

Quick Response Request

Submitted by: Association of Municipalities of the Republic of Croatia

Date: September 2010

Subject: Collecting information about the legal framework - laws, regulations, documents and best practices existing in NALAS countries about the social benefits and pension rights for Mayors and other executive persons in the municipalities after they quit the position or were not re-elected.

Background: Mayors and other executives in Croatian municipalities do not have any kind of privileges or special rights regarding their social status, retirement rules and pension amount after being elected and serving one, two or even more terms in the position. Sometimes they even have problems in finding another job which puts them in awkward position, especially in smaller communities where employment opportunities are not large. The association wanted to put this issue on decision making agenda and in order to do that they wanted to learn how it works in other NALAS countries.

1. Summary of Results

NALAS collected the requested information and it showed that in some countries the situation is similar to the one described above (Montenegro, Bulgaria), while in other the legislation provides different types of social benefits for the retired mayors (reduction in the pensioning age, special formula for calculation of their pension, payment of special compensation or appanage for a short period after the retirement, like for instance in Moldova and Serbia).

Country	apanage	coment
Albania	no	
Kosovo	no	Have proposal to the parliament, about apanage for period of 1 year
Moldova	yes	At the expiration of their mandates, the local elected person that activated at last 2 years in this function receives a unique indenisation equal to average salary in the national economy for the precedent year; 50 % from the function salary for every year of mandate.
FBIH	yes	1 year, amount of their own salary
Republic of Srpska	no	
Slovenia	no	
Macedonia	no	
Bulgaria	yes	according to their length of service
Romania	no	Have proposal to the parliament, about apanage for period of 6 to 9 months
Serbia	yes	6 months
Montenegro	yes	1 year
Turkey	no	

Croatia	yes	Mayor and Deputy Mayor exercise their rights to compensation of salary and social rights for a period of 180 days after the termination of the professional performance of duties. The amount is the average salary paid to them during the 12 months prior to relinquishing of duties.
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2. Analytical/Detailed Information

A) Montenegro

The Law on Local Self-Government ("Official Gazette of the Republic of Montenegro", No. 42/03, 28/04, 75/05 and 13/06 and "Official Gazette of Montenegro", No. 88/09 and 3/10):

"Article 86

The Mayor and deputy-mayor, the President of the Municipal Assembly and Chief Administrator shall have status of local officials.

Article 90

*In relation to **legal status of local officials**, local civil servants and employees, **legislation that regulates the status of state officials**, civil servants and employees shall be applied, unless otherwise provided for in the present law."*

The status of state officials is regulated by **the Law on Salaries and other Income of State and Public Officials** ("Official Gazette of Montenegro", No. 33/08 and 76/09):

"III. RIGHTS OF AN OFFICIAL, AFTER TERMINATION OF OFFICE

Article 10

State, or public official which professionally hold his/her office after termination of his/her office, shall have right to receive compensations for a year. The compensation shall be equal as a salary which s/he had for the last months of his/her office.

The compensation referred to in Para 1 of this Article shall be realized based on a personal request of the official. The request has to be filled no later than 30 days after termination of the office.

The compensation referred to in Para 1 of this Article shall be adjusted with a salary of a state, or public official during the duration of the right on use.

The right referred to in Para 1 of this Article shall be determined before its prescribed deadline, if beneficiary:

- enters into employment relationship;*
- is elected, or nominated, or appointed on other function, based on s/he will have salary;*
- achieves the right on pension.*

The right referred to in Para 1 of this Article can be extended for a year more, if the beneficiary will achieve the right on pension in that period."

The **Law on State Civil Servants and Employees** (“Official Gazette of Montenegro”, No. 50/08 and 86/09) has similar provisions for the heads of offices, which can be accordingly applied on the heads of local administration bodies.

In respect to a special status for achieving **the right to pension**, there are no legal provisions for mayors, nor any other officials.

B) Moldova

Law on state social insurance pensions № 156/14.10.1998 stipulates within art. 46 the conditions of pension establishment for local elected officials (i.e. mayors). Until recently, the mayors in the Republic of Moldova also were not granted any special conditions of retirement or benefits. This law was recently amended in favor of local elected officials.

The previous edition of art.46:

The insurant who had worked for at least 8 years as president, deputy president of rayon (county council, rayon executive committee), mayor (president of town, village soviet), who has reached the retirement age specified within art. 41 item (1) (62 years – for men and 57 years for women) and has accomplished the contribution period specified within art.42 item 1 (30 years both for men and women) benefits of pension calculated in amount of 75% from the total amount of monthly payments of the targeted person during the exercise of its function. The amount of all monthly payments is determined when establishing the pension.

Amended text of art. 46:

The insurant who had worked for at least 8 years as president, deputy president of rayon (county council, rayon executive committee), mayor (president of town, village soviet), who has reached the retirement age specified within art. 41 item (1) (62 years – for men and 57 years for women) and has accomplished the contribution period specified within art.42 item 1 (30 years both for men and women) **benefits from the right to anticipated retirement with at most 5 years before reaching retirement age stipulated by art. 41 item 1** and benefits of pension calculated in amount of 75% from the total amount of monthly payments of the targeted person during the exercise of its function. The amount of all monthly payments is determined when establishing the pension.

Art. 47 stipulates the contribution periods

Contribution period within civil service includes the periods:

c) of activity in leading positions within authorities of central and local public administration, held by appointment or election (member of Government, president and deputy of rayon, president and deputy of county council or of rayon executive committee, mayor and deputy mayor of municipality, town, commune, village, president of town, village soviet, praetor).

Art.25 of Law on status of local elected official stipulates that at the expiry of mandate, local elected official (i.e. the mayor) who has worked for at least two years in this position benefits from a unique compensation, equal to average monthly salary in the national economy for the previous year.

C) Federation of Bosnia and Herzegovina

ZAKON O IZBORU, PRESTANKU MANDATA, OPOZIVU I ZAMJENI NAČELNIKA OPĆINA U FEDERACIJI BOSNE I HERCEGOVNE

I. UVODNI DIO

Članak 1.

(Predmet Zakona)

Ovim Zakonom uređuje se izbor, prestanak mandata, opoziv i zamjena načelnika općine u Federaciji Bosne i Hercegovine (u daljnjem tekstu: načelnik).

II. GLAVNI DIO

Članak 2.

(Kandidiranje)

Svaki kandidat za načelnika kandidira se sukladno odredbama Izbornog zakona Bosne i Hercegovine ("Službeni glasnik BiH", br. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06 i 32/07) (u daljnjem tekstu: Izborni zakon).

Kandidati za načelnika se nalaze na istoj listi kandidata.

Redosljed kandidata za načelnika vrši se na način kako je to propisano odredbama Izbornog zakona.

Članak 3.

(Glasački listić)

Glasački listić za načelnika omogućava glasaču da svoj glas dodijeli samo jednom kandidatu.

Glasački listić sadrži:
datum izbora;

naziv organa za koji se vrši izbor;
imena svih kandidata, iza kojih je označen naziv stranke, odnosno koalicije, ili s oznakom neovisni kandidat.
Glasački listić će se smatrati važećim ili nevažećim u slučajevima kako je to propisano odredbama Izbornog zakona.

Članak 4.

(Izbor načelnika)

Načelnik se bira izravnim izborom od strane birača upisanih u Centralni birački spisak u toj općini. Za načelnika je izabran onaj kandidat koji je dobio najveći broj glasova.
Mandat načelnika traje četiri godine i vezan je za mandat saziva općinskog vijeća.
Mandat načelnika izabranog na prijevremenim izborima teče do redovitog isteka mandata općinskog vijeća.

Članak 5.

(Prestanak mandata načelnika)

Izabranom načelniku prestaje mandat prije isteka vremena na koje je izabran sukladno odredbi članka 1.10. Izbornog zakona

Članak 6.

(Opoziv načelnika)

Inicijativa s obrazloženjem za pokretanje postupka opoziva načelnika može biti pokrenuta od općinskog vijeća putem 1/3 vijećnika općinskog vijeća, ili 10% registriranih birača na području općine. Općinsko vijeće je dužno sve inicijative za pokretanje opoziva načelnika iz stavka 1. ovog članka staviti na dnevni red naredne sjednice općinskog vijeća.
Odluka o pokretanju opoziva načelnika donosi se većinom glasova od ukupnog broja vijećnika u općinskom vijeću. U slučaju prihvatanja inicijative općinsko vijeće dužno je donijeti odluku o pokretanju postupka opoziva načelnika u roku od 30 dana.

Ako općinsko vijeće donese odluku o prihvatanju inicijative opoziva načelnika, sprovodi se postupak u kojem građani odlučuju izravnim tajnim glasovanjem. Mandat načelnika prestaje ukoliko natpolovična većina građana, koji su glasovali, donese odluku o opozivu načelnika. Odluka građana je obvezujuća za općinsko vijeće i načelnika.

Članak 7.

(Zamjena načelnika)

Načelnika za vrijeme privremene izočnosti ili spriječenosti zamjenjuje dužnosnik ili djelatnik općinskih organa uprave, kojeg on ovlasti.

Dužnost načelnika u slučaju prestanka mandata u smislu članka 5. ovog Zakona i u slučaju opoziva u smislu članka 6. ovog Zakona, do ponovnog izbora načelnika, vrši osoba izabrana od strane općinskog vijeća natpolovičnom većinom od ukupnog broja članova općinskog vijeća.

Članak 8.

(Prijevremeni izbori)

Nakon prestanka mandata načelnika u smislu članka 5. ovog Zakona i opoziva načelnika u smislu članka 6. ovog Zakona, prijevremeni izbori za izbor načelnika moraju se održati u roku od 60 dana od dana prestanka mandata ili opoziva.

III. PRIJELAZNE I ZAVRŠNE ODREDBE

Članak 9.

(Primjena Izbornog zakona)

Opće biračko pravo (aktivno i pasivno) za izbor načelnika, tijela za provedbu izbora, ovjera i kandidiranje za izbor, provedba izbora, zaštita izbornog prava, verificiranje izbornih rezultata i ponovni, odgođeni i prijevremeni izbori regulirani su Izbornim zakonom i direktno se primjenjuju na izbor načelnika.

Članak 10.

(Obveza usklađivanja statusa)

Općinska vijeća dužna su uskladiti statute općina sa odredbama ovog Zakona u roku od 60 dana od dana stupanja na snagu ovog Zakona, a najkasnije do dana primjene ovog Zakona. Ukoliko općinska vijeća ne ispune obvezu iz prethodnog stavka direktno će se primjenjivati ovaj Zakon.

Članak 11.

(Izuzeće od primjene postupka opoziva)

Postupak opoziva načelnika ne može se voditi 100 dana nakon izbora načelnika, niti u izbornoj godini predviđenoj za lokalne izbore.

Članak 12.

(Pravo načelnika nakon prestanka dužnosti)

Nakon prestanka dužnosti načelnika, a do početka ostvarivanja plaće po drugom temelju ili do ispunjavanja uvjeta za mirovinu, načelnici imaju pravo:
sa radnim stažom do pet godina, tri mjeseca na naknadu plaće koju su ostvarivali dok su bili na javnoj dužnosti, a sljedećih devet mjeseci 50% od te plaće;
sa radnim stažom od pet do 15 godina, šest mjeseci naknadu plaće koju su ostvarivali dok su bili na javnoj dužnosti, a sljedećih šest mjeseci 50% od te plaće;
sa radnim stažom od 15 do 25 godina, devet mjeseci naknadu plaće koju su ostvarivali dok su bili na javnoj dužnosti, a sljedeća tri mjeseca 50% od te plaće;
sa radnim stažom preko 25 godina, 12 mjeseci naknadu plaće koju su ostvarivali dok su bili na javnoj dužnosti.

Članak 13.

(Stupanje na snagu)

Ovaj Zakon stupa na snagu narednog dana od dana objave u "Službenim novinama Federacije BiH". Danom stupanja na snagu ovog Zakona prestaje važiti Zakon o izravnom izboru općinskog načelnika u Federaciji Bosne i Hercegovine ("Službene novine Federacije BiH" broj 20/04).

PREDSJEDATELJ
DOMA NARODA
PARLAMENTA FEDERACIJE BiH

Stjepan Krešić

PREDSJEDATELJ
ZASTUPNIČKOG DOMA
PARLAMENTA FEDERACIJE BiH

D) Slovenia

The rights of municipal officials (mayor), after the end of mandate is determined by the Officials in the state administration bodies Act and regulated in the 14th Article, which states:

Official who has served as a professional and his function ended with the end of mandate or before that, and of objective reasons he can not immediately return to their former employer or the organization, or is unable to enter into an employment relationship for a job, according to level of his education for a certain type of profession, have the right to receive compensation of personal income in rate of personal income, which he would have received, if he would continue to perform the function.

The right from the last paragraph, the officer keeps till he returns to his former organization or the employer, or till he gets a new job, or till the fulfilling of requirements for retirement, but no more than three months.

The right from the first paragraph of this Article may be extended for nine months, if in that time the official fulfils requirements for retirement.

The mayor can after the end of his function, under the terms of that article above, receive compensation, if he can not return to the previous employer, or can not enter into an employment relationship. In accordance with point 14 of the Act, he has the right to receive salary compensation extended for nine months, if the former mayor at that time fulfils the requirements for retirement. The compensation is paid by the municipality in which he served as mayor.

After the end of the mandate is the return to the previous job not guaranteed, but only the right to return to their former employer or the organization on the workplace, according to level of his education for a certain type of profession. A particular workplace is part of the personal negotiation between the employer and the candidate (former mayor).

In the absence of job opportunities and the former mayor can not return to the employer or the organization, the mayor after the end of the mandate, has the right to get compensation in the amount of salary he received when he performed the function. The law does not provide a basis for any agreement on the provision and safeguarding of jobs.

Please note, that the enforcement of rights after the end of mandate, is only valid, if the officer served more mandates continuously, so that between one and the second mandate was no period without official status.