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# A CRITICAL REVIEW ON THE NEW SOLUTIONS IN THE NEW LAW ON LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF SERBIA

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**Abstract**. *Over the last twelve years three laws regulating the problems of local self-government have been passed in the Republic of Serbia.*
*The present Law on Local Self-Government of the Republic of Serbia represents harmonization of some solutions with the European standards that have been stipulated under the European Charter on Local Self-Government and, to the greatest extent, is coherent with the solutions in the field of local self-government of the European Union states.*
*That what can be noted are nearly identical solutions in the law of the Republic of Serbia and the laws that have already been passed or are prepared to be passed in the Balkans states and, first of all, in the states of former Socialist Federal Republic of Yugoslavia.*
*With regard to the previous law there are some new solutions, but there is no a completely new concept of the local self-government in the Republic that has otherwise been announced.*
*The solutions adopted are not radically new ones, so that wider authorizations of the local self-government, as expected, have not been defined.*
*Although the new law slightly differs from the previous one concerning some more modern solutions, a conclusion can be drawn that extent of changes expected is relatively low. There are still many questions that have not been covered under this law, but which should be regulated, while there are questions that should be differently regulated than in the adopted law.*
*Approaching in a relatively near future is enacamnet of one more, again new, Law on Local Self-Government.*
*That new law would have to regulate some more questions which have been so far beyond the legal regulations.*
*A conclusion can be drawn that at present there is no readiness, nor it has been earlier, for deeper changes in the system of local self-government. To be sure, it must be admitted that each law is somewhat better than the previous one, but it is not by far that what the expert and scientific public have been waiting for, and probably the*

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*citizens as well. Obviously, there is no political consensus for more fundamental changes in this field, so that is why the solutions adopted are at the level of classical and traditional solutions, without paying respects to the specifics and former experiences (whether good or bad).*
*Therefore, enactment of new laws that regulate the problems of the local self-government shall have to follow.*

**Key words:** *local self-government – the right of the local community population to make decisions on questions of mutual interests in the environment they live in.*
*Local self-government unity – form within which local self-government is being implemented.*
*Municipality – common name for the basic unit of the local self-government.*

Over the last twelve years three laws regulating the problems of local self-government have been passed in the Republic of Serbia. First of all, enacted was the law under which, in addition to the local self-government, territorial organization of the Republic[1] was regulated, while under the two in succession passed laws[2] only local self-government was regulated, the provisions on the territorial organization from the first law being still effective, because they were not the subject of later changes.

However, under the currently governing law, provisions of Articles 120 through 162 from the previous law, have been found to be in effect, which will be applied until the enactment of the new law on election of councilmen.

The present Law on Local Self-Government of the Republic of Serbia represents harmonization of some solutions with the European standards that have been stipulated under the European Charter on Local Self-Government[3] and, to the greatest extent, is coherent with the solutions in the field of local self-government of the European Union states.

That what can be noted are nearly identical solutions from our law and the laws that have already been passed or are prepared to be passed in the Balkans states and, first of all, in the states of former Socialist Federal Repuiblic of Yugoslavia.

With regard to the previous law there are some new solutions, but there is no a completely new concept of the local self-government in the Republic that has otherwise been announced.

And, of course, in connection with the requests of the expert and scientific public, the solutions adopted are not radically new, so that wider authorizations of the local self-government, as expected, have not been defined.

In the legal and technical sense, the law was not made in as correct way as possible.

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[1] See: Zakon o lokalnoj samoupravi i teritorijalnoj organizaciji Republike Srbije, ("Službeni glasnik RS", No. 47/91).

[2] See: Zakon o lokalnoj samoupravi ("Službeni glasnik RS", No. 49/99 and 27-01) and Zakon o lokalnoj samoupravi ("Službeni glasnik RS", No. 9/2002).

3 See: European Charter on the Local Self-Government.

During the making of the new law there was a wealth of discussion in the public on some proposed solutions that did not exist in the previous law.

Those criticisms referred, mainly, to some new competences of municiplities, introduction of local police and too wide authorizations for the newly introduced function of the mayor.

The essence of the remark was in that that municiplities would not be able to perform widened competences in the basic health care and education, that police is a classical function of the state which cannot be accomplished on a local level and that too wide autnorizations of the mayor may call into question harmonization of relations between the representative and executive organs to the detriment of those executive, which would reflect in the concentration of authorizations in one person, but not in the collective body, as it should be.

During the process of enacting the law, there occured relativization of the announced new solutions as well as different provisions with regards to the draft law.

The proposed solutions on the local policy were left out, while the authorizations of the mayor were shared with the newly introduced organ – municipal council.

Thus, the function of the mayor[4], elected by direct secret vote, was, for the first time, introduced under the Law on Local Self-Government. He is, in substance, an executive organ of the municipality, but with incomplete executive function, because he has shared a part of competence, originally intended for him, with the also newly introduced organ – municipal council.[5]

A mention should be, first of all, made here that in addition to the mayor there is also the function of the municipal assembly chairman.[6]

These two functions substantially differ both with reference to the way of election and competences.

In contrast to the mayor, elected directly and cannot be a councilman of the municipaly assembly, the municipal assembly chairman is, in substance, a speaker of the municipal assembly presiding the assembly sessions and organizing its work. Consequently, his function is connected with the municipal assembly, while the function of the mayor is connected with the municipality he represents.

At the same time, the mayor presides a municipal council.

Therefore, the complete local power is, first of all, in the hands of the mayor. He partially shares this power with the municipal council, but it is essential that he presides this organ. Also, decision making at the municipal assembly sessions could be said to be connected either with the proposal or with the approval of the mayor.[7]

Because of all this, it is interesting to analyse a theoretically imposed problem, to a great extent possible in practice, which consists in that how the local power will function if the mayor were from one political group, while the majority of the municipaliity assembly councilmen are from the other. The problem may escalate if programmes of these political groups oppose each

[4] See: Articles 40, 41 and 43 of the Law on the Local Self-Government ("Službeni glasnik RS"9/2002).

[5] See: Articles 43 and 44 of the Law on the Local Self-Government ("Službeni glasnik RS" 9/2002).

[6] See: Article 36 of the Law on the Local Self-Government ("Službeni glasnik RS" 9/2002).

[7] See: Article 30 of the Law on the Local Self-Government ("Službeni glasnik RS" 9/2002).

other. In that situation, blockage of the assembly decision making may result in practice, because the mayor/municipal assembly chairman ratio is closely correlated.

This results in argumentation if it is known that the municipal assembly may initiate the question of recall of the mayor[8] by the majority of the total number of councilmen. That would, probaly, be the way to resolve possible blockage of the municipality functioning due to a conflict between the mayor and the assembly majprity.

Also debatable are, however, solutions in the law when and under which conditions, except the aforementioned, recall of the mayor may be initiated. First of all, this is possible upon a proposal of 10% of the total electorate, which is a too high percentage, so that this solution seems unfeasible in practice. However, particularly problematic is a solution that the same may be done by the Government of the Republic of Serbia should they esteem that the affairs entrusted are not performed in keeping with the Law. Here, also, a voluntaristic approach of the Government is possible and arbitrariness in estimation whether the affairs entrusted are being performed in keeping with the Law. This problem may escalate if the mayor is from one and the Government of the Republic from the other political group, so that for political reasons it is possible to eliminate the mayor as a political oponent.

A very good solution is that the mayor, as an individual, shall not make decisions on classical administrative affairs, such as otherwise proposed, but the municipal council as a collective organ.[9] Here, supervision over the municipal administration and problems solving in the administrative procedure in the second degree is in questions, when in the procedure of the first degree the municipal organs of administration make decisions there are no difference here between the municipal council and the former executive council of the municipal assembly.

In fact, there is a difference between these organs only in the way of election, but not in the substantial competences. The executive council had a candidate for the chairman as a mandator of the whole "municipal government", while the mayor presides the municipal council, who, also proposes members of the municipal council, but "fall" of the chairman of the executive council caused "fall" of the complete executive council, but here the municipal council may be changed by changing the mayor at the direct election, which is a more complex procedure.

As for the competence, there is no any difference with the municipal administration with reference to the previous legal solution. The only change is that the former secretary of the municipal assembly was the head of the municipal administration, now it is chief, while the function of the secretary is reduced only to performance of expert and administrative affairs for the municipal assembly session work.

New solutions are that a main architect and municipality manager, engaged by the mayor based on a contract, may be appointed to the general administration.[10]

As a new form of indirect participation of citizens in the local self-government attainment, a meeting of citizens is introduced.[11] That form existed even before the Law of

[8] See: Article 42 of the Law on the Local Self-Government ("Službeni glasnik RS" 9/2002).

[9] See: Articles 44 and 45 paragrpahs 2 and 3 of the Law on the Local Self-Government ("Službeni glasnik RS" 9/2002).

[10] See Articles 54, 55 and 56 of the Law on Local Self-Government ("Službeni glasnik RS 9/2002")

1991, so that it is now again introduced. The basic problem arising here is determining the census for holding meeting of citizens, which, naturally, could have been expected to be defined under the Law, but was not done. Also, brought back into the Law was the institution of sections of commune[12], which is not a constitutional category, so that a question could be raised whether it was an attempt through these two forms of participation of citizens in creating local power to bring back the self-management decision making or whether those are really forms of direct participation of citizens in performing local self-government, that is, a process of further democratization of the society. This question will be best answered by practice.

Two new organs are established under the new Law – council for international relations and council for local self-government development and protection. Their affairs are not debatable, but debatable may be their character. Council for international relations is classified in the part of the Law dealing with municipal administration, while the latter is classified in the part referring to the self-government protection. A question could be raised whether they are an organ of administration, a working body of the assembly or something "sui generis".

As for the affairs they should be responsible for they should, as the assembly working bodies, be best incorporated into that part of the Law that deals with that matter.

At the end of this short form commentary, also answered should be the question whether the adopted solutions in the new Law on Local Self-Government have met the expectations of the public in respect of changes in this field.

Although the new law slightly differs from the previous one concerning some more modern solutions, a conclusion can be drawn that extent of changes expected is relatively low. There are still many questions that have not been covered under this law, but which should be regulated, while there are questions that should be differently regulated than in the adopted law.

Approaching in a relatively near future is encamnet of one more, again new, Law on Local Self-Government.

That new law would have to regulate some more questions which have been so far beyond the legal regulations. One of such questions is the property of local self-government. That question should be regulated in the law in an explicite manner. According to the current legal solutions, the property of the local sef-government belongs to the state. However, this problem should selectively be defined in the sense that the property, created by direct contributions of citizens (voluntary contribution, for example), must be the property of the local self-government.

In view of financing local self-government, although some new financial sources have been prescribed in the new law, a mention should be made that fiscal sovereignty should further be improved, so that more resources would be available for attainment, first of all, its basic functions. Namely, practise has been so far that new competences are transferred to municipalities, which are not adequately accompanied by resources needed for their performance, so that this discord should be harmonized. In spite of all that it should be

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[11] See Article 62 of the Law on Local Self-Government ("Službeni glasnik RS 9/2002")

[12] See Articles 70 through 76 of the Law on Local Self-Government ("Službeni glasnik RS 9/2002")

kept in mind that successful attainment of the local self-government functions is dependent on the financial independence.

Multy-type character of the local self-government in this country should be expressed in the future law. In our system, there are municipalities and cities as the units of self-government, but there is no any difference among them, except for the name. Also, position of municipal assemblies in the cities within which they exist has not been defined. It is, therefore, necessary to make a clear distinction among municipalties, cities and the city of Belgrade and thus clearly express existence of the multi-type nature in our model of the local self-government. A starting step ahead towards this orientation has also been carried out under the current law which stipulates that a separate law on the city of Belgrade will be passed within six months, but that the concept of the local self-government in Serbia would be consistent it is also necessary to pass a separate law on cities, under which their position will be regulated as well as relations within a city, having in mind the fact that cities may exist according to the current constitution only if they have at least two municipalities.

Thus, problems of the local self-goverment in Serbia would be regulated under the Law on Local Self-Government, Law on Cities and Law on the Capital, while the territorial organization of the Republic would be regulated under a separate law. Also, we do not think it best solution that election of councilmen of the municipal assembly and the mayor would be regulated under a separate law, such as it has now been done, but these problems should be regulated under a law on the local self-government.

Provisions on the local self-government organs, except partially on the municipal administration, where the number of inhabitants for specific regulation of certain relations is respected, are not sufficiently flexible and do not respect the need that organization of the local self-government should be adapted to the municipality size; therefore, closer attention should be placed upon this question in the future law.

Also lacking in this law are solutions on the municipal assembly councilmen election. This has been left to be resolved under a separate law. Considering that these problems should be resolved within the law on the local self-government, a decision should be made on the election system character to be applied when electing councilmen. Whether those will be simple or double majority ballot systems, practice should be analyzed, because it was in recent past that we had application of both systems. There are advocates of the view that proportional election system should be introduced or the same combined with that of majority vote. In any case, this should not be only a political question.

The whole complex of entrusting state affairs to the local self-government units should be solved in more details than it has been done in the law in a general manner. First of all, a clear distinction between the original and entrusted affairs should be made, and then in a more explicit way regulate performance of the affairs entrusted. Here, one should start form the most simple question to be answered by the law, that is, whether the local self-government units are bound to accept performance of the affairs entrusted as well as whether they can be entrusted only under the law or in any other way.

The character of dictrict remains an open-end question. Districts were established under the regulation of the Government of the Republic of Serbia. Their status is not clear. It is, "de facto", dislocation of state organs, but their connection with municipalities is not clear. Whether they will at all exist as intermediary forms of organization between

the state and municipality is an open-end question. Following this question is the state regionalism concept, currently pleaded for, so that it deserved an answer.

Concluding this short form commentary on the new Law on Local Self-Government and comparing it with the earlier passed laws, a conclusion can be drawn that at present there is no readiness, nor it has been earlier, for deeper changes in the system of local self-government. To be sure, it must be admitted that each law is somewhat better than the previous one, but it is not by far that what the expert and scientific public have been waiting for, and probably the citizens as well. Obviously, there is no political consensus for more fundamental changes in this field, so that is why the solutions adopted are at the level of classical and traditional solutions, without paying respects to the specifics and former experiences (whether good or bad).

Therefore, enactment of new laws that regulate the problems of the local self-government shall have to follow. Then, it would be a sheer luxury not to effect thorough changes in the system of local self-government. Truly, it is logical to expect passing of that law after a new Constitution of the Republic of Serbia has been adopted. For the sake of truth, the Law on Local Self-Government would probably be better if there were no certain constitutional restrictions.

In any case, scientific public should also expose its stand on this matter in an open and critical manner.

## KRITIČKI OSVRT NA NOVA REŠENJA U NOVOM ZAKONU O LOKALNOJ SAMOUPRAVI REPUBLIKE SRBIJE

**Mile Ilić**

*U poslednjih dvanaest godina u Republici Srbiji doneta su tri zakona koji uređuju problematiku lokalne samouprave.*

*Sadašnji zakon o lokalnoj samoupravi Republike Srbije iz 2002. godine predstavlja usklađivanje nekih rešenja sa evropskim standardima koji su utvrđeni u Evropskoj povelji o lokalnoj samoupravi i, u najvećoj meri, je koherentan sa rešenjima u oblasti lokalne samouprave zemalja Evropske unije.*

*Ono što se može zapaziti su skoro identična rešenja iz zakona Republike Srbije i zakona koji su već doneti ili su pripremljeni za donošenje u balkanskim zemljama a, pre svega, u zemljama bivše SFRJ.*

*U odnosu na prethodni zakon postoje neka nova rešenja, ali ne postoji potpuno nov koncept lokalne samouprave u Republici, kako je inače najavljeno.*

*Usvojena rešenja nisu radikalno nova, pa šira ovlašćenja lokalne samouprave, kako se očekivalo, nisu definisana.*

*Iako je novi zakon za nijansu drugačiji od prethodnog sa nekim savremenijim rešenjima, može se konstatovati da obim promena koji se očekivao je relativno uzak. Postoji još mnogo pitanja koja nisu obuhvaćena ovim zakonom, a treba ih urediti, a postoje i pitanja koja treba dugačije urediti nego u usvojenom zakonu.*

*Predstoji, dakle, u relativno skorije vreme donošenje još jednog, opet novog, Zakona o lokalnoj samoupravi.*

*Taj novi zakon bi morao da uredi još neka pitanja koja su, do sada, bila van domašaja zakonske regulative.*

*Može se konstatovati da ne postoji rešenost sada, niti je ona ranije postojala, za dubljim promenama u sistemu lokalne samouprave. Doduše, valja priznati da je svaki zakon nešto malo bolji od prethodnog, ali to ni izdaleka nije ono što su očekivali stručna i naučna javnost, pa verovatno i građani. Očigledno je da nema političkog konsenzusa za temeljnijim promenama u ovoj oblasti, pa su zato i usvajana rešenja na nivou klasičnih i tradicionalnih, bez uvažavanja specifičnosti i dosadašnjih iskustava (bilo da su ona dobra ili loša).*

*Zato valja očekivati da će morati da usledi donošenje novih zakona koji regulišu problematiku lokalne samouprave.*

**Ključne reči**: *Lokalna samouprava – prava stanovništva lokalne zajednice da mogu odlučivati o pitanjima od zajedničkog interesa u sredini gde žive.*
*Jedinica lokalne samouprave – oblik u kome se ostvaruje lokalna samouprava.*
*Opština – uobičajeni naziv za osnovnu jedinicu lokalne samouprave.*