

## SIMULATED APPELLATE PROTECTION WITHIN SERBIAN LOCAL GOVERNMENTS


Vuk Cucić\*, Dobrosav Milovanović

University of Belgrade, Faculty of Law, Belgrade, Serbia

ORCID iDs: Vuk Cucić

Dobrosav Milovanović

 <https://orcid.org/0000-0002-8373-5613>

 <https://orcid.org/0009-0004-9477-9007>

### Abstract

The authors conducted this empirical research to examine whether municipal/city administrations, as the first-instance authorities in administrative proceedings, are required to prepare decisions on administrative appeals against their own decisions in the place of actually competent second-instance authorities – municipal/city councils. The aim of the research was to verify the (in)existence of this issue, and its frequency, causes and potential solutions in case its existence is proven. The main findings of the research are that the problem exists, that it is widespread, and that it derives from the lack of capacities of municipal/city councils, as predominantly political bodies, to cope with this competence. The lack of capacities encompasses predominantly the lack of professional expertise and, to a lesser extent, it is a result of work overload. The authors propose the establishment of appellate commissions for one or more local government units as possible solution to the problem.

**Key words:** Administrative Appeal, Administrative Procedure, Municipal / City Councils, Serbia.

## СИМУЛИРАНА ЖАЛБЕНА ЗАШТИТА У ОКВИРУ СРПСКЕ ЛОКАЛНЕ САМОУПРАВЕ

### Апстракт

Аутори су спровели емпиријско истраживање како би испитали да ли се од градских/општинских управа, као првостепених органа у управном поступку, захтева да уместо заиста надлежних, другостепених органа – градских/општинских већа, припреме одлуке о жалбама у управном поступку против сопствених решења. Циљ истраживања био је потврђивање (не)постојања овог проблема, те његова учесталост, узроци и потенцијална решења за случај да се његово постојање докаже. Кључ-

\* Corresponding author: Vuk Cucić, University of Belgrade, Faculty of Law, Bulevar kralja Aleksandra 67, 11120 Belgrade, Serbia, [vukcucic@ius.bg.ac.rs](mailto:vukcucic@ius.bg.ac.rs)

ни налази истраживања су да проблем постоји, да је широко распрострањен и да проистиче из недостатка капацитета градских/општинских већа, као претежно политичких органа, да се носе са овом надлежношћу. Недостатак капацитета претежно обухвата недостатак професионалног знања, а у мањој мери је резултат преоптерећења, тј. обима посла. Као потенцијално решење проблема аутори предлажу оснивање жалбених комисија за територију једне или више јединица локалне самоуправе.

**Кључне речи:** жалба, управни поступак, општинска / градска већа, Србија.

### INTRODUCTION

The tasks of local government units (LGU) in Serbia, as is also the case comparatively (Milosavljević, 2015, pp. 574-575, Jerinić, Milosavljević, 2019, pp. 401-406), are split into two parts. The first one concerns its proper (own), or what is in the Serbian legal doctrine also referred to as the independent competency or sphere of work. The second is its delegated or transferred competency (Dimitrijević, Lončar, Vučetić, 2020, pp. 69, 199). In the latter case, when performing delegated tasks, the local government authorities have the same legal position as dispatched units of central administration. Central state administrative authorities retain comprehensive control over their work (Tytykalo, 2022). When performing their proper tasks, i.e., exercising their proper competency, local government authorities are predominantly under no legal control of the central state administration. One of the most notable distinctions in that respect is a different second-instance, appellate authority in the administrative procedure (for details on administrative appeal see Tomić, Milovanović, Cucić, 2017, pp. 167-187; Cucić, 2011; Cucić, 2018, pp. 152-155). If an individual case in the administrative proceedings derives from the delegated tasks, the second-instance authority in the administrative proceedings shall be a state administrative authority (e.g., a ministry). For instance, when local government authorities decide in the first instance in administrative proceedings in the field of construction permits, administrative appeals against their decisions are filed with the ministry competent for construction matters. Oppositely, when local government authorities, in particular municipal or city administrations (Serbia has three different types of LGU – municipalities, cities and the City of Belgrade, as a special unit), decide a case from the scope of its proper competency in first instance administrative proceedings, administrative appeals are submitted to municipal or city councils. As an example, one could mention the cases from the field of local taxes or the local social aid scheme.

A paramount distinction between the municipal or city administration and the municipal or city council lies in the fact that the prior represents an authority employing professional civil servants, while the latter is comprised of local politicians elected by municipal or city assemblies.

Members of the municipal or city councils need not (and, as a rule, do not) possess any legal education or any other type of professional specialisation in any of the fields within which they decide upon administrative appeals.

For years, the authors of this paper took part in various professional training programs, within which they provided courses, trainings and workshops in the field of Administrative Law to local government civil servants and officials. During one of these workshops, the authors were informed that in practice, when deciding in first-instance administrative proceedings in matters from the proper competency of the LGU, local government civil servants, which are engaged by municipal or city administrations, are later required by their municipal or city council to prepare draft decisions on administrative appeals against their own decisions. They would effectively perform the work of municipal or city councils, which would only sign the decisions. Hence, they would simulate the appellate control of their own work. As the main reason for this, mentioned local civil servants cited lack of capacities of municipal or city councils to engage with such a task. The lack of capacities chiefly concerned the lack of legal education of their members. Despite the fact that this issue has not been recognised in academic literature, and despite the fact that it has only recently been identified and briefly tackled in one strategic document, it seems that it was common knowledge within the community of these professionals.

For this reason, the authors decided to further explore this issue, and to scientifically check its existence, magnitude and frequency. For that purpose, they conducted research by way of anonymous questionnaires sent to heads of municipal and city administrations. The results of said research are presented in this article.

On the basis of the information supplied by the local government civil servants, the authors formulated the following three hypotheses to be examined in the paper:

- Local government civil servants working in municipal or city administrations are sometimes requested to prepare draft decisions on administrative appeals against their own decisions in the place of municipal and city councils, as their hierarchal superiors in these administrative legal matters.
- The main reason for this is the lack of capacities of municipal or city councils to successfully perform this work.
- The frequency of this issue depends on the size of the population of the LGU and is, on average, more frequent in smaller than in larger LGUs.

### *LITERATURE OVERVIEW*

As was previously mentioned, the awareness of this challenge came from a direct contact with the local government civil servants.

There is only one academic paper making reference to the issue and providing certain possible solutions to it on the assumption of its existence (Milovanovic, 2020, p. 220). Nevertheless, given that it tackles the issue only laterally, in a single passage, and that it is based on the assumption not empirically confirmed, it leaves sufficient space for this research.

Only recently has a strategic document of the Government identified the problem, in the Program for the Reform of the Local Government System in the Republic of Serbia for the period from 2021 to 2025 (Official Gazette of the Republic of Serbia, no. 73/2021). This document states the following:

(...) considering that the council is a political authority made up of people from different professions, it is necessary to reconsider the concept of the council as an authority that decides on the rights and duties of citizens and other subjects in the second instance. This issue is particularly significant if one takes into account that the council's decision proposals in the second instance are prepared by the municipal/city administration that decided in the first instance.

### *RESEARCH*

#### *Methodology*

In order to test the set hypotheses, the authors created a questionnaire. The questionnaire contains the following six questions:

- Are you employed in a municipal or city administration unit?
- Available answers: a) municipal administration; b) city administration.
- If you are employed in a municipal administration, what is the population of the municipality?
- Available answers: a) 10,000; b) 30,000; c) 50,000; d) 70,000; e) more than 70,000.
- Was the municipal/city administration asked to prepare decisions by which the municipal/city council decides on the administrative appeals against first-instance decisions of the municipal/city administration?
- Available answers: a) Yes; b) No.
- If you answered “Yes” to the previous question, how often does this occur in practice?
- Available answers are set on a scale from 10% to 100%, increasing by 10% for each answer.

- What do you think could be the potential reasons for such behaviour of the municipal/city council?
  - Available answers (multiple choice available): a) overload; b) lack of professional knowledge; c) its political nature; d) other reasons (open answer available).
  - Do you have a proposal for the resolution of this problem (provided you consider that it exists), or any other comment?
- Open answer available.

Questions 3 and 4 are the principal questions, and they were designed to test the (non)correctness of the first hypothesis, i.e. whether such practice exists and whether it is of sufficient magnitude to be considered a serious issue.

The purpose of Question 5 is to test the second hypothesis, i.e., to test whether the main reason for this occurrence is the lack of capacities of the municipal or city council to successfully perform this work. The capacities could appear in the form of a lack of necessary expertise. This option is covered by two potential answers – the lack of professional knowledge and the political nature of municipal and city councils. This option was deliberately split into two answers, having in mind that, despite knowing that the questionnaire answer would be provided completely anonymously, certain civil servants could be wary of straightforwardly pinpointing the lack of knowledge as the reason for the occurrence of this problem. That is why the other answer was provided, to euphemistically indicate that a lack of necessary expertise exists. The other form of the lack of capacities is the overload of cases that cannot be handled by municipal/city (M/C) councils.

The aim of Questions 1 and 2 was to enable us to test the third hypothesis, i.e., to test whether the frequency of this issue depends on the size of the LGU and whether it is, on average, more frequent in smaller than in larger LGUs.

Finally, Question 6 was introduced with the aim of providing us with potential solutions to this problem.

### *Ensuring Anonymity*

In order to obtain adequate persons to complete the questionnaire, as well as to assure their anonymity, the authors asked the Standing Conference of Towns and Municipalities for assistance. The Standing Conference of Towns and Municipalities was founded in 1953 as an association of towns and municipalities in Serbia. It encompasses all LGUs in Serbia, and it is the largest and most significant association of its kind.

The questionnaire was not distributed to the addressees by the authors, but by the Standing Conference of Towns and Municipalities. Even the Standing Conference of Towns and Municipalities was not able to

identify those who provided answers to the questionnaire due to the fact that they only sent a group mail to all the heads of M/C administrations and some of their deputies, containing a link to an online questionnaire on a website that did not gather any of the addressees' metadata. The addressees were informed of this fact, so as to ascertain that their answers would be frank and given freely.

### *Sample*

Serbia has a single layer of LGUs. They are not subordinated amongst each other. As was stated, it has three types of LGUs. It has 145 municipalities, 28 cities and the City of Belgrade, which is the states' capital and whose status is regulated by a special piece of legislation (Law on the Capital City, Official Gazette of the Republic of Serbia, no. 29/2007, 83/2014, 101/2016, 37/2019 and 111/2021). In total there are 174 LGUs.

It is also important to mention that cities have the option to create city municipalities on their territories. City municipalities are not LGUs, but only a city's internal territorial units to which the city, as a LGU, can confer some of its competencies (Pešović, 2019, p. 103). Only four cities opted to create city municipalities. Belgrade has 17, Niš (the third largest city in the country) has 5, Požarevac, Vranje and Užice (three rather small cities, all three with less than 100,000 residents) each have two city municipalities. Awareness of the existence and the number of city municipalities is significant for understanding the representativeness of the gathered research sample.

The research questionnaire was sent to the mailing list of the Standing Conference of Towns and Municipalities, which encompasses 170 heads of city, municipal or city municipality administrations, as well as 50 of their deputies. In total, 96 of them responded to the questionnaire. If compared to the number of LGUs, which 174, this accounts for 55.17% thereof. This could certainly be regarded as a representative sample.

Nevertheless, a disclaimer has to be made. There are two factors that might have influenced the sample in that it may reduce its representativeness.

The first one is the fact that the group to which the questionnaire was sent encompassed not only heads of M/C administration but also their deputies. It could have happened that both a head and a deputy from the same LGU provided answers to the questionnaire. Notwithstanding this circumstance, it is unlikely that this occurred often. The authors were informed by the person employed in the Standing Conference of Towns and Municipalities who coordinated the information gathering process that when they used this channel of communication on other occasions, they received one answer per LGU, either from the head of its administration or his or her deputy. Moreover, heads of M/C administrations are not obliged to have deputies. If they actually decided to have one, they are

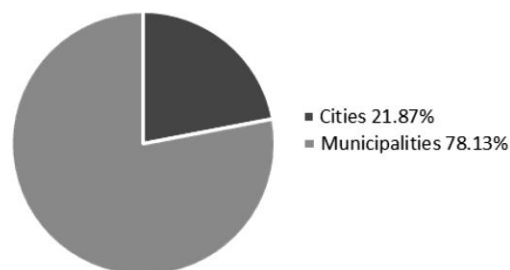
probably coordinating their work and are accustomed to communicating in this manner with the Standing Conference of Towns and Municipalities, so as to assure that only one of these persons answers their query. Hence, most probably the heads and their deputies agreed upon who would answer the questionnaire. If the alternative did occur, it probably occurred only incidentally.

The second factor concerns the fact that the mailing list encompasses not only heads of municipal or city administrations but also heads (and potentially deputies) of administrations of city municipalities. Therefore, it could have occurred that heads and/or deputies of city municipalities that belong to the same city responded to the questionnaire. In that case, given that all of them would have had the same appellate authority on the city level, an overlap decreasing the representativeness of the sample could have appeared. It was displayed that there are 28 city municipalities in five cities in Serbia. Nonetheless, we again believe that if this had actually happened, it was only incidentally. Namely, we received only four questionnaires for which we can suspect that they were filled-in by the heads and/or deputies of the city municipality administrations. In these four questionnaires, the addressees stated that they work within the city administration (Question 1), but additionally marked the answer to Question 2 concerning the size of their municipality. We might suppose that these are actually the instances in which we received answers from persons employed in city municipality administrations. Given that we received four such answers and that there are five cities in which city municipalities are established, we can assume that this too had no significant influence on the representativeness of the sample we gathered.

Lastly, one might rightfully ask whether these potential discrepancies could have been avoided by simply posing a question in the questionnaire of whether someone is employed in a city municipality administration. It could have. The same goes for the fact that we could have asked the addressees to state the exact LGU in which they are employed, but we believe that the more information about them we required, the higher the chances that they would not respond at all or would have made their answers less sincere. For that reason, in this trade-off, we opted to have less certainty about the number of LGU encompassed by the research than to have less certainty about their answers. Given the volume of the gathered sample, it seems that this was the right choice.

## *RESULTS*

The addressees that completed the questionnaire came from city administrations in 21 case (21.87%), and from municipal administrations in 75 instances (78.13%) (Chart 1).



*Chart 1. Type of LGU*

The distribution of addressees coming from municipalities with regard to their population is as presented in Table 1.

*Table 1. Size of Municipalities*

Municipality size	Number	Percentage
10,000	19	25.33%
30,000	40	53.33%
50,000	12	16.00%
70,000	0	0.00%
>70,000	4	5.33%

The research also provided results to the central question of the paper, i.e., whether M/C administrations are requested to prepare decisions by which the M/C council decides on the administrative appeals against their first-instance decisions. In order to check whether the first and third hypotheses are correct, we calculated the gathered responses in several ways – for all LGUs, for cities, for all municipalities, and for each category of municipalities, classifying them by size. The results are presented in Table 2.

*Table 2. Occurrence*

Type of LGU	Occurrence
All LGU	64%
Cities	57%
All Municipalities	65%
M up to 10,000	68%
M up to 30,000	65%
M up to 50,000	50%
M >70,000	100%

Municipalities with approximately 50,000 residents, and those with more than 70,000 residents display somewhat different results, probably due to the fact that the sample was very modest. However, if these two were taken together, as the category of municipalities around and above 50,000

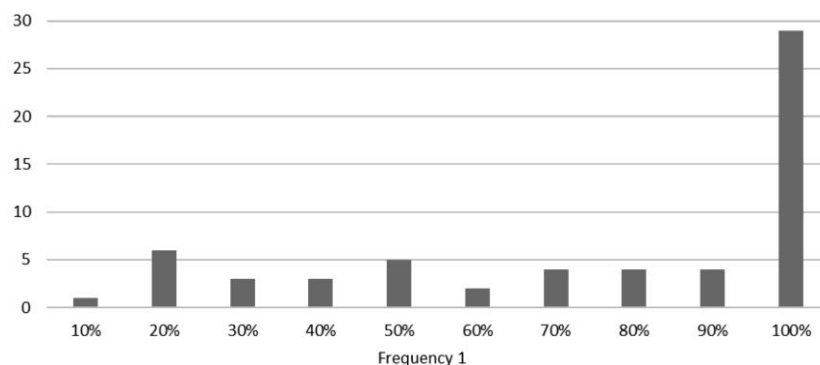


residents, the percentage would be similar to those of the other two categories of municipalities (10,000 and 30,000 residents). Namely, the result would be 62.5% (10 out of 16) of municipalities in which the problem arose.

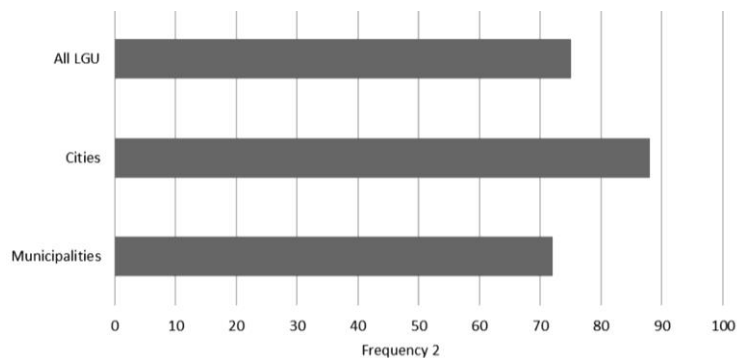
The responses to the questionnaire also provide insight into the frequency of this issue. According to the data, in the majority of instances, this occurs always, i.e., in 100% of cases. This answer was chosen by 29 addressees. This comprises almost half of all the provided answers (47.53%). All others were chosen significantly fewer times. They are as follows: (1) 10% - 1 answer (1.64%); (2) 20% - 6 answers (9.84%); (3) 30% - 3 answers (4.92%); (4) 40% - 3 answers (4.92%); (5) 50% - 5 answers (8.20%); (6) 60% - 2 answers (3.28%); (7) 70% - 4 answers (6.55%); (8) 80% - 4 answers (6.56%); and (9) 90% - 4 answers (6.56%). When we aggregate the results of all LGUs, the average frequency is 74.92%. The average frequency for cities is 88.33%, while the average frequency for all municipalities is 71.63%.

Chart 2 presents the answers related to the frequency of the issue for all LGUs.

Chart 3 compares the average frequency of the problem in all LGUs, cities and all municipalities.



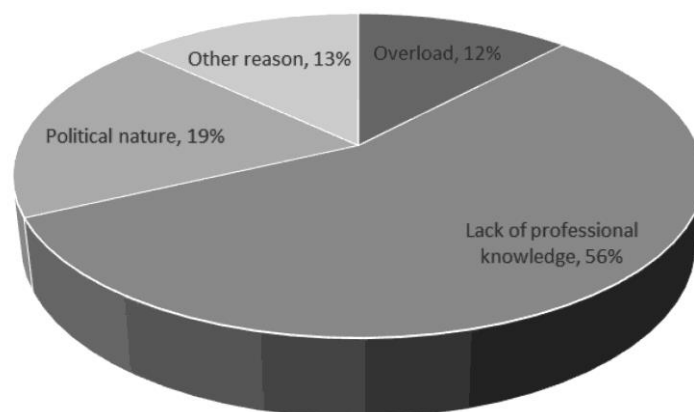
*Chart 2. Frequency 1*



*Chart 3. Frequency 2*

When asked what could be the potential reasons for such behaviour of M/C councils (requesting first-instance authorities to do their job), the addressees were given four options to choose from: (a) overload; (b) lack of professional knowledge; (c) its political nature; and (d) other reasons (open answer available). The addressees were allowed to make multiple choices. Additionally, almost half of the addressees that previously indicated that the problem did not occur in their LGU (17 out of 35) answered this question anyway. This suggests that, despite not being affected by it, even those addressees are aware of the existence of this issue. Hence, amongst local government civil servants, the problem seems to be a well-known, notorious fact. For this reason, their answers were taken into account. For the two mentioned reasons (multiple choice, answers of those not affected by the problem), the overall number of answers significantly exceeds the number of those who reported the appearance of the problem in their LGU. The total number of provided answers to this question was 94. Out of those 94, overload was selected 11 times (11.7%), lack of professional knowledge was selected 53 times (56.38%), political nature was selected 18 times (19.15%) and other reason was selected 12 times (12.77%).

Chart 4 displays the ratio of reasons for the existence of the problem.



*Chart 4. Reasons 1*

In total, 77 addressees answered this question. If we look at it from that perspective, the distribution of reasons for the existence of the problem looks somewhat different. We can see that 14.29% chose overload as the reason, 68.83% chose lack of professional knowledge, 23.38% chose political nature, and 15.58% chose another reason (Chart 5).

What were the other reasons listed by the addressees as the potential causes of this issue? The other reason option was chosen by 12 addressees. Five of them actually elaborated on the lack of professional knowledge and/or political nature of M/C councils, indicating in general

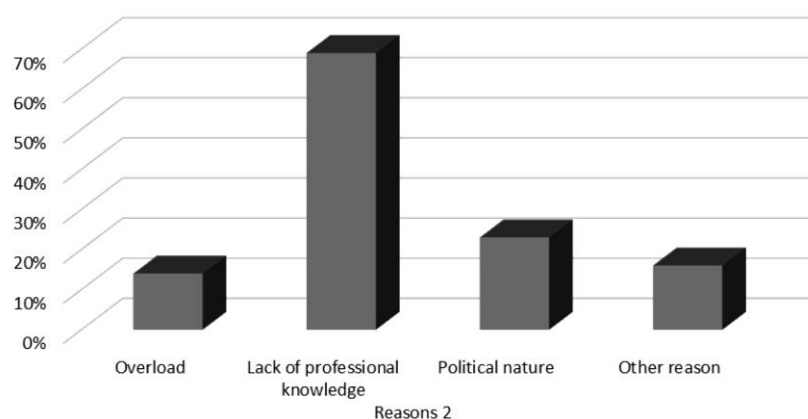


Chart 5. Reasons 2

that they lack lawyers and other qualified staff to assist them in the preparation of appellate decisions. More curious were the answers provided by another five addressees. They consider that M/C administrations are obliged to assist the M/C council in drafting regulations and other acts from their competence, including appellate decisions. In two of these responses, Art. 52, para. 1, item 1 of the Law on Local Government is cited as the legal basis for this stance. Although we consider this interpretation of the law incorrect (see *below*), it is a valuable insight enabling us to understand that some of the local government civil servants employed in M/C administrations consider that it is their job to prepare, or essentially decide upon administrative appeals against their own decisions. The first of the two remaining answers indicates that this occurs due to the fact that the civil servants that rendered the decision in the first-instance administrative proceedings are better acquainted with the facts of the case and that, accordingly, they should prepare appellate decision as well. The other remaining response suggests that members of M/C councils are of the opinion that other authorities of the local government should prepare everything for them and warn them of any potential illegality in their decisions.

Finally, the addressees showed noteworthy interest in providing suggestions that might resolve, or at least ameliorate the problem. Almost half of them (41 out 96) gave an answer to this question. The given responses could be classified into several groups.

The first group of answers (21 addressees) indicates that the capacities of M/C councils should be elevated either through the legal prescription that the secretary of the M/C council has to be a lawyer or via the engagement of additional legal staff that would aid them in their work.

The other, more peculiar group of responses (8 addressees) proposes that lawyers or persons otherwise competent for various fields within the competence of M/C councils should be elected to be members

of M/C councils. These responses vary from those only recommending this as a good practice, and those suggesting that it should be legally prescribed that a certain number of members of M/C councils must be lawyers, to those advocating for the solution that only lawyers could be eligible to become members thereof.

The third group of answers (9 addressees) proposes the establishment of appellate commissions or other expert bodies that would act as second-instance authorities instead of M/C councils, either under their auspices or as separate authorities. As a role model, they see the appellate commission of the (state) Government (Milovanovic, 2020, p. 220). It is emphasised that the members of these appellate commissions of expert bodies should be paid for their service, given that such bodies exist or did exist in some LGUs, but did not function adequately because their members were not paid.

The remaining three answers suggest an increase in the quality and quantity of professional training, designating the heads of the M/C administrations as the second-instance authority (their subordinate civil servants would probably decide in the first-instance proceedings), and one of the addressees is of the opinion that this practice is actually good.

## *DISCUSSION*

### *Findings*

After presenting the results of the research, we can verify the validity of the posed hypotheses.

The first hypothesis was that local government civil servants working in municipal or city administrations are sometimes requested to prepare draft decisions on administrative appeals against their own decisions in the place of municipal and city councils, as their hierarchal superiors in these administrative legal matters. This hypothesis was confirmed. In all the LGUs taken together, this occurs in 63.54% of the cases. Moreover, the intensity of the problem is high. In almost three out of every four cases (74.92%), M/C administrations encounter this setback. As an additional confirmation, one can see that this issue appears in every group of LGUs we examined separately.

It is important here to tackle one thing we encountered in the questionnaire. This is the stance that this type of behaviour of M/C councils is in accordance with the law. Namely, some of the addressees of the questionnaire indicated that this is obligatory for the M/C administrations pursuant to Art. 52, para. 1, item 1 of the Law on Local Government. This provision states the following: “Municipal administration [it applies also to city administrations]: 1) prepares drafts of the regulations and other acts rendered by the municipal assembly, president of the municipality

and municipal council; (...).” The wording of the provision, indeed, can lead to the wrong impression that the duty of M/C administrations is to prepare draft appellate decisions for M/C councils. However, a systemic interpretation of the law reveals that one would be wrong in coming to such a conclusion. The Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, no. 18/2017, 95/2018 and 2/2023) is the law governing decision-making processes in administrative proceedings. In Art. 40, para. 1, item 5, it explicitly prescribes that the authorised official (persons conducting and/or deciding in an administrative case) has to be exempted if they took part in the first-instance proceedings. This valid even in situations in which a person advanced to the second-instance authority after making an appealed first-instance decision. In other words, even if someone rendered a first-instance in administrative proceedings while s/he was employed in the M/C administration and was afterwards elected to the M/C council, such a person would have to be exempted from deciding on the administrative appeal against his/her own decision, even more so if that person is not even a member of the M/C council, which is the case we are analysing in this paper.

The second hypothesis was also confirmed. Namely, the main reason for the occurrence of this problem is the lack of capacities of the municipal or city council to successfully perform this work. More than two thirds of the addressees stated that the problem was caused by the lack of professional knowledge. To this number, we should add those who listed the political nature of the M/C councils (as was explained, this reason was intentionally inserted as euphemism for the lack of professional knowledge) and their overload as the causes of the issue. These reasons also demonstrate the lack of capacities to perform their appellate jurisdiction. Also, five out of 12 of the addressees who listed other reasons for the occurrence of the problem actually referred to the lack of professional knowledge and/or political nature of the M/C councils. Taken all together, this would mean that 92.55% of the addressees are of the opinion that the root of the problem lies with the fact that M/C councils lack capacities (in particular, human resources) to cope with their role of appellate administrative authorities.

This hypothesis was further confirmed by the proposals of addressees for remedying the problem. Almost all of the suggestions (38 out of 41) recommend an increase of the professional capacities of M/C councils via the engagement of lawyers and/or other professionals to assist them in their work. This recommendation has various forms – that M/C councils’ secretaries should be lawyers, that special legal services should be attached to them, that appellate commissions or other expert bodies should be formed or even that all or some of the members of the M/C councils should be lawyers. Nevertheless, their common thread is the increase of professional capacities through the engagement of lawyers and/or other experts in the work of M/C councils.

The third hypothesis was almost completely rejected. Smaller municipalities (around 10,000 residents) had approximately the same percentage of instances in which the problem occurred (68.42%) as those with around 30,000 residents (65%), and those with around and above 50,000 residents (62.5%). Minor discrepancies are in the range of statistical error ( $\pm 3\%$ ).

A somewhat more sensible difference in the occurrence of the issue exists if cities and municipalities (as a whole) are compared. In the cities, the issue was reported in 57.14% of instances, while this percentage was 65.33% in the municipalities. That still cannot be regarded as confirmation of the hypothesis, given the previously provided data for different categories of municipalities. Availing the reason behind this discrepancy between the cities and the municipalities could be one of the recommendations for future research. A potential explanation for this, which would have to be verified, is that cities, as regional economic, political and cultural centres, have better chances in drawing lawyers and other qualified professionals to their administrations and councils.

There is another recommendation for the further research of this topic. It could be the case that a difference with regard to the frequency of occurrence of the problem exists between economically developed and underdeveloped LGU (Serbia has five categories of LGU depending on their level of economic development, from developed to devastated, Milovanovic, 2020, p. 207). Specifically, this differentiation might be more important than differentiation on the basis of the size of the population. This is due to the fact that small LGU that are near larger city centres could more easily find necessary professionals to employ. The less economically developed LGU would, *prima facie*, have less chances to attract experts and, thus, a greater likelihood of encountering the problem.

### *Potential Solutions*

The analysis of potential solutions to the problem should start from the suggestions of the addressees. The first one was to attach secretaries or other staff to M/C councils that would have the necessary knowledge to deal with the administrative appeals. The second was to have members of M/C councils which are lawyers or otherwise have the needed expertise to handle the administrative appeals themselves. The third proposition was to create appellate commissions or other expert bodies, either for all or only certain fields, which would decide on the administrative appeals.

The second proposal should be dismissed due to the fact that that it would not only be extremely difficult to achieve in practice but it would also affect the democratic legitimacy of local representatives. M/C councils are elected by M/C assemblies, which are elected by the citizens. Their role is mainly political and they need not be experts, but they need to (or least should) be supported by the local population. Their counter-

part on the central state level is the (state) Government and, like the Government, they should be the bearers of the executive power on the basis of their democratic legitimacy derived from universal suffrage.

While being sound, the first and the third proposal fall short of being more than empty desires. As one of the addressees commented in the end of his questionnaire, even if there were sufficient financial resources for this, finding adequate personnel in every LGU seems unachievable (municipalities especially suffer from the lack of capacities, Djordjević, 2019, p. 720). The heads of M/C administrations are usually the only employees that must be lawyers (graduated jurists). Due to uneven regional development in Serbia (Stanković, Radenković-Jocić, 2017, p. 458), finding more lawyers and other experts could be unattainable for many of those LGU already suffering from this problem.

Nevertheless, the third proposal – the creation of appellate commissions or similar professional bodies that would take over the role of the second-instance administrative authorities in LGU could be a solution with one addition. Those LGU facing the problem of finding lawyers and other adequate staff, and especially small, underdeveloped municipalities, could jointly form appellate commissions (Milovanovic, 2020, p. 220). This would increase their chances of overcoming this obstacle, and it would also contribute to the harmonisation of the case law (*Ibid*). Moreover, the Law on Local Government (Arts. 88-88d) provides the legal basis for the creation of such joint appellate commissions, or the transfer of these authorisations (deciding on administrative appeals) from one LGU to another.

Ultimately, a potential solution would be to abandon administrative appeals to M/C councils altogether. They could be replaced by remonstrative legal remedy, i.e., the M/C administration could decide on the matter once again upon the parties' requests (whatever they would be called – objections, internal appeals, etc.). This happens in practice anyway, so it would not change the outcome. It could only reduce the workload of the M/C councils and expose the true decision-maker. Another option would be to abandon a remedy of any kind if it is not efficient. This would, at least, save the involved parties' time. They would be able to challenge the decisions of M/C administrations directly before the Administrative Court. Both of these options would, however, require empirical research and confirmation that legal remedies within LGU are not efficient in the sense of ending the dispute between the parties and the local government authorities. This is another area for future research. It would require examining how many administrative appeals are submitted to M/C councils, how many of them are accepted and how many appellants later do not initiate a judicial review procedure. Otherwise, without such empirical confirmation, one would risk an increase of the already large backlog of the Administrative Court, and the further prolongation of the dispute settlement resolution process.

### CONCLUSION

The authors conducted this empirical research to examine whether M/C administrations, as the first-instance authorities in administrative proceedings, are requested to prepare decisions on administrative appeals against their own decisions in the stead of actually competent second-instance authorities – M/C councils.

Three hypotheses were formulated – (a) that this problem occurs in practice, (b) that its cause is the lack of capacities of the M/C councils necessary for acting as second-instance, appellate administrative authorities, and (c) that the smaller the LGU is, the more often it encounters this problem.

In order to test the hypotheses, the authors prepared a questionnaire and distributed it to the heads of M/C administrations. The sample was representative. The results confirmed the first two hypotheses. The problem does exist and its root is the lack of capacities of M/C councils to decide upon administrative appeals. The lack of capacities encompassed predominantly the lack of professional expertise and, to a lesser extent, it was a result of work overload. The third hypothesis was rejected. The problem appeared almost equally in all municipalities, no matter the size of their population. A certain, more sensible difference has been noticed when cities, as the larger LGU, were compared to municipalities, as the smaller LGU. This, still, did not amount to the confirmation of the third hypothesis.

A potential solution to the problem would be the establishment of appellate commissions, which would be professional, not political authorities, and which would take over decision making in the second-instance administrative proceedings. This proposal was found in a number of questionnaires. The authors added that, in those LGUs, especially the smaller and less economically developed municipalities, where it is difficult to attract and retain qualified lawyers and other professionals, appellate commissions could be formed on a level of several LGUs. Existing legislation provides a legal basis for this.

Space for further research exists. It would be interesting to analyse why cities are less exposed to this issue. In addition, one could examine whether the frequency of the occurrence of the problem depends on the level of the economic development of an LGU. Lastly, the (non-)efficiency of the administrative appeal submitted to an M/C council could be studied. It would be considered efficient if it prevents a sufficient number of appellants from proceeding with the judicial review procedure.

ACKNOWLEDGMENT: The authors would like to express their gratitude to the Standing Conference of Towns and Municipalities, and especially to Maja Stojanović Kerić, for helping them distribute the questionnaire to the relevant local government civil servants, thus making this research possible.



## REFERENCES

- Cucić, V. (2011). Administrative Appeal in Serbian Law, *Transylvanian Review of Administrative Sciences*, 32 E, 50-74.
- Cucić, V. (2018). Fino podešavanje Zakona o opštem upravnom postupku [Fine Tuning of the Law on General Administrative Procedure]. *Anali Pravnog fakulteta u Beogradu*, 2, 139-163, [https://doi.org/10.51204/Anali\\_PFUB\\_18206A](https://doi.org/10.51204/Anali_PFUB_18206A).
- Dimitrijević, P., Lončar Z., & Vučetić, D. (2020). *Pravo lokalne samouprave* [Local Government Law. In Serbian]. Beograd, Službeni glasnik.
- Đorđević, S. (2019). Steering Urban Policy for Reaching Development and Social Welfare – Lessons from Scandinavia. *Teme*, XLIII(3), 719-731, <https://doi.org/10.22190/TEME190515044D>.
- Jerinić, J., Milosavljević, B. (2019). Normativna ovlašćenja organa lokalne samouprave u Srbiji [Normative Powers of the Local Government Authorities in Serbia]. *Pravni zapisi*, X(2), 399-412. <https://doi.org/10.5937/pravzap0-23969>
- Milosavljević, B. (2015). *Dva veka lokalne samouprave u Srbiji: razvoj zakonodavstva (1804-2014)* [Two Centuries of Local Government in Serbia: Legislative Development (1804-2014)]. Beograd, Stalna konferencija gradova i opština - Savez gradova i opština Srbije.
- Milovanović, D. (2020). Odnosi republičkih organa i organa jedinica lokalne samouprave u Srbiji [Relations between State Authorities and Local Government Authorities in Serbia]. *Kopaonička škola prirodnog prava Slobodan Perović, Unifikacija prava I pravna sigurnost*, Zbornik radova 33. Susreta Kopaoničke škole prirodnog prava Slobodan Perović, Beograd, Tom II, (pp. 205-226).
- Pešović, M. (2019). Gradske opštine u Republici Srbiji [City Municipalities in the Republic of Serbia]. *Pravni zapisi*, 1, 101-124, <https://doi.org/10.5937/pravzap0-21197>.
- Stanković, J., Radenković-Jocić, D. (2017). The Role of Business Environment in the Promotion of Investment Activities: Case Study of Cities and Municipalities in the Republic of Serbia. *Teme*, XLI(2), 457-473, <https://doi.org/10.22190/TEME1702457S>.
- Tomić, Z. Milovanović, D. & Cucić V. (2017). *Praktikum za primenu Zakona o opštem upravnom postupku* [Workbook for the Application of the Law on General Administrative Procedure]. Belgrade, Ministry of Public Administration and Local Government.
- Tytykalo, R. (2022). Functions of local government bodies. *Scientific Notes Series Law*, 1(12), 286-291. <https://doi.org/10.36550/2522-9230-2022-12-286-291>.

## СИМУЛИРАНА ЖАЛБЕНА ЗАШТИТА У ОКВИРУ СРПСКЕ ЛОКАЛНЕ САМОУПРАВЕ

Вук Цуцић, Добросав Миловановић

Универзите у Београду, Правни факултет, Београд, Србија

### Резиме

Аутори су спровели емпиријско истраживање како би испитали да ли се од градских/општинских управа, као првостепених органа у управном поступку, захтева да уместо заиста надлежних, другостепених органа – градских/општинских већа, припреме одлуке о жалбама у управном поступку против сопствених решења. Поред организационих, наведена појава ствара и правне проблеме, јер

се симулира постојање истинске правне заштите од стране вишег, непристрасног органа управе. Циљ истраживања био је потврђивање (не)постојања овог проблема, те његова учесталост, узроци и потенцијална решењ, за случај да се његово постојање докаже. Истраживање је спроведено слањем упитника начелницима и заменицима начелника општинских, градских и управа градских општина. Упитник се састојао од пет затворених и једног отвореног питања. Упитник је попуњаван на интернету, а учесницима анкете је обезбеђена потпуна анонимност. Узорак је највероватније (анонимност учесника не омогућава потпуно прецизно утврђивање величине узорка) обухватио више од половине свих јединица локалне самоуправе у Србији, што га чини репрезентативним. Скоро две трећине учесника (64%) је потврдило постојање проблема. Као главни разлози за појаву проблема наводе се недостатак професионалног знања (56%), политичка природа (19%) и преоптерећеност (11%) општинских/градских већа. Дакле, кључни налази истраживања су да проблем постоји, да је широко распрострањен и да проистиче из недостатка капацитета градских/општинских већа, као претежно политичких органа, да се носе са овом надлежношћу. Недостатак капацитета претежно обухвата недостатак професионалног знања, а у мањој мери је резултат преоптерећења, то јест, обима посла. Аутори су у раду поставили три хипотезе. Прва хипотеза је да проблем постоји, то јест, да се од општинских/градских управа захтева да припреме нацрт одлука о жалбама на сопствена ожалбена решења, уместо заправо надлежних органа – општинских/градских већа. Ова хипотеза је потврђена од стране скоро две трећине учесника анкете. Друга хипотеза, да је главни разлог за појаву проблема недостатак капацитета општинских/градских већа, такође је потврђена. Трећа хипотеза била је да учесталост појаве проблема зависи од величине јединице локалне самоуправе. Наведена хипотеза није потврђена. Као потенцијално решење проблема, аутори предлажу оснивање жалбених комисија за територију једне или више јединица локалне самоуправе.