų viešosios nuomonės tyrimų duomenys, taip pat kitų šalių mokslinių publikacijų medžiaga.

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