



Organizational Policies of Local Self-Government in a Modern Democratic State

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Received: 12/06/2019

Accepted: 1/09/2019

Published: 03/09/2019

Abstract

The article presents an analysis of the specific character of the local self-governance in the Republic of Serbia. The main technique of the research was the system method, which allowed analyzing the significant role of local self-government in the system of public authority in Serbia. As a part of the study of the institution of local self-governance in the Republic of Serbia, the author came to the conclusion that, on the one hand, its modern constitutional-legal regulation in Serbia revived the traditions of local self-governance laid down by the 1888 Constitution of the Kingdom of Serbia, and on the other hand, it fully meets the demanding requirements imposed by the 1985 European Charter of Local Self-Government.

Keywords: the 2006 Constitution of the Republic of Serbia, the competence of local governments, citizens' initiative, guarantees of local self-governance, constitutionality and legitimacy review of the acts of local authorities.

1 Introduction

The tradition of local self-governance has long historical roots. The tribal community as the primary unit of human society may to a certain extent be considered its prototype. The forms of human interaction and self-organization became more complex with the development of civilization; the formation of local government in its modern sense falls at the end of the 18th century. It was then that the first theories of self-governance appeared; later the phenomena became the subject of state regulation (England, France, Prussia, etc.). At the same time, the consolidation of rights of local self-government at the constitutional level for the first time was provided for by the 1831 Constitution of Belgium, which played a discrete role in disseminating the ideas of local self-governance in European states. Yet the stable traditions were formed already in the second half of the XX century by establishing the mechanisms and procedures of self-governance and developing the interaction with government bodies. Hence the regulation of local self-government became an indispensable component of the new constitutions of the majority of democratic states around the globe.

The most important milestone in the formation of the modern concept of local self-governance was the adoption by the Council of Europe of the European Charter of Local Self-Government on October 15, 1985, in which local self-government is defined as 'the right and the actual ability of local authorities, acting within the limits of the law, to be able to regulate and manage a substantial share of public affairs under their own responsibility in the interests of the local

population'. Indeed, the modern concept is based on the fact that local communities are an essential component of a democratic state regime, and the right of citizens to participate in the management of public affairs is an integral part of the democratic principles of the organization of most modern states (5).

The institution of local self-governance in Serbia also has a great history (12). The first steps in the formation of a modern-type local government system were made in the 1888 Constitution; however, this process has evolved with varying success. During the period of socialist Yugoslavia, the government has conducted an experiment on the introduction of an integral self-governance system. The concept of integral self-governance provided that the *opština* municipality, being an administrative-territorial unit, had the status of a socio-political association. This, in the fair opinion of professor Stojanović, in practice led to its enactment as a 'mini-state'. At the same time, according to the 1990 Constitution, the institution of local self-governance was significantly updated; this was due to the fact that Serbia abandoned the socialist model in the early 1990s. Thus, in the new historical conditions, *opština* was designed as a decentralized local government, based on the representative system, the separation of powers and the right of citizens to manage local affairs (15).

Therewith, the existing Serbian Constitution of 2006 made significant adjustments to the system of local self-government. In particular, if the Local Government Act of 2002 established a system of local government bodies based on the principle of

supremacy of the chairman (with the envisaging of chairman's direct elections), the 2006 Constitution provided for the Assembly to be the highest local government body (Part 1 of Article 180 of the Constitution), which meant a transition to a model of local self-governance based on the principle of the rule of the Assembly.

So, according to Article 12 of the 2006 Constitution of the Republic of Serbia, state power was limited to the right of citizens to regional autonomy and local self-government. Article 2 of the Law on Local Self-Government defines the latter as 'the right of citizens to manage public affairs that have a direct, common interest for the local population, directly and through freely elected representatives in local government units, as well as through the right and the ability of local governments within the framework of the law to manage public affairs that are within their competence and are of interest to the local population'. Thus, the self-governance is represented in the Law on Local Self-Government both as a right of citizens and as an aggregate of bodies and institutions of local self-government (1).

2 Methodology

The object of this study is a set of constitutional-legal relations associated with the system of local self-government in the context of the process of improving the organization of public authority in the Republic of Serbia. The subject of the study is represented by the legal norms governing the procedures for exercising local self-governance, defining the organization and activities of local self-government bodies, and finally, establishing guarantees for local self-governance in the Republic of Serbia. The methodological basis of the study was a set of general and special scientific methods of cognition. The study is based on the system analysis method, which allowed investigating the system of local self-governance as a component of public authority in the Republic of Serbia. In addition, the author used historical-legal and sociological methods; the source-study base was composed mainly of international and domestic regulatory sources of the Republic of Serbia.

Part 1 of Article 3 of the Law on Local Self-Government states that the local self-governance in the Republic of Serbia is exercised in the cities, opština municipalities, and also in the city of Belgrade as a separate territorial unit. At the same time, opština is the main unit of local self-government in the Republic of Serbia, and the presence of units of local self-governance in the form of cities and the city of Belgrade is intended, according to professor Marković, to 'soften the uniformity of opština as the main unit of local self-government'. Thus, the Republic of Serbia provided for a single-stage local government, the territorial units of which are opština municipalities; the cities represent the separate additional units within this structure. As for the territory and location of local governments, they are determined by law. The creation, abolition or other changes of the territory of a local government unit are preceded by a consultative referendum on the territory of the relevant local unit. As a general rule, the municipal territory is comprised of the territories of one or several localities, which are, respectively, its constituent cadastral opštinas. The territory within which a local government unit is formed is a natural and geographical integrity, economically connected and having a developed system of communication between settlements and with a

single unifying territory center of local government location (Article 17 of the Law on Local Self-Government). The main and highest legal act of a local government unit is a charter adopted by a representative local self-government body - the Assembly (1).

3 Results and Discussion

3.1 Constitutional-legal foundations of local self-governance in the republic of serbia

According to the 2006 Constitution, opština is the main territorial unit of local self-governance implementation; this unit has the right to directly and independently (by the population or through its bodies) exercise all rights and obligations within its competence. Such unit has to consist of at least 10,000 residents, however, the municipalities formed before the Law on Territorial Organization of the Republic of Serbia entered into force may also account for less. In addition, as an exception due to special economic, geographical or historical grounds, a new opština with a population of fewer than 10,000 people also can be established (Article 18 of the Law on Local Self-Government) (1).

As for the cities as another variety of municipalities in the Republic of Serbia, their status is governed by the Law on Territorial Organization, as well as by the Law on Local Self-Government. The legislative definition of a city reads as follows: 'a city is a statutory unit of local self-government, which is an economic, administrative, geographical, and cultural center for a larger region and has more than 100,000 inhabitants' (Part 1 of the Law on Local Self-Government and Part. 1 of Article 17 of the Law on Territorial Organization). As per professor Marković, the city, in accordance with its functions established by the Constitution and laws, in fact, is claimed to be opština as well, but nevertheless, the city differs from opština not only by its name (6). Thus, the Law on Local Self-Government stipulates that its provisions applicable to the opština municipality may also regulate the status of the city, unless otherwise provided by the Law itself (Part 4 of Article 23). Apropos, the Law on Local Self-Government provides as an exception that due to special economic, geographical or historical grounds, a territorial unit with a population of fewer than 100,000 may also be recognized as a city (1).

So, the territory on which the city is formed represents natural and geographic integrity with economic and communication links between settlements and a single center of government location. At the same time, the charter of the city may stipulate the establishment of two or more urban opština municipalities on the city territory; such municipal communities may also exercise some certain powers of the city competence. Such an additional citywide structure caused criticism from a number of Serbian constitutionalists. Thus, in particular, professor Pajvančić emphasized that the presence of urban opština as an independent unit of local government in the city leads to unnecessary competition, duplication in activities, and inability to ensure the unity of functions of the city as a unit of local government, which is utmost irrational (9).

As for the capital of the Republic of Serbia, the status of the city of Belgrade is regulated by a special law (Article 26 of the Law on Local Self-Government) (1). Such a law is the Capital Act, according to which Belgrade has the status of a special territorial unit. Thus, in accordance with Part 2 of Article 6 of the Capital Act, 'in order to more effectively and

economically justified exercise certain powers of the city of Belgrade, the city charter establishes urban opština municipalities within the framework of the legally established territory of the city of Belgrade'. As follows from the provisions of this law, the division of the city of Belgrade into urban opština municipality (Belgrade also has 7 'suburban' municipalities) is a legal obligation. Moreover, in contrast to the status of urban opština in other cities, the Capital Act directly states that urban opština in the city of Belgrade enjoys (along with the city itself) the status of a legal entity. The City Charter defines the powers that fall under the jurisdiction of the city of Belgrade, and that are exercised by the urban municipalities. At the same time, the city of Belgrade has the right to abolish the urban opština municipality and annex its territory to one or more other urban opštinas (15).

The degree of autonomy and independence of local self-government is manifested in the scope of authority of local units. Opština as the main unit of local self-government in Serbia has two types of competence: independent (primary) and delegated (decentralized) competence. Opština exercises its independent powers through its bodies and is responsible for their implementation; such powers are established by the Constitution in ambivalent manner, namely: issues relating to the subject of exclusively independent powers of the opština, and those areas to which, among other things, the independent competence of the opština extends. As for the issues associated with the subject of exclusively independent powers of opština, in accordance with Article 190 of the Constitution of the Republic of Serbia, they include: adoption of the budget, urbanization and development plans; establishment of community insignia and its authorized use; management of municipal property and establishment of the responsibility for violation of regulatory acts; and ensuring the implementation, protection and development of human and minority rights in particular opština along with freedom of the media. Within the framework of independent powers, the opština also regulates the activities of its bodies and agencies. The Charter, as the highest act of the opština, establishes the bodies of local self-government, specifies their powers and determines the order of their activities.

The 2006 Serbian Constitution introduced the exercise of the independent powers of the opština in following spheres: public utility, land development, local mass transit, culture and education, health care, social security and protection of children, cultural and historic sites, sports and physical culture, tourism and hospitality, handicrafts and trade, agricultural land uses, disaster management and environmental protection (9).

It is quite remarkable that the spheres of the independent powers exercise are regulated by the Constitution in a very general manner; therefore it was of utmost importance for the legislators to define the boundaries of this competence, given that the Republic of Serbia, through its state bodies, has a certain amount of competence in the same areas. At the same time, as professor Marković aptly noted, this was essentially important for detailing the independent powers of the opština, since their competence is a constant within the competence of all three types of local government units (6). Noteworthy is the fact that the Serbian legislators have sufficiently fully and in detail settled the independent powers of the opština in the Law on Local Self-Government. Thus, Article 20 of this Law divides such powers into 39 groups of powers of direct and general interest to the local population, and therefore often

referred to in the literature as community powers. Attention also should be paid to the fact that these powers are prescribed in even more details in the charters and other general acts of local government units (1).

Thus, in addition to the independent powers, in the exercise of which the opština enjoy full autonomy in relation to the state, the opština, as mentioned above, also have delegated powers. These are state powers that fall under the responsibility of the Republic. At the same time, the 2006 Constitution provided for the right of the state (by adopting a special act) to authorize the exercise of certain powers by the relevant units of local self-government with the appropriate transfer of the necessary funds.

According to Article 21 of the Law on Local Self-Government, individual powers of state administration may be assigned by law to all or particular opština municipalities in order to more efficiently implement the rights and duties of citizens and meet their needs of direct interest for the professional and personal life (1). Of significant interest is the fact that an autonomous region also has the right to impose (by its decision) the exercise of particular powers within its competence on a local government unit on the territory of an autonomous region. Funds for the exercise of delegated powers are provided for in the budget of the Republic of Serbia or, respectively, of an autonomous region, depending on which authorized body had delegated named powers. At the same time, when it comes to delegated powers, the law generally provides that the powers of the Republic can be transferred to local government units, subjected to certain personnel, technical and organizational conditions, which are determined by special laws. Professor Marković observed at the same time, that if the system of legislative enumeration provides for independent powers, then the system of general clause is acting for the exercise of delegated powers, since these powers are not listed in a single general law, but, as mentioned above, the Law on Local Self-Government states that local units may exercise state powers only if they are directly entrusted to them by law (17).

The Law on Local Self-Government has determined the nature and type of state powers that the Republic of Serbia can impose on the opština. The Republic may delegate by an act to the municipal authorities the implementation of laws, other regulatory and general acts, and exercise of other powers of state administration. Thus, in accordance with Article 22 of the Law on Local Self-Government, opština exercises (as delegated) powers for inspectional supervision in the areas of education, health care, environmental protection, distribution of goods and provision of services, transportation, agriculture, water use and forestry, as well as some other inspectorial powers in accordance with the law. As noted by professor Pajvančić, the delegated powers exercised by the units of local self-government remain the powers of the Republic, i.e. state powers, however, their implementation is assigned to non-state bodies such as, in particular, local authorities (9).

Exploring the competence of the city as a municipal entity on the territory of local governance one should pay attention to the fact that, according to Article 24 of the Law on Local Self-Government, the city exercises (along with the opština powers) other powers, including assigned by law powers in the field of public administration. Thus, the city as a unit of local self-government can be assigned by law with other powers of state administration (along with the opština powers), which is

associated both with the level of economic and social development of a particular city and with its other features. This denotes the right of Republican legislation to distinguish between the scope of authority delegated by the opština and the city. Another innovation of the Law on Local Self-Government was that the city, as a unit of local self-government, was given the right, in accordance with the law, to create a community police force, as well as to ensure and organize the exercise of its necessary powers (Part 2 of Article 24). As for the powers of the capital, the city of Belgrade has both the powers of opština and the city established by the Constitution and the law, as well as special powers derived from its capital provision and stipulated by the Capital Act (Part 2 of Article 8) (1).

In order to exercise its powers, a local government unit has relative financial autonomy, given special and stable sources of income. The financing of the powers of a local unit is provided from its budget and the budget of the Republic. Budget funds of a local unit are provided from independent and from transferred public revenues, income from borrowing and other income defined by law. If a local government unit cannot provide funding for its powers from own annual budget, it will be complemented with additional targeted funds from the Republican budget.

The established by law autonomous public revenues of a local government unit include municipal administrative fees collected on its territory, local utility charges, housing charges, fees for the use of land plots for construction, etc. The transferred public revenues include taxes provided for by law and collected on the same territory, such as personal income tax, inheritance and gift tax, tax on the transfer of absolute rights, etc. As for the relations between the Republic and local self-government units, according to Article 78 of the Law on Local Self-Government, the Republican bodies, regional autonomy bodies, and bodies of local self-governance cooperate with each other in order to exercise their rights and obligations in accordance with the Constitution, law and other regulatory acts (1). There are several types of interrelations of republican bodies and bodies of local government unit. The bodies of the Republic and of the regional autonomy oversee the legitimacy of the activities and acts of the bodies of local self-governance in accordance with the Constitution and the law. The competent authority of the local government unit is obliged to timely provide the requested data and documents to the republican body and, respectively, to the bodies of the autonomous region, which oversees the legitimacy of the activities and acts of the local unit. The Chairman of the opština municipality is responsible for the submission of the necessary data and documents; however, if the supervision is carried out over the activities and acts of the municipal assembly, then the responsibility for providing the necessary documents is assigned to the secretary of the assembly.

In relations with local government units, the Republic of Serbia can be represented by the Government, the Ministry of Public Administration and Local Self-Government, or another competent ministry. The aforementioned bodies have the right to implement six options for state intervention in the affairs of local self-governance, but solely for the purpose of establishing constitutionality and legitimacy. Professor Marković aptly noted that in this case, it is not a question of mentoring the state over local self-government, but only of

overseeing constitutionality and legitimacy (Part 2 of Article 12 of the Constitution of the Republic of Serbia) (17).

Thus, according to Article 81 of the Law on Local Self-Government, the Government is obliged to suspend the execution of the general act of a local self-government unit, which, according to the Government, does not comply with the Constitution or the law, by a decision that comes into force from the date of publication in the Official Gazette of the Republic of Serbia (1). This decision is terminated if the Government, within five days of the official publication of the decision, does not initiate a procedure for verifying the constitutionality and legitimacy of the general act in the Constitutional Court of Serbia.

The competent ministry institutes a procedure for verifying the constitutionality and legitimacy of the charter, normative or other general act of a local government unit in the Constitutional Court if it considers that this act does not comply with the Constitution, law or other republican normative act. The authority of the regional autonomy has the same power if it considers that the statute, normative or other general act of a local government unit does not correspond to the normative acts of an autonomous region (Article 82 of the Law on Local Self-Government) (1).

If the Ministry of Public Administration and Local Self-Government or, respectively, the competent authority of the regional autonomy, considers that the general act of the body of local self-governance does not comply with its charter, then the Ministry or regional authority denotes such act to the assembly of the local government unit for taking appropriate measures. Whether the local assembly does not take action in accordance with the proposals of the above-mentioned body, the Ministry initiates proceedings in the Supreme Court of Cassation of Serbia and at the same time makes a proposal to the Government to suspend the execution of the relevant act of the local unit until a decision is made by the Supreme Court. As it was clearly indicated by professor Marković, this measure is aimed at ensuring the compliance with the highest act of the local government unit and its statute, which is why this type of cases are initiated in the highest judicial body of the Republic of Serbia, and not in the Constitutional Court (17).

If the Ministry of Public Administration and Local Self-Government concludes that a particular act of a body or agency of local self-government in respect of which judicial protection is not provided does not comply with the law or another normative act, or, respectively, with the decision or other act of the local government unit, then the Ministry submits a proposal to the local unit for the repeal or annulment of such an act. If, however, the Assembly does not take appropriate action within one month after receiving such a proposal, the Ministry will independently cancel or annul the corresponding particular act (Article 84 of the Law on Local Self-Government) (1).

The Law on Local Self-Government provided a number of grounds for the dissolution of the assembly of a local government unit (1). Thus, the Government of the Republic of Serbia, upon the proposal of the Ministry of Public Administration and Local Self-Government (the competent authority of the regional autonomy), has the right to decide on the dissolution of the local assembly under the following circumstances: first, if the Assembly does not hold a sessions for more than three months; secondly, if it does not elect a

chairman of the opština or municipal council for one month from the date of the formation or from the day of their dismissal or, respectively, resignation; thirdly, if it does not adopt a charter or the budget within the period prescribed by law. If the Government of the Republic of Serbia decides on the dissolution of the assembly of a local government unit, the chairman of the National Assembly of the Republic of Serbia shall appoint elections of councillor within two months from the moment the decision on the dissolution of the local unit takes effect (10). In this case, the term of office of councillor elected under such circumstances is four years. Prior to the formation of the assembly and the executive bodies of the local government unit, current and urgent activities within the competence of the assembly and the executive bodies are carried out by the temporary unit of the local government, consisting of a chairman and four members appointed by the Government with regard to the political and ethnical composition of the discharged assembly of the local unit (Article 86). The Government of the Republic of Serbia appoints a temporary body also if the local government does not hold elections of advisers within two months after the announcement of the election results. The Speaker of the National Assembly is obliged to decide on the appointment of new elections to the assembly of the local government within a month from the day when such elections were to be held.

3.2 Local authorities in the republic of serbia

So, according to Part 1 of Article 179 of the Constitution of the Republic of Serbia, local government units, in accordance with the Constitution and law, independently regulate the structure and powers of their bodies and public services. In the light of the above, both opština and the city have approximately the same structure of local governments, with rare exceptions, which are described below.

Opština bodies include local assembly, opština chairman, council and board (15). Similar bodies exist in Belgrade and other cities: the city assembly, the mayor, the city council and the city government. Professor Stojanović noted that with the departure from the socialist model of integral self-governance, Serbia preferred a model of local self-governance based on the principle of supremacy of the chairman in the system of self-governing bodies, which implied direct election of the chairman; the latter was also reflected in the 2002 Law on Local Self-Government (4). However, the adoption of the 2006 Constitution stipulated that the assembly is the highest body of local self-government (Part 1 of Article 180 of the Constitution) denoted a transition to a model of local self-governance based on the principle of supremacy of the assembly. Thus, Article 180 of the Constitution stipulated that the assembly is the supreme body of the local government unit. As a result, the Law on Local Self-Government not only duplicated the above constitutional provisions, but also provided that the assembly carries out the basic functions of local government, as established by the Constitution, the law, and the charter of the local self-government unit. Thus, the modern constitutional legislation of Serbia established the assembly system of organization of power in the units of local

self-governance, where the representative body is the highest body of local government (1).

According to Part 2 of Article 180 of the Constitution, the assembly of a local government unit consists of councillors elected for the term of four years. The number of councillors in the opština assembly is determined by its opština, but cannot be less than 19 and more than 75.² The independence of councillor of the local assembly is ensured both by the immunity of state representative and by the prohibition of conflicts of interest. Thus, according to Article 37 of the Law on Local Self-Government, the councillor cannot be brought to criminal responsibility, detained or subjected to another form of responsibility for the expressed opinion or vote at a session of the assembly and its working bodies. Thuswise, the immunity of the local government councillor is remarkably reduced compared to the immunity of the People's Deputy of the Republic of Serbia, since the councillor has only substantive but not procedural immunity, and only in respect to responsibility for the opinion and vote in the representative body (13,16).

Considering the issue of the conflict of interest of the councillor, the latter (along with the general provisions of Article 6 of the Constitution, according to which no one can exercise state or public functions if there is a conflict of interests with the other official functions, activities or private interests), according to the Law on Local Self-Government, cannot be employed by the opština government, as well as by the bodies appointed by the opština assembly. If an employee of the opština council is also elected as a councillor, the rights and obligations of this official of the opština administration shall be suspended until the mandate of the councillor is terminated. At the same time, the rules governing the resolution of conflicts of interest in the exercise of public authority do not preclude the application of the provisions of the Law on Local Self-Government governing activities that are defined as incompatible with the authority of the councillor of opština municipal assembly (Article 30) (1).

The issue of the free mandate of the councillor deserves particular attention. Thus, unlike the Law on Election of Deputies, which regulates the casual relations of a candidate for people's deputies and the party-bearer of the slate of nominees (where the named candidate is listed), the Law on Local Elections heretofore regulated in detail the issue of mutual rights and obligations between the candidate to the council of municipal representative body and the candidate's party-bearer in furtherance of the provisions of Part 2 of Article 102 of the Constitution of Serbia. Thuswise, according to the named article of the 2006 Constitution, a councillor is free under the Law without the right of recall to place his or her mandate at the disposal of a political party, from the list of which this official was elected. In pursuance of this provision of the current Serbian Constitution, Part 1 of Article 47 of the Law on Local Elections provided that the party-bearer and the council candidate could conclude an agreement that would regulate mutual rights and obligations and provide for the right of the party-bearer to file the resignation from the post of councillor to the representative body of the municipality on behalf of the councillor.

² The common city assembly consists of no more than 90 councillors; the City Assembly of Belgrade consists of 110 councillors.

Furthermore, in pursuance of the aforementioned agreement, the council candidate transferred to the producer of the list of candidates (or the party-bearer) the 'blank resignation' - a written statement on the councillor's resignation, which gave the party (from which the councillor was elected) the coming opportunity to dispose the councillor's mandate at its own discretion, including to make such statement official at any time. This agreement was to be concluded in writing; the signatures under the agreement, as well as under the 'blank-resignation' had to be certified in accordance with the procedure provided by law. Council candidates after signing the relevant agreement were no longer entitled to withdraw their application. Thus, the councillor who signed (yet being a candidate) the above-mentioned agreement was entitled to take part in the activities of the representative body of the municipality, exercising all official powers of a councillor, up to and including the approval of the resignation by the representative body of the municipality; the mentioned resignation letter was supposed to be passed to the chairman of the representative body by the party, which listed the elected councillor (Article 47 of the Law on Local Elections).

Certainly, such legislative practice 'brought to naught' the free mandate of the councillor, turning it into an actual party mandates; such practice was deservedly criticized by both Serbian academicians and European human rights organizations. Even before the adoption of the 2006 Constitution of the Republic of Serbia, the Constitutional Court in its decision of 2003 formed a position according to which, since the mandate of a councillor is free (non-imperative), such a mandate cannot be directly dependent on membership in a political party and, respectively, in the coalition of parties, which listed the elected official (2). As a result, the Constitutional Court of Serbia in its decision of 2010 (3) established that it is not permissible by any agreement to transfer the mandate to any political party and, accordingly, the provisions of Article 47 of the Law, which provide for a resignation blank, are incompatible with the Constitution and ratified international treaties. Thus, the councillor could keep the mandate even if the political party had expelled this member, and even if this official leaves the political party on the list of which he was elected. Finally, the 2011 Law on Amendments and Supplements to the Law on Local Elections provided that the councillor personally sends a notarized letter of resignation to the chairman of the assembly of local government unit within three days from the date of such letter certification, and the chairman must address the issue of resignation to the nearest regular meeting of the assembly, which in fact made it impossible to apply the institution of the 'blank-resignation' to the councillor.

In addition, the Law on Local Elections established earlier that in case of pre-term loss of a mandate by a councillor, this mandate was to be transferred to another electoral list candidate at the party's discretion. The Constitutional Court in its IU-52/08 decision established, in particular, that the mandate is transferred in accordance with the sequence of indication in the electoral list. Therefore, in the current edition of the Law on Local Elections, the mandate is transferred to the first next candidate from the list of this party, who did not receive a mandate when distributed according to the results of municipal council elections. Whether the mandates obtained by the political party are distributed among all listed

candidates and there is no council candidate left to be given the mandate, then such mandate is transferred to the list of candidates for municipal council who received the next largest individual seat allocation and who did not receive the councillor office. In this case, the written consent of the council candidate to accept the mandate is necessary; the authority of the councillor expires on the date of the loss of authority to which this official was elected (Article 48 of the Law on Local Elections). As for the competence of the representative body of a local government unit, it has a wide specter of powers, ranging from resolving financial issues to maintaining local infrastructure.

The executive bodies in the units of local self-government include the chairman and the opština council; Part 4 of Article 191 of the Constitution of the Republic of Serbia stated that the Opština Municipal Assembly may decide on the formation of the opština executive bodies in accordance with the law and municipal charter (15). As a result, this version of the Law on Local Self-Government provided that the chairman of the opština is elected by the municipal assembly from among the councillors of the assembly for a four-year term by secret ballot by a majority of votes from the total number of opština councillors (1). The chairmen can be dismissed before the expiration of the term following the grounded proposal of at least one-third of the councillors in the same manner in which this official was elected. As pointed out by professor Marković, the chairman of the opština represents, on the one hand, an independent executive body of the opština; and on the other hand, this official actually represents the opština (even not being elected by the people), i.e. of the collegial executive municipal body. In the first capacity, the chairman which 'represents the opština', proposes ways to settle the issues resolved by the opština assembly, and directs and coordinates the activities of the opština government. In the second capacity, this official represents the opština council, convenes and holds its meetings, being responsible for the legitimacy of the activities of the council and therefore is obliged to suspend the implementation of the decisions of the named council, which, in his opinion, does not comply with the law (17).

The opština municipal council is the collegial executive body of the assembly. It consists of the chairperson as well as of the deputies, and members of the opština council, who are elected for a period of four years by secret ballot by a majority of the total number of councillor. Candidates for the municipal council are nominated by the candidate for the opština chairmen, however, as a rule; they represent the same party as the candidate for the opština chairmen. When deciding on the election of the chairman, the opština simultaneously decides on the election of the members of the municipal council. The composition of the opština municipal council may not include more than 11 members; the chairperson is the co-president of the council at the same time. The members of the opština council cannot be councillors at the same time; they must deal with one or several specific areas within the competence of the assembly. At the same time, a councillor elected as a member of the opština council loses his mandate. Opština council members can exercise their powers on a recurring basis.

As for the powers of the opština municipal council as a collegial executive body, the council submits the draft statutes, budget and other adopted acts for the consideration of local assembly; directly implements and ensures the implementation of decisions and other acts of the opština assembly; supervises

the activities of the local council, annuls or invalidates acts of the opština council that do not comply with the law, the charter and other general acts or decisions adopted by the opština assembly; makes a decision in the framework of the administrative procedure of the second instance on the rights and obligations of citizens, enterprises, institutions and other organizations on administrative issues within the competence of the initiative; appoints and dismisses the head of the municipal board or, respectively, the head of the board of other certain types of organizations. The chairman of the opština and the municipal council regularly inform the opština assembly on the own initiative or at the assembly request for the execution of decisions and other acts of the opština assembly (Article 48 of the Law on Local Self-Government) (1).

With due regard to the assembly system of the arrangement of powers in the local self-governance of Serbia, it is quite natural that with the termination of powers of the local assembly, the executive mandate also become terminated, despite the fact that the local bodies may continue to carry out current duties within their competence until the chairman or, respectively, the powers of ad hoc members of the interim authority may be terminated by dissolution of the assembly (Article 51 of the Law on Local Self-Government). According to paragraph 5 of Article 66 of the Local Government Law, the provisions of the Law governing the status of the opština council apply to any city council (7,8).

The statute of the opština municipal administration had significantly changed with the enactment of the existing Law on Local Self-Government. Thus, under the current law, the opština administration received the status of a special body of local self-government and, as rightly pointed out by professor Marković, of a bearer of the administrative function, representing one of the executive functional levels of the opština community (17). The opština council under its new status drafts normative and other acts adopted by the local assembly, its chairman and the council; executes decisions and other acts of the opština assembly; make decisions in the framework of the administrative process of the first instance on the rights and obligations of citizens, institutions and other organizations on administrative issues within its initiative competency; conducts activities for the administrative supervision of the implementation of normative and other general acts of the opština assembly; executes laws and other regulations, the execution of which is entrusted to the opština; and finally, the opština council carries out expert and other activities established by the opština assembly, its chairman, and the council (Article 52 of the Law on Local Self-Government) (1).

3.3 Legal guarantees for local self-governance in the republic of serbia

The most important guarantee for the implementation of the right to local self-governance in the Republic of Serbia is the opportunity of direct participation of citizens in the exercise of the municipal powers; such opportunity is directly stipulated by the Law on Local Self-Government (1). Thus, the special chapter III of this Law provides such forms of direct participation of citizens in the implementation of the powers of municipalities as civil initiative, citizens' assembly, referendum, and community-based self-government, the implementation of which is governed by both the law and the charter of the local government unit.

So, with regard to civil initiative as a form of direct citizen participation in the implementation of local self-governance, it represents the right of citizens to make proposals to the assembly of local self-government units for the adoption of an acts regulating a specific issues within the competence of the local self-government unit, as well as proposals for amending charter or other acts. In addition, the institute of civil initiative includes the right of citizens to initiate (by submitting a proposal to the assembly) a local referendum in accordance with the law and the charter of a local government unit. The local assembly is obliged to hold a hearing on the above proposals and submit a reasoned response within 60 days of the proposal receipt. The charter of a local government unit determines the number of signatures of citizens, ensuring the validity of such civil initiative. At the same time, the Law provides that such a number cannot be less than 5% of voters (Part 3 of Article 68 of the Law on Local Self-Government) (1).

The next form of direct participation of citizens in the implementation of local self-governance is the citizens' assembly. Thus, in accordance with Article 69 of the Law on Local Self-Government, an assembly of citizens is convened on the part of the territory of a local government unit established by its charter (1). The procedure for convening an assembly and its activities, as well as the method of establishing the 'group judgment', is governed by the charter and the decision of the local government unit. The assembly of citizens by the majority of votes of those present accepts the demands and proposals and sends them to the assembly or to other bodies or agencies of the local self-government unit; the agenda items under discussion are mostly related to the local competence. In turn, the bodies and agencies of a local government unit are obliged to consider the demands and proposals of citizens' assembly within 60 days and take a certain position on the voiced opinion and, respectively, bring a question to a decision or appropriate measure and inform the citizens on the actions taken.

Another form of direct citizen participation in the implementation of local self-governance is a local referendum. Apart from the fact that the local assembly may appoint a referendum on its own initiative and on the matters within its competence, the assembly is also obliged to appoint a referendum on the proposal submitted by at least 10% of voters of the total number of voters in a local government unit, in the manner prescribed by law and charter. The referendum decision is adopted if voted by the simple majority, provided that more than half of the total number of citizens participated in the voting. At the same time, the decision adopted at a local referendum is mandatory, and the assembly of a local government unit does not have the right to cancel it or change its content by making changes or amendments within one year from the date such decision enters into force.

A new form of participation of citizens of the Republic of Serbia in the implementation of local self-governance is the community-based self-government, creating aerial communities and other forms of territorial self-governance in order to meet the needs and interests of the local population in small settlements. As emphasized by professor Marković, in contrast to the previous three forms, territorial communities are a form of continuous participation of citizens in the direct implementation of issues of common concern (6). As a rule, such communities are created to meet the needs and interests

of the local population, primarily in small settlements (one or two or more). However, in accordance with Part 2 of Article 73 of the Law on Local Self-Government, territorial communities may also be formed in urban settlements (neighborhoods, districts, etc.) (1). The decision on their formation and their prospective territory (as well as on the abolition of territorial communities) is made by the council of a local government unit by a majority vote of the total number of councillors, provided that previously received citizens' opinion was properly expressed. As it was rightly pointed out by professor Pajvančić, participation in the activities of the territorial community is not a legal duty, but an opportunity that citizens can take advantage of for the rational and effective exercise of their rights and interests (9).

In accordance with the charter of the local government unit and the constituent act of the territorial community, the acts of the latter establish its activities, as well as its bodies and the procedure for their election, organization and activity, decision-making and other issues relevant to the activities of the territorial community. In accordance with Article 76 of the Law on Local Self-Government, the territorial community has the status of a legal entity within the limits of the rights and obligations established by the statute and the decision on the formation (1). The funds necessary for the activity of a territorial community or another form of territorial self-governance are provided from 1) the budget of a unit of local self-government; 2) donations; 3) income received by the territorial community from its own activities. The territorial community adopts a financial plan, which is approved by the competent authority of the municipality.

Also noteworthy is the fact that by the decision of the assembly of a local self-government unit, all or some territorial communities may be entrusted with the implementation of certain types of activities that are within the competence of the municipality (with the corresponding provision of the funds necessary for their implementation). The territorial communities can arrange the activities of the municipal government for the implementation of certain tasks related to the competence of the immediate municipal government. The above activities, as well as the order and place of their implementation, are determined by the chairman of the local government unit at the suggestion of the head of the council (Article 77).

So, the territorial community as a new form of direct participation of citizens in the implementation of local self-governance is a special type of self-organization of citizens whose activities are aimed at a more rational and effective exercise of civil rights and the satisfaction of their needs. At the same time, professor Marković emphasized that the territorial community is a type of self-organization of citizens in units of local self-government, while such community itself is not a unit of the territorial organization of the Republic of Serbia (6).

One of the essential guarantees of compliance with the right to local self-governance is the right of a local unit provided for in the Law on Local Self-Government to cooperate with local government units of the Republic of Serbia, as well as with local government units and structures of other states (1). Professor Marković aptly noted that the presence of the above right is related to their self-governing status (6). However, if cooperation with local government units in the Republic of Serbia is unlimited, cooperation with

foreign partners still has certain limitations. Local government units may cooperate in areas of common concern with the relevant territorial communities and local government units of other states within the framework of the foreign policy of the Republic of Serbia, observing the territorial unity and the rule of law of the Republic of Serbia in accordance with the Constitution and the law. At the same time, such cooperation is carried out exclusively with the consent of the Government of the Republic of Serbia. Also, professor Stojanović draws attention to the fact that, in order to ensure the interests of local government units and their residents, the Law on Local Self-Government provides for the right of local governments to cooperate with NGO's, humanitarian and other organizations (15).

A special place in the system of guarantees of the implementation of the constitutional right to local self-governance in the Republic of Serbia is occupied by its legal protection; such protection of local self-governance at the present time is ensured by several legal institutions. As stressed by professor Marković, in two cases the protection is carried out through state bodies, and in the other two - through organizational mechanisms of local self-government (17).

First of all, this refers to the institution of protection of the right to local self-governance in the Constitutional Court of the Republic of Serbia (11). Thus, according to Part 2 of Article 193 of the Constitution and Article 95 of the Law on Local Self-Government, the body provided for in the statute of a local government unit has the right to institute constitutional and legal verification proceedings on the constitutionality and legitimacy of laws and other general acts of the Republic of Serbia violated the right to local governance (1). Therefore, the relevant local government is called upon to act only in the case of violation of the right to local self-governance established by the Constitution. At the same time, the Serbian constitutional legislators have provided 'blanket protection' of local self-governance from unconstitutional acts and actions of state authorities and regional autonomy (15). Thus, according to Part 1 of Article 193 of the Constitution, the body provided for by the charter of a local government unit has the right to appeal to the Constitutional Court of the Republic of Serbia if a particular norm or act of a state body or local government body impedes the exercise of the competence of the local government unit (11).

The institutions protecting the right to local self-governance in the Republic of Serbia should also include the activities of the local ombudsman. Thus, according to Article 97 of the Law on Local Self-Government, a local self-government unit may provide for the position of a local Protector of Citizens authorized to monitor the observance of the rights of citizens to detect violations committed by acts, actions or omissions of administrative bodies and public agencies of local government unit. At the same time, two or more units of local self-government may decide on the establishment of the position of single Protector of Citizens. Professor Pajvančić draws attention to the fact that the definition of powers and the order of activities of the local Protector of Citizens falls within the competence of the local government unit and is regulated, as a rule, by its charter (9).

The Republic of Serbia is quite an innovator in solving the issue of inter-ethnic relations at the local level. Thus, in accordance with Part 4 of Article 180 of the Constitution of the Republic of Serbia, the operation of the units of local self-

government with a mixed ethnical structure and proportional representation of national minorities in assemblies is provided in accordance with the law. With this constitutional provision, the constitutional legislators obliged the legislator to ensure the proportional representation of ethnical groups in the local government unit to protect their rights and vital interests (which were also provided for in the Law on Local Elections). In particular, this Law provides for the application of the 'electoral threshold' at the election of councillor to the assembly of a local government unit, i.e. the distribution of the mandates of the councillor includes the electoral lists that received at least 5% of the votes of the total number of participated voters. The exceptions are the political parties of national minorities and coalitions of such parties, which, in accordance with paragraph 5 of Article 40 of the Law on Local Elections, may participate in the distribution of mandates, even if they receive less than 5% of the votes. According to the above Law, a political party of national minority is considered a political party whose main purpose is to represent the interests of the national minority, as well as to protect minority members in accordance with international standards. At the same time, the decision on whether the bearer of the electoral list has a status of a national minority political party or, respectively, the coalition of political parties of national minorities, is taken by the election commission of the local government unit at the suggestion of the bearer of the electoral list submitted during electoral registration (Part 7 of Article 40 of the Law on Local Elections).

Not of less importance from the point of view of the protection of vital interests of national minorities in the exercise of right to local self-governance are the provisions of Section 98 of the Law on Local Self-Government, stipulating the creation of council for interethnic relations as an independent working body in local units with multicultural population; the members of such councils include representatives of the Serbs and national minorities. At the same time, according to the Law, local self-government units are considered multicultural if the representatives of at least one national minority make up more than 5% of the total population or representatives of all national minorities make up more than 10% according to the last population census in the Republic of Serbia. Also, both the Serbs and minorities have the right to be represented in the council for interethnic relations, if their number is more than 1% of the total population of a local unit (Part 3 of Article 98). If the national minority has its own elected national council in the local self-government unit, then the representatives of this minority in the council for interethnic relations are elected on the proposal of the national council.

The procedure for nominating and electing members of the council for inter-ethnic relations should ensure equal representation of the Serbs and national minorities, while neither of them should have an overwhelming majority of council members. The scope of authority, composition, the election of members and the arrangement procedures of the council for interethnic relations is governed by the decision of the assembly of the local government unit; such decisions are made by a majority of votes of the total number of councillors of a local assembly in accordance with the charter.

As the main activity, the council considers issues of implementation, protection, and development of equality of ethnic groups in accordance with the law and the charter.

Decisions of the council for interethnic relations are taken by consensus of its members; in exercising of its direct powers the council operates in direct contact with the assembly of the local government unit. Thus, the council notifies the local assembly on its own position and proposals regarding the solution of issues of ensuring ethnic groups' equality; the council should state its position on such proposals at the first regular session, but no later than within 30 days. At the same time, the assembly and the executive bodies of the local self-government unit are obliged to submit preliminary drafts of all decisions concerning ethnic groups' equality to the council for interethnic relations for the latter to express its position on the above-mentioned projects. The significance of the council in the system of bodies of local self-governance is quite clearly demonstrated by the fact that the council received sweeping powers to protect constitutionality, legitimacy, and also to ensure the supremacy of the statute in the system of acts of the local self-government unit. Thus, the Law on Local Self-Government provided for the right of the council for interethnic relations to initiate proceedings before the Constitutional Court of the Republic of Serbia to verify the constitutionality and legitimacy of a decision or other general act of the local assembly if the council believes that such acts directly violate the rights of persons belonging to the national minorities or dominant ethnic group represented in the council for interethnic relations. Moreover, the council is entitled under the above conditions to initiate the proceedings in the Supreme Court of Cassation of Serbia (14) to verify the compliance of a decision or other general act of the local government unit with its charter (Part 11 of Article 98 of the Law on Local Self-Government) (1).

Another important guarantee of local self-governance in the Republic of Serbia is the provision of paragraph 2 of Article 12 of the Constitution, according to which the citizens' right to local self-governance is subjected only to the state supervision of constitutionality and legitimacy. The Republic of Serbia can be represented in relations with local government units by the Government, the Ministry of Public Administration and Local Self-Government, or by another competent ministry. As mentioned above, these bodies have the right to implement six options for state intervention in the affairs of local self-governance, but solely for the purpose of establishing constitutionality and legitimacy. As aptly noted by professor Marković, this case refers only to such constitutionality supervision but definitely not to the mentoring of the state over local self-government (17).

4 Conclusion

The Republic of Serbia ipso facto has abandoned the socialist model of self-governance already in 1990; this model was featured by the system of integral self-governance, under which opština municipality, being an administrative-territorial unit, had the status of a socio-political association. The new Constitution of 2006 laid the foundation for modern local self-governance in the Republic of Serbia. As a result, the present local authority system in this state is based on the traditional European concept of local self-governance, which is based on the representative system, the separation of powers and the right of citizens to manage local affairs. The Republic of Serbia envisaged a single-stage local government with opština municipalities as the territorial units; the cities represent special additional units within the framework of this structure.

The creation, abolition or territorial changes of a local unit are preceded by a consultative referendum on the territory of the corresponding government unit. The territory within which a local government unit is formed is a natural and geographical integrity, economically connected and having a developed system of communication between settlements and with a single unifying territory center of local government location. The main and highest legal act of a local government unit is a charter adopted by an Assembly, which is a representative body of local self-government. Along with the independent powers, in the exercise of which municipalities enjoy full autonomy in relation to the state, they also have powers delegated by the Republic and regional autonomies. The Law on Local Self-Government regulates in reasonable detail the types and order of relations between the republican bodies and bodies of local self-government units. In particular, the authorities of the Republic oversee the constitutionality and legitimacy of the activities and acts of the bodies of the local self-government units in accordance with the Constitution and the law; the latter provides for six options for the Republic to intervene in the affairs of local self-government, including the dissolution of the assembly, but only for the purpose of establishing constitutionality and legitimacy. In this case, the law provides for the procedure for protecting the rights of local self-government from unconstitutional and illegal acts and actions of state authorities and regional bodies (1).

As for the bodies of local self-government in the Republic of Serbia, with the departure from the socialist model, Serbia turned to the classical model of local self-government. At the same time, the specifics of the Serbian system of local self-government in the early post-socialist period were featured by the principle of supremacy of the highest official in the system of local self-government bodies, which assumed the direct election of this official; this provision was also stipulated by the Law on Local Self-Government of 2002 (1). However, the adoption of the 2006 Constitution, which established the Assembly as the highest body of local self-government in Serbia, accomplished the transition to a model based on the principle of supremacy of the Assembly. It is the local Assembly that currently forms the executive bodies of local self-government, which include the chairman of the *opština* (same as mayor in the cities) and the *opština* council (same as the city council). The assembly system of organization of power in the local self-government units of Serbia is characterized by the fact that with the termination of powers of the assembly, the powers of the executive bodies of the units of local self-government are also suspended. Modern legislation on local self-government has qualitatively changed the status of local self-government. Thus, under the current law, the local self-government received the status of a special body exercising a number of administrative powers, being 'one of the levels of the executive system in local government units' (6).

The most important issue, which largely characterizes the position of local self-government in the state, is its protection both as an institution of democracy and as a human right. At the present stage, the constitutional legislation of the Republic of Serbia provides a wide range of guarantees: a number of forms of direct citizen participation in the implementation of local self-government; the right to cooperate between local self-government units (including the freedom of association to achieve common interests); the institution of protection of

rights to local self-government in the Supreme Court and the Constitutional Court of Serbia, as well as the activities of local ombudsmen in the territory of local government units; and finally, the statutory restrictions of interference in the activities of the local self-government on the part of public authorities. All the above guarantees fully comply with the requirements of the European Charter of Local Self-Government. At the same time, the sub-institute for the protection of the rights of national minorities as a component of the institution for the protection of the right to local self-government in the Republic of Serbia is meant to be recognized as truly innovative.

Summing up the conducted research, it can be stated with confidence that modern Serbian constitutional regulation, on the one hand, revived the traditions of local self-government laid down by the 1888 Constitution of the Kingdom of Serbia, and on the other hand, it fully complies with the demanding requirements imposed by the 1985 European Charter of Local Self-Government

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