

## A CITY'S DECLINE: TOWARDS THE PREVENTION OF DETERIORATION OF PUBLIC SPACES IN SARAJEVO NEIGHBORHOODS<sup>1</sup>

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The visible decline of public spaces in urban neighborhoods in Sarajevo is a result of a number of factors, including an imprecise normative framework and a lack of standards for certain communal services, as well as insufficient mechanisms of control of the delivery and quality of services in the areas of communal cleanliness and the maintenance of public areas. In addition, there are a number of obvious obstacles to the sanctioning of offences of littering, damaging or destroying urban spaces. Moreover, mechanisms of communication between responsible institutions and the residents of Sarajevo are wanting. This policy brief provides recommendations that aim to improve the current regulation and practice in order to prevent further physical deterioration of public spaces. It is primarily intended for the representatives of cantonal and local authorities in Sarajevo.

### SUMMARY

Unkempt, littered, destroyed public spaces are a normal sight in urban residential areas of Sarajevo. Research to date suggests the general dissatisfaction of citizens of Sarajevo with the state of cleanliness of their neighborhoods, the overall state of green areas and their maintenance.<sup>2</sup> Improper waste disposal, as well as the conscious destruction of public and private property, including damaged façades and broken objects in parks and children's playgrounds, contribute to the diminished look of public spaces in urban Sarajevo neighborhoods.<sup>3</sup> The problem appears even greater when considering that the deterioration of public spaces reduces residents' quality of life and can lead to further physical disorder.<sup>4</sup>

In order to establish the reasons for these problems and offer potential solutions, Analitika - Center for Social Research conducted research

on different aspects of managing urban public spaces in Sarajevo in 2012 and 2013, including competences for services in the fields of communal cleanliness and maintenance of public areas and the accompanying legal framework, service planning, oversight mechanisms of the quality and delivery of services, mechanisms of coordination and cooperation between service providers, institutions at different levels of government, inspection bodies and local communities (*mjesna zajednica*) as well as mechanisms of sanctioning of the destruction and littering of areas and objects within neighborhoods. "Access points" that are available to the residents of Sarajevo to communicate with the authorities, local communities, service providers and inspection bodies were also considered.<sup>5</sup> A special focus of the research were the most obvious aspects of physical deterioration of public spaces and objects that



<sup>1</sup> This policy brief is based on the report of Analitika - Center for Social Research titled *Degradacija grada: Razlozi za propadanje javnih prostora u sarajevskim naseljima i prijedlozi rješenja* [A city's decline: Reasons for the deterioration of public spaces in Sarajevo neighborhoods and proposed solutions], written by Mirna Jusić and published in 2013.

<sup>2</sup> See Civil Society Promotion Center, *Ispitivanje zadovoljstva korisnika javnih usluga u općini Novo Sarajevo; Ispitivanje zadovoljstva korisnika javnih usluga u općini Novi Grad; Ispitivanje zadovoljstva korisnika javnih usluga u općini Centar; Ispitivanje zadovoljstva korisnika javnih usluga u općini Stari Grad* [For all: Public service user satisfaction polling in municipalities Novo Sarajevo, Novi Grad, Center and Stari Grad] (Sarajevo: CPCD, 2012). Citizens of these municipalities have expressed (partial) satisfaction with waste collection and transportation services.

<sup>3</sup> See, for example, Criminal Policy Research Centre (CPRC), *Analiza kriminaliteta na području općine Novi Grad Sarajevo* [Analysis of Crime on the Territory of the Novi Grad Sarajevo Municipality] (Sarajevo: CPRC, 2011), pp. 40–41.

<sup>4</sup> Kees Keizer, Siegwart Lindberg and Linda Steg, "The Spreading of Disorder," *Science*, Vol. 322 (12 December, 2008), p. 1681.

<sup>5</sup> As part of the research, semi-structured interviews were conducted with the representatives of the competent cantonal ministries, communal inspection organs of Canton Sarajevo and the City of Sarajevo, departments of city municipalities and the City of Sarajevo in the area of communal affairs and environmental protection, cantonal public communal enterprises (*kantonalna javna komunalna preduzeća* - KJKP) "Park" and "Rad", three local communities on the territory of the municipalities Center, Novi Grad and Novo Sarajevo, companies in charge of managing residential buildings in Sarajevo, as well as non-governmental organizations dealing with environmental protection and public service issues. In addition, four focus groups with residents of Sarajevo neighborhoods were organized. For details, see Mirna Jusić, *A city's decline*, pp. 18–20.

belong to them, including unmaintained public areas and green areas within neighborhoods; unmaintained outside areas that belong to residential buildings; illegal waste disposal on public areas and outside areas belonging to residential buildings; destroyed and damaged façades and other external parts of residential buildings, as well as destroyed and damaged objects located on public and green areas.<sup>6</sup>

This policy brief gives an overview of the main results of the research, and provides a number of recommendations for the improvement of the current legislation and management mechanisms of public spaces in Sarajevo neighborhoods.

### PROBLEMS OF COMPETENCE

In Canton Sarajevo, the issue of the distribution of competences between the Canton, the City of Sarajevo, and municipalities has still not been solved. In Canton Sarajevo, within 12 months of the adoption of the Law on the principles of local self-government in Federation BiH (hereafter: FBiH) from 2006, competences and the territorial organization of the City, municipalities that are a part of the City and those that are not, as well as their mutual relationship and means of financing, were supposed to be determined.<sup>7</sup> However, this was not done by May 2013; a proposal of the Law on local self-government of the Canton Sarajevo should be on the cantonal assembly's agenda in September 2013.<sup>8</sup>

According to the Law on the principles of local self-government in FBiH, the management, financing and improvement of services and objects of local communal infrastructure, the drafting and implementation of housing policy and the analysis of public order, security of persons

and property all represent own competences of municipalities and towns/cities as units of local self-government, which cannot be challenged by federal or cantonal authorities, except in cases and within the framework of the constitution and the law.<sup>9</sup> According to the Constitution of Canton Sarajevo, the Canton has exclusive competences for "setting policies concerning the regulation and provision of public services,"<sup>10</sup> and communal services are "performed as public services" according to the Law on communal services (2004). However, the Canton is competent for the provision of most communal services.<sup>11</sup> Housing policy is also an exclusive competence of the Canton, as well as the establishment and oversight of police forces.<sup>12</sup> However, according to the cantonal Law on local self-government, the municipality, within its scope of self-government, *inter alia*, especially conducts communal and other services, ensures public order and sets urban and housing policy that is of significance for the municipality and its development.<sup>13</sup> Nevertheless, neither the City nor municipalities in Canton Sarajevo have significant competences according to the Law on communal services.<sup>14</sup> On the other hand, it is somewhat surprising that ensuring public order falls within the competences of municipalities, given that police forces are within the jurisdiction of the Canton. The Law on the principles of local self-government in FBiH only cites as an own competence of units of local self-government the analysis of the state of public order. In line with the cantonal Law on offences against public order, which gives municipalities the possibility to prescribe additional offences through their own decisions,<sup>15</sup> and the Law on local self-government, city municipalities have adopted almost identical decisions on offences against public order, which establish offences that have not been covered by the mentioned cantonal law, and that also relate to the

<sup>6</sup> However, it is important to emphasize that there is a number of other problems that pertain to the generally bad condition of urban neighborhoods in Sarajevo, such as illegal construction, destroyed or abandoned objects, inadequate care of stray dogs, etc. Such a wide spectrum and complexity of problems extends the ambition and the methodological grounds of the research conducted.

<sup>7</sup> "Zakon o principima lokalne samouprave u Federaciji BiH" [Law on the principles of local self-government in Federation BiH], *Official Gazette of Federation BiH* 49/06, Article 60.

<sup>8</sup> Assembly of Canton Sarajevo, "Program rada Skupštine Kantona Sarajevo za 2013. godinu" [The work program of the Assembly of Canton Sarajevo for 2013], 2013.

<sup>9</sup> "Law on the principles of local self-government in Federation BiH," Article 8.

<sup>10</sup> "Ustav Kantona Sarajevo" [Constitution of Canton Sarajevo], *Official Gazette of Canton Sarajevo* 1/96, 2/96, 3/96, 16/97, 14/00, 4/01, 28/04, Chapter III, Article 12.e).

<sup>11</sup> "Zakon o komunalnim djelatnostima" [Law on communal services], *Official Gazette Canton Sarajevo* 31/04 and 21/05 – correction, Article 5 and Article 7.

<sup>12</sup> "Constitution of Canton of Sarajevo," Chapter III, Article 12.d), Article 12.a).

<sup>13</sup> "Zakon o lokalnoj samoupravi Kantona Sarajevo" [Law on local self-government of Canton Sarajevo], *Official Gazette of Canton of Sarajevo* 19/97, 13/99 and 22/00, Article 9. The law does not list competences of the City of Sarajevo that, within its self-government jurisdiction, is to perform tasks determined by the City Statute and by law. *Ibid*, Article 10.

<sup>14</sup> For example, the City and municipalities ensure the provision of the following communal services pertaining to public areas within neighborhoods: decoration, maintenance of public fountains and public toilets, maintenance of public clocks. "Law on communal services," Article 9.

<sup>15</sup> "Zakon o prekršajima protiv javnog reda i mira" [Law on offences against public order], *Official Gazette of Canton Sarajevo* 18/07, 07/08, Article 13.

littering and destruction of areas and objects. In practice, officials of the police administration of the Ministry of Interior of Canton Sarajevo act in line with both the cantonal law and the municipal decisions on offences against public order.

Given the fact that the issue of competences has still not been solved, numerous requests for the protection of the right to local self-government that have over the years been submitted to the Constitutional Court of FBiH by the City of Sarajevo and municipalities within the Canton do not come as a surprise. According to a decision adopted by the Court in 2010, acting in line with a request of the mayor of the Center Sarajevo Municipality, the Court established that the Canton had violated the right to local self-government of this municipality because it had not acted in line with the provisions of the Law on the principles of local self-government in FBiH, according to which the Canton was supposed to harmonize its laws and bylaws with this law, in line with deadlines prescribed, and to transfer competences to units of local self-government in line with this law.<sup>16</sup> In a partial decision adopted in 2010, the Court determined that a number of laws and other acts adopted at the cantonal level had violated the right of the City to local self-government. However, in relation to the disputed laws on communal services and communal cleanliness, the Court decided that it is necessary to collect additional information, and to adopt a decision concerning these two laws later, which has not been done to date.<sup>17</sup> However, not even the Court's decisions in favor of local self-government units have substantially helped accelerate the process of reallocating competences between different levels of government in the Canton, given that key decisions have not been implemented to date.

Although there are potentially other reasons as well, it appears that the conflict of competences between the Canton, the City and municipalities in the Canton is to certain degree slowing down the process of adoption of important laws and bylaws. For example, according to an explanation of the Ministry of Justice and Administration

of Canton Sarajevo, the Law on the amendments to the Property law of Canton Sarajevo has still not been adopted, given that its adoption depends on the Law on local self-government (as competences and financial means for their execution need to be determined and transferred to units of local self-government), and as the adoption of the previously mentioned supplementary decision of the Constitutional Court of FBiH with respect to communal services and communal cleanliness is still expected.<sup>18</sup> According to the report on the work of the Government of Canton Sarajevo for 2010, the competent ministry did not follow the procedure for the adoption of laws further after preparing the text of the Law on the maintenance of cleanliness and communal waste management, as the mentioned Constitutional Court decision was being waited for.<sup>19</sup> However, the draft law was submitted to the Assembly for consideration in 2011, and the Office for Legislation of the Government of Canton Sarajevo, in its opinion of the draft, recommended that during the public hearing phase, concrete tasks that are to be performed by municipalities, the City and the Canton be determined through consultations with units of local self-government, and that, in the case that the Court adopts the decision relating to the laws on communal cleanliness and communal services, the one proposing the law, according to need, includes potential remarks and suggestions of the Court in the body of the law.<sup>20</sup> This law has still not been adopted.

It appears that, in general, there are different conceptions concerning the model of service delivery in the communal sector, which can also pose a challenge to the resolution of the competence issue. When looking for the best solution for the distribution of competences, it is especially important to have in mind the distinctiveness of the current administrative setup of Sarajevo, with two levels of government carrying the the status of a unit of local self-government existing on the same territory.<sup>21</sup> The City and municipalities that are a part of it surely shouldn't perform the same competences, but rather, either the City or the municipalities should be responsible



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<sup>16</sup> Constitutional Court FBiH, Odluka U-14/09 (Presuda) i Rješenje Suda o neizvršenju presude [Decision U-14/09 (Judgment) and Court Decision on the non-execution of the judgment], 12 October, 2010; 24 May, 2011.

<sup>17</sup> Constitutional Court FBiH, Odluka U-21/09, Djelimična presuda i Rješenje Suda o neizvršenju presude [Decision U-21/09, Partial Judgment and Court Decision on the non-execution of the judgment], 27 September, 2010; 6 March, 2012.

<sup>18</sup> Ministry of Justice and Administration of Canton Sarajevo, odgovor na poslaničko pitanje zastupnika Ivana Brigića [Response to the delegate question of representative Ivan Brigić], 11 July, 2010.

<sup>19</sup> Government of Canton Sarajevo, "Izveštaj o radu Vlade za 2010. godinu" [Report on the work of the government for 2010], 2011, p. 11.

<sup>20</sup> Office for Legislation of the Government of Canton Sarajevo, Stručno mišljenje na Nacrt Zakona o održavanju čistoće i upravljanju komunalnim otpadom [Expert opinion of the Draft Law on the maintenance of cleanliness and communal waste management], 15 July, 2011, Items 2.a) and 3.

<sup>21</sup> Bodo Weber, "Između ustavno-pravnog haosa i EU integracija: Sarajevo kao ogledalo države" [Between constitutional and legal chaos and EU integration: Sarajevo as a mirror of the state], *Novi pogledi*, no. 20 (Fall 2012), ACIPS, p. 8.

for them.<sup>22</sup> Despite what the final model of communal service delivery may be – consolidated, where services are provided by one instance, or fragmented, where a number of local jurisdictions provide services in mutual coordination and cooperation – the model should be based on the principles of efficiency, effectiveness and equity. Currently, these principles are not seriously considered in the competence debate.

### THE SHORTCOMINGS OF THE CURRENT LEGAL FRAMEWORK

According to the Law on communal services, Canton Sarajevo is responsible for ensuring the performance of communal services such as the maintenance of cleanliness in public areas (including green and recreational areas), the maintenance of public areas, the collection and transportation of communal waste, as well as its disposal at the landfill.<sup>23</sup> The Government of Canton Sarajevo was supposed to adopt bylaws that would further regulate the performance of communal services within two years of the Law on communal services' entry into force.<sup>24</sup> However, although certain bylaws that relate to other communal services were adopted or are in the process of being adopted, this is not the case for the mentioned services.

The law on communal cleanliness (1997) pertains to the maintenance of public cleanliness, which includes the maintenance of cleanliness of public areas and "other areas" (courtyards, common facilities of residential buildings, etc.), the cleaning of communal waste from public areas and its collection, as well as the transportation and disposal of communal waste.<sup>25</sup> Enterprises working in the field of communal cleanliness are responsible for the maintenance of cleanliness of public areas,<sup>26</sup> and in practice, KJKP "Rad" and KJKP "Park" are in charge of maintaining communal cleanliness of public areas in Sarajevo mu-

nicipalities, in line with annual programs on the maintenance of cleanliness that are prepared by the Ministry of Spatial Planning and Environmental Protection of Canton Sarajevo, as well as operational plans adopted by the enterprises in line with the programs.<sup>27</sup> The maintenance of public areas, which includes tasks of landscaping and regular maintenance of green and recreational areas, public traffic areas and other public areas,<sup>28</sup> is neither regulated by the Law on communal cleanliness, nor prescribed in a more detailed manner by the Law on communal services. The maintenance of green areas is currently prescribed by the still valid Decision on the maintenance of green and recreational areas (1987) of the former City of Sarajevo.<sup>29</sup> A new Law on the maintenance of cleanliness and communal waste management is now in a draft phase; the law is, *inter alia*, to be adopted in order to harmonize the maintenance of cleanliness and communal waste management with the obligations stemming from new FBiH regulations, including the Law on waste management of FBiH.<sup>30</sup>

When it comes to outside areas that belong to residential buildings, the Law on communal cleanliness has prescribed that the maintenance of cleanliness of these areas is to be conducted by their users.<sup>31</sup> According to the Law on the maintenance of common parts of a building and building management (2012), maintaining cleanliness surrounding the building on areas that are not public falls under the activities of regular maintenance that are performed by the company in charge of managing the building; however, the order of works that are to be performed as part of regular maintenance are determined by law and technical regulations, as well as by flat owners based on the need and condition of the building.<sup>32</sup> The interpretation of the law depends on the formulation and the perspective – on the one hand, one could say that there is no explicit responsibility of including the maintenance of

<sup>22</sup> According to the working material of the proposal of the Law on local self-government from 2011, it was foreseen that the City of Sarajevo, *inter alia*, takes over competences for numerous communal services. Ministry of Justice and Administration of Canton Sarajevo, Radni materijal prijedloga Zakona o lokalnoj samoupravi [Working material of the proposal of the Law on local self-government], March 2011, Article 9 and Article 10.

<sup>23</sup> "Law on communal services," Article 7.

<sup>24</sup> *Ibid*, Article 52 and Article 4.

<sup>25</sup> "Zakon o komunalnoj čistoći" [Law on communal cleanliness], *Official Gazette of Canton Sarajevo* 11/97, Article 2 and 4.

<sup>26</sup> *Ibid*, Article 3 and Article 6.

<sup>27</sup> *Ibid*, Article 8.

<sup>28</sup> "Law on communal services," Article 4.13.

<sup>29</sup> "Odluka o održavanju zelenih i rekreacionih površina" [Decision on the maintenance of green and recreational areas], *Official Gazette of the City of Sarajevo* 06/87. KJKP "Park" maintains these areas in line with the annual program of maintaining green areas on the territory of six municipalities, which pertains both to the maintenance of cleanliness of these areas and their overall maintenance.

<sup>30</sup> Government of Canton Sarajevo, Nacrt Zakona o održavanju čistoće i upravljanju komunalnim otpadom [Draft law on the maintenance of cleanliness and communal waste management], 2011.

<sup>31</sup> "Law on communal cleanliness," Article 3.

<sup>32</sup> "Zakon o održavanju zajedničkih dijelova zgrade i upravljanju zgradom" [Law on the maintenance of common parts of a building and building management], *Official Gazette of Canton Sarajevo* 03/12, Article 24.



cleanliness of these areas in the regular maintenance activities, and on the other hand, that flat owners are responsible to agree with the building manager on the principles and the manner of maintaining the cleanliness of these areas. In practice, the building manager will not keep these areas clean if this previously has not been agreed on with the flat owners. The law does not prescribe the responsibility of regular maintenance and landscaping of green areas that belong to the building, which, according to the mentioned Decision on the maintenance of green and recreational areas, should be done by the “users” of such areas.<sup>33</sup> Maintenance is in part regulated by the Decision on house rules in residential buildings of the City of Sarajevo, which defines the responsibilities of the residents and the chosen manager to, in line with a common agreement, clean and maintain the outside areas that belong to the building.<sup>34</sup>

## PLANNING AND OVERSIGHT OF SERVICES IN THE CONTEXT OF PUBLIC SPACE MANAGEMENT

As previously stated, communal enterprises act in line with the annual programs and operational plans on the maintenance of cleanliness, or the maintenance of green areas, respectively, that should be drafted, apart from the respective ministry and enterprises, with local authorities as well.<sup>35</sup> Currently, these services are performed in line with priorities (categories).<sup>36</sup> However, a number of representatives of different institutions and organizations interviewed pointed out that there are public spaces in the city that are not included in the programs and plans of communal enterprises, and are thus not cleaned and maintained. These are usually areas which are not considered to be a priority with respect to the available budgetary means, or green areas that have not been landscaped and for which a final purpose has not been determined. This is not surprising given that the maintenance and the cleaning of such areas is considered to fall under “joint communal consumption,”<sup>37</sup> which is to be financed from a communal fee which, although foreseen by the Law on communal services, still

has not been introduced. In other words, these services are currently financed from the budget of the Canton, and the budgetary means are not sufficient to cover all public areas. Such a model of financing is not sustainable in the long run, and some unkempt areas, such as illegal landfills, are already becoming a source of significant problems. Some municipalities sign on an annual basis contracts or agreements with public enterprises on the maintenance or landscaping of green areas not included in annual work programs of the communal enterprises, and through the project “Work for all” of the City of Sarajevo, KJKP “Park” and KJKP “Rad” have in the previous years employed workers from the unemployment bureau to clean, landscape or maintain public areas that have not been included in the regular maintenance programs. Such activities help to, at least in part, restore usually unkempt areas.

The implementation of the Law on communal services, the Law on communal cleanliness and maintenance programs and operational plans is under the oversight of the Ministry of Spatial Planning and Environmental Protection.<sup>38</sup> Public communal enterprises are responsible for submitting periodical reports on their work to the Ministry. In addition, the Ministry has employees in charge of monitoring, who visit local communities based on a random sample, and check whether respective communal services are being provided. According to an interviewed representative of the Ministry, the situation on the ground matches the monthly reports that communal enterprises submit, and in principle, they are very satisfied with the work of communal enterprises in these service areas in the Ministry.<sup>39</sup> In addition to the Ministry, supervisory boards of the enterprises are to monitor their work, and based on the reports, suggest measures for improvement. However, according to the Report on the audit of financial reports for KJKP “Park,” published in 2009 by the Audit Office for the Institutions of FBiH, “reports on performed works and services are annually submitted to the competent ministry, but the latter does not conduct oversight, monitoring and verification of the executed quantities according to individual phases of work.” At that moment, the Audit Office could

<sup>33</sup> “Decision on the maintenance of green and recreational areas,” Article 4.

<sup>34</sup> “Odluka o kućnom redu u stambenim zgradama” [Decision on house rules in residential buildings], *Official Gazette of the City of Sarajevo* 31/06, Article 17, a–h. The decision contains relatively detailed provisions on how these areas are to be maintained.

<sup>35</sup> “Law on communal cleanliness,” Articles 7 and 27.

<sup>36</sup> For example, the frequency of activities of cleaning and washing public roads is determined according to the traffic load of a given road; the frequency of collecting waste is greater in the old town or the central part of the city in relation to hilly parts of the city, etc.

<sup>37</sup> On the other hand, the services of collection, transport and disposal of communal waste at the landfill are financed through individual communal consumption, i.e. the users pay for these services to the service provider directly.

<sup>38</sup> “Law on communal cleanliness,” Article 58; “Law on communal services,” Article 42.

<sup>39</sup> Interview with a representative of the Ministry of Spatial Planning and Environmental Protection of Canton Sarajevo, 2 October, 2012.

not confirm whether or not the monitoring of the execution of the scope and quantity of performed services was sufficiently prescribed given that internal acts of the enterprise did not completely regulate and define all norms and procedures of monitoring and oversight of all phases of work.<sup>40</sup> Acknowledging the possibility that the existing oversight mechanism was improved in the meantime, it still appears that oversight of the work of communal enterprises in general is not sufficient to ensure that all tasks of regular maintenance are fully executed. According to an analysis prepared by the Ministry, "due to inadequate staffing of the Ministry of Spatial Planning and Environmental Protection, this type of oversight was not adequately implemented, which partially reflects the overall condition of this area."<sup>41</sup>

The current regulatory framework also has not defined sufficiently clear standards of quality of the mentioned services given that relevant bylaws of the Law on communal services have not been adopted.<sup>42</sup> According to this law, the "Canton Government is responsible to determine standards and adjust the quality and level of communal services in line with price levels."<sup>43</sup> The annual programs and plans determine priorities, the frequency and type of activities of cleaning or maintenance of public spaces. In that sense, programs and plans, at least according to persons interviewed, also represent service quality standards for the public enterprises. The enterprises participate in the drafting of programs with suggestions and information on technical conditions and possibilities for work. However, given that the current legal framework does not provide precise standards, one may pose the question of whether at all and in what way quality of service delivery is overseen.

The Inspectorate for Urbanism, Construction, Communal Services and Ecology of the Cantonal Administration for Inspection Issues (hereafter: cantonal communal inspectorate) is responsible for inspection oversight of the execution of responsibilities of communal enterprises in line with laws on communal services and communal cleanliness. According to a representative of the inspectorate, their department does oversee the work of communal enterprises and

there are currently no significant problems with the regular maintenance of cleanliness. However, regular inspection oversight of the work of communal enterprises is not completely being implemented due to insufficiently precise provisions of current regulations and a lack of bylaws for this area. Inspection oversight is conducted in case of reported problems, either upon request of the service user or the direct, on-the-ground insight of the communal inspector or communal monitor. This does not allow the inspectors to act in a preventive manner, which could be ensured through the adoption of necessary bylaws.<sup>44</sup> For example, the provider of a communal service, according to the Law on communal services, is to be sanctioned with a fine if they do not ensure the permanent and quality delivery of communal services; if they do not maintain communal objects and installations in a functional state; if they do not take measures to preserve and protect the environment; and do not ensure the publicity and transparency of work. According to a representative of the communal inspectorate, such provisions are not a precise enough basis for sanctioning.<sup>45</sup> This concrete article lists general principles of service delivery, but not concrete steps of their implementation. On the other hand, regular inspection oversight pertaining to the work of communal enterprises is also made difficult by the wide spectrum of inspection oversight in the area of communal services in Canton Sarajevo, as well as the insufficient capacities for oversight, given that only three inspectors are employed in the cantonal inspectorate that oversees communal services.

## CHALLENGES TO SANCTIONING OF THE LITTERING AND DESTRUCTION OF URBAN SPACES

Research conducted has shown that the city is facing the problem of destruction and littering of public spaces; at the same time, there are significant obstacles to the sanctioning of offences.

**Inadequate sanctioning policies:** Different acts of littering, damage and destruction of public and other areas, which represent offences for which private and legal persons are punished with a fine, are regulated by the Law on communal

<sup>40</sup> Audit Office for the Institutions of FBiH, *Izveštaj o reviziji finansijskih izvještaja KJKP "Park" d.o.o. za 2008. godinu* [Report on the audit of financial reports of KJKP "Park" Ltd. for 2008], no. 061/09, 2009, pp. 8–9.

<sup>41</sup> Government of Canton Sarajevo, *Analiza provođenja Zakona o komunalnim djelatnostima* [Analysis of the implementation of the Law on communal services], 2009, p. 10.

<sup>42</sup> However, the Law on communal cleanliness does establish certain standards pertaining to this area, while the Decision on the maintenance of green and recreational areas does include technical conditions for the maintenance of these areas.

<sup>43</sup> "Law on communal services," Article 14.

<sup>44</sup> Written comment of the representative of the cantonal communal inspectorate on the working version of the report, 26 April, 2013.

<sup>45</sup> "Law on communal services," Article 5 and Article 48.

cleanliness.<sup>46</sup> Offences that pertain to the littering, damage and destruction of public areas are also prescribed by municipal decisions on public order,<sup>47</sup> which are to be enforced by the police administration in some municipalities, and by both the police and inspection organs in others.<sup>48</sup> In other words, municipal decisions basically pertain to the same or similar offences as prescribed by the Law on communal cleanliness, the latter to be sanctioned by the cantonal communal inspectorate. Apart from the redundancy of such solutions, it appears that it is difficult to allocate the responsibility of one organ for the sanctioning of offences such as the destruction of seedlings, drawing on buildings or illegal wasted disposal. However, as some of the persons interviewed confirmed, in practice, it is the police that usually reacts in the case of offences that relate to the damage or destruction of property, while the communal inspection reacts in case of offences that relate to communal cleanliness. When it comes to graffiti on façades of residential buildings, a provision of the Decision on house rules in residential buildings is especially absurd: residents are responsible for “preventing the writing of graffiti, the dirtying or damaging of façades and building entrances, and for fixing the damage.”<sup>49</sup> In other words, residents not only have to finance the repair of the destroyed property, but could even be punished for not preventing the damage, although it is not clear how they are even to do so. It is also questionable how the City’s communal inspectorate, responsible for oversight of this decision’s implementation, can enforce such a provision in practice: will it investigate which residents were present in the building at the time of the offence and sanction those residents for not reacting, or would it collectively sanction all residents?<sup>50</sup>

**The problem of communal monitors’ competences:** Direct oversight of the condition of communal cleanliness is the responsibility of communal monitors, employees of KJKP “Park” and KJKP “Rad.” In line with the Law on communal cleanliness and a special rulebook, the monitors identify persons caught conducting an act against the provisions of the law and other supporting acts, write a record or an official note and report to the cantonal inspectorate responsible for communal inspection.<sup>51</sup> A couple of interviewed representatives of “Rad” and “Park” described the communal monitors as the “extended arm of the communal inspectorate.” Acknowledging the significance of the work of the communal monitors, which is evident from the number of records and official notes annually submitted to the communal inspectorate,<sup>52</sup> and especially having in mind that the number of communal monitors is small,<sup>53</sup> the fact that they do not have competences to sanction the offenders on the spot can evoke a perception among citizens that communal monitors are powerless and that offenders go unpunished. Representatives of “Rad” do not agree with such views, as they consider the monitors’ records as a basis for sanctioning, what allows them to have a direct effect on the protection of communal cleanliness.<sup>54</sup>

Other countries in the region, such as Montenegro,<sup>55</sup> and even other parts of Bosnia and Herzegovina, such as Republika Srpska,<sup>56</sup> have introduced a communal police with more significant competences for sanctioning offenders in comparison with the communal monitors; the competences of communal monitors in the City of Zagreb<sup>57</sup> can be compared with those of the cantonal communal inspectorate. The Government of Canton Sarajevo

<sup>46</sup> “Law on communal cleanliness,” Articles 67–69.

<sup>47</sup> “Odluka o prekršajima protiv javnog reda i mira” (Novo Sarajevo Municipality), *Official Gazette of Canton Sarajevo* 35/07, Article 5(2); “Odluka o prekršajima protiv javnog reda i mira” (Stari Grad Municipality), *Official Gazette of Canton Sarajevo*, 39/07, Article 5(2); “Odluka o prekršajima protiv javnog reda i mira” (Centar Sarajevo Municipality), *Official Gazette of Canton Sarajevo*, 38/07, Article 5(2); “Odluka o prekršajima protiv javnog reda i mira” (Novi Grad Municipality), *Official Gazette of Canton Sarajevo*, 04/08, Article 5(2) [For all: Decisions on offences against public order].

<sup>48</sup> *Ibid*, Article 8 (for all decisions).

<sup>49</sup> “Decision on house rules in residential buildings,” Article 11.b).

<sup>50</sup> This was also confirmed in an interview with a representative of the communal inspectorate of the City of Sarajevo, 9 October, 2012.

<sup>51</sup> “Law on communal cleanliness,” Articles 60–64. Ministry of Spatial Planning, Housing and Communal Affairs of Canton Sarajevo, “Pravilnik o zadacima i načinu obavljanja dužnosti komunalnih redara, načinu odijevanja i oznakama, te obliku i sadržaju legitimacije komunalnog redara” [Rulebook on the tasks and methods of performing the duties of communal monitors, their attire and markings, and the form and content of identifications of a communal monitor], no: 05-023-191/97, 24 October, 1997, Article 2.

<sup>52</sup> For example, see T.C. “Nemaran odnos prema zelenilu: Ekoredari u 2012. imali skoro 5.000 intervencija u Sarajevu” [A negligent attitude towards the environment: In 2012, eco-monitors had almost 5000 interventions in Sarajevo], *Portal 24sata.info*, 09 February, 2013.

<sup>53</sup> There are currently 35 communal monitors in KJKP “Rad” and 20 in KJKP “Park.”

<sup>54</sup> Written comments of the representatives of KJKP “Rad” on the working version of the report, 29 April, 2013.

<sup>55</sup> See the Union of Municipalities of Montenegro, “Komunalna policija u mojoj opštini” [Communal police in my municipality], 2009.

<sup>56</sup> See “Zakon o komunalnoj policiji” [Law on communal police], *Official Gazette of Republika Srpska* 85/03.

<sup>57</sup> See “Odluka o komunalnom redu” [Decision on communal order], *Official Gazette of the City of Zagreb* 04/08, 05/08, 08/09, 17/09, 16/10 – Decision of the Constitutional Court of the Republic of Croatia, 17/10, 05/11, 08/11 and 05/12, Article 142.

has instructed the Cantonal Administration for Inspection Issues to initiate, jointly with the relevant cantonal ministries, the formation of a communal police. However, it appears that to date, no significant progress has been made to that end.<sup>58</sup>

According to an analysis prepared by the competent ministry, the way that the communal monitors are organized is not adequate, and there is a need to "reassess their competences and organization."<sup>59</sup> According to the draft Law on the maintenance of cleanliness and communal waste management, it was foreseen that departments of communal monitors are moved from the communal enterprises "Park" and "Rad" to the Cantonal Administration for Inspection Issues, which would make sense from the perspective of ensuring the independence of their oversight.<sup>60</sup> However, according to one person interviewed, this solution was later called into question due to administrative obstacles to the displacement of departments of communal monitors from public communal enterprises to a body of the public administration, in this case the Cantonal Administration for Inspection Issues.<sup>61</sup>

**Limitations of inspection oversight:** According to an analysis of the competent ministry, inspection oversight of the Law on communal services faces the problem of a limited number of communal inspectors.<sup>62</sup> Namely, only three communal inspectors are employed in the cantonal communal inspectorate, and the City's communal inspectorate currently employs only one inspector, responsible for the oversight of some 5500 buildings. Inspectors work *ex officio* and based on the reports they receive from communal monitors and citizens; on the basis of records and documented violations, they issue decisions on addressing deficiencies, offence warrants or, where there are no conditions for issuing offence warrants,<sup>63</sup> they submit a request for the initiation of offence proceedings before the responsible court, in this case the department for offences of the municipal court (the so-called "offences court"). At the same time, inspection proceedings can be long and complex. As previously mentioned, there are not many communal monitors, the "extended arm" of the inspectorate.

**Practical problems of sanctioning offenders:**

There are numerous practical obstacles in the sanctioning of offences pertaining to the littering, damage or destruction of public spaces. According to representatives of both communal enterprises, it is not easy to identify the offender; representatives of "Rad" stated that this is especially difficult due to the very small number of communal monitors who either personally have to see and identify the offender, or have to work together with a citizen witness. Sometimes, the enterprise organizes watches at certain locations where recurring problems, such as illegal waste disposal, have been noticed through rounds, and in order to see and identify the offender on the spot to be able to make a record for further proceedings.<sup>64</sup> A couple of persons interviewed pointed out that if the communal monitor personally did not see someone violate communal cleanliness, offenders deny that they are guilty and usually remain unpunished due to a lack of evidence.

On the other hand, even when an offender receives an offence warrant from the competent organ, this does not mean that they will pay the fine. According to the Law on offences of FBiH, in case they do not pay the fine, offenders will not be allowed to register or to extend the validity of the registration of a motor vehicle, will not be issued or will not be able to extend the validity of their drivers' license, will not be able to participate in a public tender, change the registration of a legal person or undergo registration of an independent retailer.<sup>65</sup> However, according to a representative of the City's communal inspectorate, if the party does not own a motor vehicle, traffic permit or drivers' license, the fine may never be paid.<sup>66</sup> In the case that offence proceedings have been brought before the court, a couple of persons interviewed pointed out the problem of the lack of capacity of the offences court with respect to the number of reports that the court is currently processing, and the fact that court proceedings usually last a long time. According to the Law on offences of FBiH, an offence proceeding can neither be initiated nor processed when more than a year has passed since the offence has been conducted for those offences for which the prescribed fine amounts to less than 3000 KM,<sup>67</sup> which is the case

<sup>58</sup> See Government of Canton Sarajevo, Zaključak br. 02-05-15818-5.1/11 [Conclusion no. 02-05-15818-5.1/11], 4 May, 2011.

<sup>59</sup> Government of Canton Sarajevo, *Analysis of the implementation of the Law on communal services*, pp. 10–11.

<sup>60</sup> Government of Canton Sarajevo, Draft law on the maintenance of cleanliness and communal waste management.

<sup>61</sup> Interview with a representative of the cantonal communal inspectorate, 28 September, 2012.

<sup>62</sup> Government of Canton Sarajevo, *Analysis of the implementation of the Law on communal services*, pp. 10–11.

<sup>63</sup> In line with the Law on offences of FBiH.

<sup>64</sup> Interview with representatives of KJKP "Rad", 8 October, 2012.

<sup>65</sup> "Zakon o prekršajima Federacije BiH" [Law on offences of Federation of BiH], *Official Gazette of Federation of BiH* 31/06 and 37/10, Article 80. In case the offender is avoiding to pay the fine, the authorized organ or court may ask the FBiH Tax Administration to apply an enforced collection procedure; in addition, there is the option of arresting the person for up to 15 days. *Ibid*, Article 81 and 82.

<sup>66</sup> Interview with a representative of the communal inspectorate of the City of Sarajevo, 9 October, 2012.

<sup>67</sup> "Law on offences of FBiH," Article 29 (1).



for most of the offences that are regulated by the Law on communal cleanliness or decisions on offences against public order. Thus, it may happen that in practice, offenders remain unpunished. This evokes an additional impression of practical impunity in this area.

**No man's land - residential objects and areas belonging to them:** As previously explained, the Law on the maintenance of common parts of a building and building management has not clearly allocated responsibilities and duties for the maintenance of outside areas that belong to residential buildings and for the maintenance of their cleanliness. The City's Decision on house rules in residential buildings does determine that residents and the elected building manager are responsible for the maintenance of the courtyard and the entrance to the building, the maintenance of fences, as well as green parts of the courtyard. However, it is currently very difficult to sanction responsible persons that do not act in line with these provisions. The City's communal inspector, responsible for oversight of this decision, can only issue an offence warrant or issue a request for the initiation of offence proceedings for residents that have made an offence. In other words, if residents keep their courtyards in an unkempt state, the inspector can only complain about the work of the representative of flat owners or the building manager, but cannot sanction them, as this is within the jurisdiction of the housing inspectorate, which acts in line with the mentioned law. The Law on communal cleanliness also foresees fines for offences for a "citizen" who does not keep the outside areas that belong to the building clean,<sup>68</sup> but there is again the dilemma of how a citizen can be sanctioned for something that is, in practice, the collective responsibility of all building residents, especially if no clear responsibility has been allocated. According to the Decision on the maintenance of green and recreational areas, in case legal persons or citizens do not maintain green and recreational areas in line with the decision's technical conditions, and the communal inspector issues a decision that orders activities of maintenance to be performed within 24 hours, it is foreseen that the communal enterprise will undertake activities of maintaining the areas at the expense of the users of these areas.<sup>69</sup> However, as could be concluded from interviews with different actors, this does not occur in practice.

Overall, it appears as if the provisions of the mentioned acts have been drafted on the premise that citizens *a priori* have the capacity to act

collectively. It is especially difficult to expect that sanctions can be imposed having in mind the number of persons that would need to be sanctioned and the poor likelihood of allocating responsibility. One may ask why certain activities should be dependent on the agreement between citizens and building managers in the first place: maintaining and cleaning areas that belong to the building should be the responsibility of managers. Precisely because the existing mechanisms of sanctioning are not effective in practice, areas that belong to residential buildings appear to be turning into "no man's land."

## A WEAK LINK BETWEEN AUTHORITIES AND CITIZENS

In order for citizens to be able to communicate with the competent institutions, certain institutional prerequisites, including appropriate channels of communication, are required. Public institutions, including enterprises that perform public competences, have an obligation to address citizens' submissions in line with the Law on administrative procedure of FBiH.<sup>70</sup> The Law on addressing petitions and proposals of Canton Sarajevo also gives citizens the right to submit proposals in which they can draw attention to the condition, problems or occurrences in a given area, and propose that certain measures are taken; on the other hand, they can also ask for an inquiry into the state of affairs in a certain area or request information, notifications, reports, etc.<sup>71</sup> These laws regulate, *inter alia*, the manner in which the competent institutions are to handle the submissions even when they are not responsible for them, the obligation of responding to submissions, etc. Although they are by nature unidirectional and do not allow for more significant interaction, the basic formal channels of addressing the competent organs and enterprises do exist, and representatives of institutions at different levels of government pointed out in interviews that they act in accordance with mentioned laws, and that citizens can, through different means, submit their requests or report issues.

On the other hand, the majority of focus group participants have expressed the attitude that if they do report problems, they do not expect that they will be solved. They see the existing mechanisms of reporting problems to the competent institutions as inefficient due to the impression that institutions "throw the ball into another court," or other institutions. When they tried

<sup>68</sup> "Law on communal cleanliness," Article 70.

<sup>69</sup> "Decision on the maintenance of green and recreational areas," Article 17.

<sup>70</sup> "Zakon o upravnom postupku" [Law on administrative procedure], *Official Gazette of Federation BiH* 02/98 and 48/99, Article 1.

<sup>71</sup> "Zakon o postupanju s predstavkama i prijedlozima" [Law on addressing petitions and proposals], *Official Gazette of Canton Sarajevo* 04/02, Article 1.

to report a certain problem, citizens were usually told that the institution they addressed is not responsible for the concrete issue and were referred to other bodies. Often, the reason for this is their own lack of awareness of the complex constellation of competences of different levels of government, inspectorates and service providers; many do not want to report problems in the first place as a result. Representatives of different institutions have also confirmed that citizens send them requests or reports for which they are not competent.

At the same time, no significant efforts have been made to date to inform citizens in a systematic manner regarding who is responsible for what aspects of communal cleanliness, maintenance of public areas or sanctioning of relevant offences in Canton Sarajevo. Focus group participants did not see or receive educational materials that would clarify the competences for different issues that are of interest for this research. Citizens do not necessarily know what communal services such as maintenance of public areas or maintenance of cleanliness of public areas even entail. Annual programs and operational plans on the maintenance of communal cleanliness or the maintenance of green areas, at least nominally, are adopted in consultation with local communities, but public communal enterprises do not have the habit of directly consulting with residents of local communities concerning their needs during the drafting of their annual plans, in order to identify priority areas and improve their overall service provision. Annual programs and operational plans are also not published on the websites of the competent cantonal ministry, municipalities or communal enterprises, or in the official gazette of the Canton, and they are only available to citizens upon request, in line with the Law on freedom of access to information of FBiH.

Many focus group participants have had a negative experience when addressing local communities,<sup>72</sup> either because the latter could not solve their problem, their representatives did not recognize citizens' requests to be grounded, or did not want to forward them to the competent bodies, or because citizens did not receive feedback on whether their problem will be solved or not. Expectations regarding local communities may also be a reflection of a flawed perception of their actual capacities: local communities presently do not have own competences and are not in the position to solve citizens' problems, but can only be a channel of communication with the municipalities, the Canton and communal enterprises.

## CONCLUSION AND RECOMMENDATIONS

The research conducted has demonstrated that the interaction between different factors contributes to the deterioration of urban neighborhoods in Sarajevo, including an imprecise normative framework, a lack of standards for individual communal services, insufficient mechanisms of oversight of the delivery and quality of services, a number of obstacles to the sanctioning of offences that pertain to the littering, damage and destruction of urban spaces, as well as inadequate points of access to competent institutions that residents of Sarajevo have at their disposal in order to communicate their issues and needs. The consequence of such interaction is the further deterioration of public spaces in the city of Sarajevo.

In an effort to tackle the identified problems, a number of recommendations for the cantonal and local authorities in Sarajevo are listed below.

### Recommendations for the cantonal level of government concerning the legal framework, planning and oversight

- To adopt, as soon as possible, the Law on local self-government of Canton Sarajevo in order to determine clear competences of the Canton, the City and the municipalities within the Canton, especially with respect to communal services, but also with respect to ensuring public order. It is evident that the issue of competences should be addressed as soon as possible, given that the system of communal service delivery is currently functioning on disputed legal grounds, and the processes of adoption of important public policies have been delayed;
- To adopt bylaws in line with the Law on communal services that would define in a more precise manner the standards of maintaining public areas. In addition, to adopt the new Law on the maintenance of cleanliness and communal waste management;
- To adopt bylaws and amendments to the Law on the maintenance of common parts of a building and building management in order to clearly define the duties and responsibilities of residential building managers with respect to the maintenance of communal cleanliness and overall maintenance of outside areas that belong to residential buildings. To establish the competence for inspection oversight of these concrete services;
- To improve the capacities and mechanisms of oversight by the Ministry of Spatial Planning and Environmental Protection of the work of communal enterprises, and to improve the mechanisms

<sup>72</sup> Citizens' experiences pertained to different problems within the local community, not only service delivery in the area of maintaining public areas or communal cleanliness.

of internal controls of the providers in order to ensure the delivery of the planned services;

- To consider the possibility of establishing an independent expert body that would determine standards for communal services, such as waste collection, cleaning and maintenance of public and green areas, as well as oversee the quality of services delivered in these areas;

- To consider modalities of including as many of the currently unkempt and unmaintained public areas as possible in the annual maintenance programs and plans as to avoid further littering and destruction of such spaces and the creation of illegal landfills. Accordingly, it is necessary to examine realistic modalities of financing the delivery of such services in order to ensure equal quality of service delivery for all citizens.

#### **Recommendations for the cantonal and city governments concerning sanctioning**

- In the new Law on the maintenance of cleanliness and communal waste management and by-laws of the Law on communal services, to define more precisely the standards of service provision, as well as penalties that would allow for the sanctioning of service providers not only in the case of a potential halt in service delivery, but also in the case of inadequate service delivery;

- To increase the capacities of city and cantonal communal inspectorates to create preconditions for the regular inspection of the work of communal enterprises;

- Within the framework of the Law on the maintenance of cleanliness and communal waste management, and potential bylaws or completely new laws in this area, to strengthen the capacities of communal monitors with regards to their powers to sanction, and to foresee a different form of organization of communal monitors independent of public communal enterprises (potentially within the cantonal communal inspectorate);

- To consider the option of establishing a communal police. In this manner, the sanctioning of offences would become more efficient, the burden of communal inspectorates would be reduced and the latter could focus on the regular oversight of communal service providers;

- To determine sanctions for not keeping areas belonging to residential buildings clean or maintaining them in general, in line with bylaws that should entail standards in this area, and to establish modalities of sanctioning building managers in this case;

- In relevant laws and bylaws, including the Law on the maintenance of cleanliness and communal waste management, to introduce the provision that legal and private persons, if they do not act in line with decisions of responsible inspection organs, will bear the cost of any necessary maintenance activities conducted on their behalf by an authorized entity;

- To define offences against public order in the respective cantonal Law on offences against public order and to avoid overlaps with the new Law on the maintenance of cleanliness and communal waste management, which should determine offences that pertain to communal cleanliness. To delineate competences for the sanctioning of individual offences in a more precise manner.

#### **Recommendations for the improvement of relations between citizens and responsible institutions and enterprises**

##### ***For the cantonal level of government***

- To inform citizens in a more systematic manner regarding the competences for the delivery and oversight of services, as well as offences against public order and communal cleanliness. Together with local authorities, to inform citizens concerning whom to address in order to solve individual problems.

- To insist on the responsibility of service providers to provide citizens with feedback on the result of their requests or issues reported.

##### ***For the local level of government***

- As the physically nearest entities that citizens can turn to, and with an already established practice of organizing citizen assemblies on different issues, local communities could be an efficient first instance of informing citizens, as well as a coordinator of their requests and reports to other institutions, especially concerning problems of general interest. However, the improvement of their capacity to do so would require a more significant education of their staff and a better operationalization of the manner in which citizens' reports and requests are addressed. It is therefore necessary to strengthen the role of local communities to efficiently act in line with the requests and reports of citizens and to insist on their responsibility to provide citizens with feedback on the result of their requests or reports. It is necessary to consider the adoption of local acts that would operationalize the interaction with citizens in solving problems in the community, as well as their role in informing citizens about communal, housing and other issues.

- To consider the establishment of volunteer-based communal committees within local communities bringing together representatives of citizens from different neighborhoods located in local communities, as an address for reporting current problems in the delivery of certain communal services and for solving long-term problems in the local community. In addition, to consider the possibility of establishing community security forums that would entail regular meetings between citizens, representatives of the police and local authorities with the aim of solving communal problems that pose a threat to the community and addressing offences against public order and crime in the community.



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