

**CURRENT QUESTIONS OF CONSTITUTIONAL CONCEPT
REALIZATION REFERING
TO LOCAL SELF-GOVERNMENT IN SERBIA**

UDC 352(497.11)

Mile Ilić

Faculty of Law, University of Priština

Abstract. *Structuring of local self-government system in Serbia in period from 1990. to 2003. has general characteristic that each new law, comparing to previous, means more completely structuring of local self government system, the way that is regulated in article 113. paragraph 2. of Serbian Republic Constitution.*

By the self-government law from 1999. and 2002. all questions important for local self-government system are regulated in complete and systematic way, and the special accent is on establishing independent local self-government unit sphere of activity, productive differing state and local self-government working area, citizen participation in making decisions in local public activities in local self-government unit, as well as questions of local self-government financing and its legal protection. With these two laws, we can consider that, according to our opinion, the system of local self-government is legally regulated in coordination with Local Self-government European Chart.

Key words: *Local autonomy, citizens, European charter on local self-management, municipality.*

Local self-management is a very interesting investigation area. But, in spite of the best wishes actual practice often denies the rationality of certain solutions offering quite new ones or simply emphasizing that some questions need to be arranged in a different, although unspecified way. Considering its far-reaching repercussions on political and cultural life, the question of local self-management is one of the most important in whole political system. Citizens' right to fulfill their political needs by organizing themselves into communities and therefore participating in partly decentralized governmental power, was traditionally considered to be one of the greatest democratic achievement. The European Charter of local self-management, adopted by the European Council in Strasbourg, October 15, 1985, declares that "protecting and advancing the local self-management in Euro-

pean countries represent significant contributions to the process of constituting Europe in accordance with the principles of democracy and power decentralization."

In the entire post-war period, (here was a tendency in Yugoslavia to develop specific local self-management by its incorporating into a system of governmental power, (i.e. a tendency to nullify the limits between two basically different ways of governing), which led to an unusual type of local self-management, as well as governmental power, too. The local self-management has been gradually retreating before the state power, and in 1974 it actually ceased to exist. This fact has been repeatedly distorted. There is a strong belief that the local self-management has usurped governmental functions. Quite opposite, by means of permanent strengthening its power in community, state pushed the local self-management out of scene. It was the end of an unrealistic concept of communal system in Yugoslavia.

Comparisons of our experiences in commune organization with similar European ones showed that, besides different theoretical and ideological basis, our communal system was not original one. Rather, it was an unsuccessful duplicate of an average European model with all its exaggerations and bad solutions. Aiming to establish an original model of self-managing socialistic political system, but denying the world achievements in the field, the makers of our communal system have simply grafted its wrong solutions on the historically approved world practice. This have resulted not in an original but distorted system with overlapping elements of local self-management and administrative power.

The key arguments of previous statement are as follows:

a) Our commune was twofold in nature (as a self-managing association in one hand and a unit of governmental power in the other), which made it similar to local associations in most of the European countries. But the similarity was only superficial. Our model put too much stress on the part of governmental power, quite contrary to European one which made a clear distinction between the local self-management and governmental power; b) Our commune is one and only element of local self-management and local governmental structure, what makes it exceptional in comparison to European local units structure; c) In regard to relations between communal and central governmental units, commune had complete autonomy in the field of self-management and some autonomy in the field of governmental power (especially administrative one), which wasn't the case in other European countries, particularly in part of delegated (entrusted) functions. In contrast to European, our model defined administrative power as communal in origin, not as delegated one; d) The scope of original communal functions was wider then anywhere in Europe and, in regard to its administrative functions, the widest in the world. On the other hand, neither the self-management nor administrative power were in accordance with (1) its financial and economic potentials and (2) its territorial functions. Therefore communes were often additionally financed from republic or provincial budgets but, besides all, their potentials to reach an average standard in carrying out the prescribed functions were insufficient (by the way, such standards were never defined). Solutions for various territorial problems were found in forms of joint communal associations. Communal size turned out to be an obstacle to its functioning in two basic aspects: in the first place, from the point of view of autonomous governing, communal territory is too large and, in the second place, too narrow for realization of certain numbers of functions which are beyond the communal scope, e) Commune was given complete freedom in managing finances without an adequate central control. Consequently, such policy gave rise to many irregu-

larities based on great financial power concentrated in a commune (such as different approaches to the common social needs, tax policy etc).

It is important to note that local self-management was strictly legally defined in most European countries, in best legal tradition, with, at least, two big advantages in comparison to our model. First of all, it is impossible for central organs to interfere with communal self-management and, second, local units are prevented to turn into quasi-governmental forms or subject its interests to some narrower sub-groups etc. In order to be appropriate and in accordance with European experience, our concept of local self-management should incorporate the following characteristics:

Commune should be defined as local self-management unit exclusively, with precisely numbered basic (original) functions and authority to put its own decisions into effect. In part of its original functions, clearly distinctive from governmental ones, commune should have the constitutionally guaranteed autonomy, which means its functions would be subsidized from central budget and distinguished from central governmental ones.

Legislator should define (best in the form of special law) the scope of original communal functions and aims, as well as the financial resources and its relations with central state units. It is specially important to establish the criteria on the basis of which commune could appeal for additional financial resources if the regular ones wouldn't suffice for its proper functioning. Regarding the communal structure, and on the basis of European experience, the following basic organs could be instituted by the law: 1) communal assembly or city council, 2) executive agencies, and 3) commune or city mayor.

In City Assembly or Council, with one House of Representatives, should be elected from 30-70 representatives, depending on city needs. Executive unit (board, council) should consist of up to 15 members, each one responsible for one specific field in communal domain. Commune or City Mayor would be elected by the Assembly. There is a possibility to appoint the authorized official as the chief city administrator (for example Communal Secretary). Central administration would specify the number of communal officials needed in part of delegated functions, as well as all the conditions which should be met in regard to their position (wages, education etc.). Other issues regarding administrative personnel in part of original communal functions should be left to the community itself.

In defining basic communal functions and its legal position, solutions which are beneath the level of so called countries with developed local self-management (Scandinavian, for example) or beneath the principles proclaimed by the European Charter of local self-management, should not be taken into account.

Speaking of positive experiences with local self-management and its original functions in most European countries, we have in mind that, beside all the conceptual differences, their model involves very important and extended rights. An average European model pools the following activities and institutions: social service institutions (taking care of and helping the unemployed and their families, taking care of children in specialized nursery schools, nursing the senior citizens etc.); educational and cultural institutions (elementary education is usually under the local jurisdiction); public health institutes; communal affairs (water and sewerage systems, streets, markets, bridges, parks, traffics, urbanism, local taxes etc.). Local administration supervises a process of communal tasks realization as well as carrying out a delegated functions (local police, taxes, statistical data, registration service etc.). Actual size of our commune, comparable with medium-sized European region, is great obstacle to inauguration of local self-management. This

specially stands for those communes which size is similar or greater than an average one in Yugoslavia. This must be kept in mind because the concept of local self-management implies an integration of many small communities in order to satisfy their mutual needs and interests. If neglected, this fact would stop the process completely. We would get an unrealistic local self-management concept again, this time unrealizable one. Further, it would be possible to transform former local community council into commune. It would be more appropriate and in accordance with communal tradition in Serbia (for example, a small commune in Serbia before II World War). If actual communal size stays as a transitional form, it will be necessary to define its nature in a different way. Commune would be a basic local self-managing unit but with outstanding characteristics as local governmental unit, also. By the constitution, certain parts of precisely specified central administrative functions should be transferred to the communal authority. Because of the strong local interest and certain influences of local administration, these duties could be carried out through communal agencies (organs specialized in delegated administrative functions) subjected to and subsidized by central administration. This way we are not dealing with pure concept of local self-management but with a sort of middle form system unit. These solutions should be applied to big communes (with 50.000 inhabitants or more) or two or more small communes taken together. Considering the middle form, we are facing the following dilemma - whether this form should be a combination of local self-management (decentralization) and local administration ("deconcentration") or just an organizational form of complex governmental system? Mixed middle form has its advantages. Legal competence of the middle form unit (administrative district, region etc.) could include communal functioning supervision and appointment of chief manager of communal administrative organ with delegated competence in local fields. Head of an administrative district should be appointed by republic executive organ. In accordance with experiences in European countries, financial resources should be provided by central level administrative units (organs). Regarding the structural matters (district, region etc.), besides a chief administrator, the law should also regulate composition and prerogatives of one representative (assembly, council) and one executive body. Territories these agencies (organs) would be in charge with could cover the same areas as minor regions (economic or urban center with gravitating areas), i.e. big communes. According to European experience, the middle structure units are carrying out delegated (entrusted) functions mostly. Certainly, if we are considering the slate administration units on this level, they are carrying out administrative duties exclusively, and a sort of distinction between original functions and delegated ones (sometimes on the inter-communal level) could be made in the case of the local self-management units only. As far as original functions are concerned, on this level they include the duties which importance is far beyond the local scope (roads, schools, ecology, social services, urbanism, public works, social, cultural, economic issues etc.). Delegated tasks are numerous and, in addition to supervising activities over communal and public services, include administrative functions in the self-managing fields. Any commune has the right to make associations and cooperate freely with any other commune, and this matter does not need to be regulated in the constitution. The world experiences show that legal regulations only restrain the progress in the field. Besides, we think that we should maintain a sort of conference of the cities or communes with some appropriate changes in their functions and methods of work. The new concept of communal development is very important in the process of developing commune as

democratic local self-managing factor. Aiming to satisfy mutual needs, communes have freedom to make joint associations. Among the others, association would have to find solutions for common interests, tasks and duties in the fields of urbanism, social development, communal legislative functions, to take initiatives in the areas regulated by republic or federal laws but common to all the members of joint associations. Needed financial resources should be provided by all the association members (communities). Also, all members of the joint association would mutually regulate their activities and relations. Depending on actual relations, tradition or natural interests, any community would have the right to choose its partners freely. If there are regional division with respective administrative departments, it would be appropriate to establish communal association on regional level. Republic would delegate a part of its functions to regions, where the communes associated into the union or joint associations would have an opportunity to negotiate and adjust their mutual interests. Obviously these solutions wouldn't be convenient to every commune. So, there is a good reason to establish a sort of multilevel commune, i.e. community with different structure and scope of functions. Another possibility is so called city level (status). For example, any commune with more than 250.000 inhabitants should be given the city status, which would be more appropriate solution in comparison to heavy and ineffective structure composed of many communal plus higher, city level administration. The idea about two-leveled local self-management system implies that there aren't any presumptions in favor of communal administration and that this fact is regulated by the law. The higher-level authority (republic) should have the supremacy, for example, in regulating the matters of foundation and status of local administration agencies, their relations with central units, communal prerogatives to set the regulations etc. Only the basic principles of local self-management need to be legally regulated and all the others, more detailed relations, should be specified by special law. As far as delegated functions are concerned, their implementation would be regulated by means of the state administration regulations.

We find it necessary to define City of Belgrade as the capital of Republic of Serbia/Federal Republic of Yugoslavia, with its special prerogatives distinctive of other communes and cities. Its position should be regulated by the special law and the City of Belgrade should be given a part of delegated republic functions. City of Belgrade has actually paved a legal way for a few formerly "big" communes (Nis, Kragujevac, Pristina, Novi Sad) which achieved the city status with an opportunity to develop their identity distinctive of other "small" communes and Belgrade, too. All the cities, including the other communes, remain the local self-management units with broader and more independent status which means they could autonomously regulate their prerogatives defined in accordance to special law. They should be subsidized and given a part of delegated (transferred) republic functions and/or administrative organs. According to the constitution, city should have at least two "city communes", different from ordinary "communes" established in accordance to communal bylaws, and their status could be ascertain by means of special legal regulations. They are quite different in comparison to classic administrative communes in any respect. Under the requirements of parliamentary democracy, so called local communities have proved to be out of date, anachronistic and out of touch with real political life. If left to be, they should be organized and given a part of communal prerogatives in helping citizens to regulate their relationship with local administration in the most effective way. For that purpose, a certain number of local administra-

tion stuff should be employed in specialized offices and put at citizens' disposal. In particular, it is expected that local community will be freed of formal obligations that can not be achieved at present level. Local community should maintain its position as the appropriate place where citizens will get the opportunity to satisfy their mutual needs and interests. Having in mind all of these conditions, we think it is reasonable to organize a local community as a single social-political system unit and specify its position by law. Administrative and organizational issues should be left to the commune itself and specified by its bylaw and regulations. In this respect, communal prerogative to self-organize its functioning in accordance to its needs and possibilities is particularly important issue. On the basis of that principle it is possible to promote mutual cooperations between citizens and administration offices and intensify their participation in the local self-management process. For that purpose, commune will nominate specialized administrative organs (or agencies) and, according to law, will have the only one representative body (House of the representatives) with its respective executive and administrative organs or agencies. Delegates in the communal representative board should be decreased in number, and its president would be elected out of communal representatives. President of the city representative board (in big communes) could be a mayor at the same time. The city representative board could entrust a president (mayor) with certain executive prerogatives which could be recalled whenever it is necessary or requested for. The same board should have a vice-president (or deputy). His duty would be to replace a president in case of his absence or inability to carry out his function regularly. In order to be more efficient in carrying out its legal functions, representative board should form a certain number of working agencies (commission, council, board, committee). Besides delegates from the representative board, a number of citizens would be members of these agencies, too. Executive function could be organized and carried out in many different ways, depending primarily on communal size and extent of its development. Bigger communes could have an independent executive agencies with exclusive prerogatives to control and set conditions needed for appropriate functioning of administrative organs. In minor ones, executive functions would be carried out by communal administrative organs mostly, and in order to control and coordinate its functioning and legality, the representative board could form an executive agency (Communal Executive Board). A few delegates from the representative board would be appointed members of its executive board, and some of them or president of the representative board could lie a head of the executive one. In minor communities, the administrative functions could lie carried out in one or several joint agencies (communal departments). A Secretary of department would be an officer in charge of communal affairs, subordinated to communal representative board. The basic principles of organizing and functioning of communal departments, as well as its financial resources, would lie regulated by special republic law and communal regulations. In accordance to recently defined constitutional position, commune is a democratic association of local self-management and there is no need to set a different territorial principle in this matter, which, of course, does not mean (hat an actual stale is optimal one and could not or should not be changed for better. But, the Republic will set the uniform standards for communal functioning on its whole territory and set the limits to communal engagement in administrative areas. A communal self-management development should be supervised by the Republic in an organized and continuous manner. If necessary, the needed changes in territorial organization of the communes could be carried out.

In Serbia today, there are 184 communities, 4 cities and the City of Belgrade. It should be stressed that actual constitutional status of the commune has provoked a great deal of difficulties and negative consequences in functioning of our social-political system. A numerous communal rights and obligations have been defined in such a vague and general way that there was no place for any differentiating from higher social-political associations. Community turned out to be self-dependent and self-isolated entity. Based on such starting premises and under prevailing administrative circumstances (being given the same rights and responsibilities no matter how different they are) community has ceased to carry out any of its rights and obligations.

Economic reform and market orientation dictate decreasing of communal economic prerogatives and its reduction to communal services, housing construction, private sector of the economy and development of social services important as the means for satisfying an individual and mutual needs of its citizens. In accordance to its constitutional definition, commune was treated as a social-political and governmental association mostly. Consequently, community was held responsible for carrying out every single function but one which has to be realized in broader social-political association (e.g. Republic). It was the main source of numerous difficulties in law implementation.

If we are to establish a principle of consistent social responsibility for implementation of law and regulations we shall have to leave (the communal practice to feel in charge of execution any of republic, regional or federal laws. That way a clear distinction between administrative and other functions will be made and commune given an opportunity to develop as the self-managing and autonomous democratic society with its respective executive functions.

Commune should be defined as a democratic local self-managing association with its belonging rights and obligations established by (the constitution and communal bylaw. The local self-management is a form of territorial decentralization in social functioning, which means that commune has autonomy in setting and carrying out regulations and other functions from domain of its jurisdiction, as well as in providing citizens' participation in the process.

Basically, communal rights and duties are as follows:

- to provide conditions for satisfying mutual needs and interests of its citizens in the areas of communal services, housing, ecology, education, health care, social security, child care, culture and physical culture (and others which haven't been entrusted to the republic or provinces),
- to make decisions regarding the urbanization and administrative planning,
- to educate communal organs to carry out their autonomous functions as well as entrusted (delegated) ones,
- to provide general conditions for undisturbed functioning in the areas of communal services, residential construction, local streets and communications, urbanism, private sector of the economy, social services and many others of common interest,
- to provide conditions for and supervise the implementation of communal programs, decisions and regulations,
- to strengthen and protect the civil rights of its citizens, and
- to carry out its other rights and duties according to the constitution and communal bylaws.

However, defined this way, original (autonomous) communal functions will not be clearly distinctive of republic ones and, in order to protect local self-management autonomous functions, their relations need to be regulated by law and other regulations.

Constitutional solutions would apply to all communities. Republic could transfer (delegate, entrust) a part of its executive prerogatives to a community (to make voter registration lists and elect communal representatives, to have a communal registration office, technically regulate local traffic, issue passports, driving licenses etc.). In regard to entrusted functions, Republic would have an obligation to supervise their carrying out and provide financial resources. Republic could, also, transfer another part of its constitutional functions to the communes with city status (public security, traffic control and regulation, staff education for republic administration services etc.). For carrying out these functions community would be subsidized. In accordance to uniform criteria, republic should provide community with certain minimum of financial resources intended to satisfy mutual needs in elementary education, social security, child care and culture and physical culture. Besides, every community could provide extra financial resources by means of local voluntary taxes, communal incomes (annuities, taxes) or any other way. For satisfying general social interests basically charged with, community would have its own financial resources. According to article 52, paragraph 1 of the Constitution of Monte Negro, if an appeal is filed against an executive decision of any communal organ, republic administrative organs will take over the prerogatives of higher level legal instances. This represent a sort of limitation of the local self-management. We find that better solution was offered in the Law of territorial organization and self-management of Republic of Serbia. According to mentioned Law, it is up to the local community executive organ to make a decision in case of any appeal. And vice versa, republic organs in Serbia can lodge an appeal before the Constitutional Court against a communal self-management organ and its decisions and ask the Republic Government to suspend their implementation. The Republic Government itself can take the same initiative and suspend the further implementation of some paragraphs or the whole regulation. The same stands for Republic of Monte Negro except that Republic Government has legal right to suspend the further implementation of any communal regulation if it violates or invokes citizens freedom, rights or obligations. Suspension will stand till the Constitutional Court establishes the constitutionality of the mentioned regulation or law. In Republic of Serbia, the local government organs have legal means to safeguard their basic rights. If their rights were violated by republic administration organs or their decisions, they could appeal to the Republic Government. If the violator is the Republic Government itself, they could appeal to the Republic Parliament. Moreover, communal assembly in Republic of Monte Negro has legal prerogatives to challenge the constitutionality of any dubious decision before the Constitutional Court. Commune can, also, constitute a special council for local self-management protection composed of the citizens' representatives with legal prerogatives to make suggestions or file petitions to governmental organs and inform the community about it.

However, in Republic of Serbia there would be the following territorial units: - Republic (a state defined in the Constitution of Republic of Serbia) -Autonomous Provinces (their status could be defined in Republic Constitution and Provincial Bylaw) - Region (an intermediary organizational form somewhere between republic and commune, status of which should be defined by republic i.e. republic governmental regulation) - City of Belgrade (as the capital with twofold legal status defined by the special republic law in regard to a part of entrusted republic functions) - Cities (their status should be defined by special law, too), and - Local communities (their status should be regulated by communal bylaw). The essence is that the whole matter of organization and legal prerogatives of

communes, cities and City of Belgrade need to be defined by special law of territorial and local self-managing organization in Republic of Serbia. Another special law would regulate the scope of republic governmental functions entrusted to the City of Belgrade and other cities in the country.

AKTUELNA PITANJA OSTVARIVANJA USTAVNOG KONCEPTA LOKALNE SAMOUPRAVE U SRBIJI

Mile Ilić

Strukturiranje sistema lokalne samouprave u Srbiji u periodu od 1990. do 2003. ima opštu karakteristiku da svaki novi zakon, upoređenju sa prethodnim, predstavlja potpunije strukturiranje sistema lokalne samouprave, na način uređen članom 113. st. 2. Ustava republike Srbije.

Pod pravom lokalne samouprave od 1999. i 2002. sva pitanja važna za sistem lokalne samouprave se regulišu na potpun i sistematičan način, i poseban naglasak je na uspostavljanju nezavisne jedinice lokalne samouprave, produktivno različitoj nadležnosti države i lokalne samouprave, građanskog učestavanja u odlučivanju u lokalnim javnim aktivnostima u jedinici lokalne samouprave, kao i pitanja finansiranja lokalne samouprave i njene pravne zaštite. S ova dva zakona, mi možemo zaključiti da je, po našem mišljenju, sistem lokalne samouprave legalno uređen u skladu sa Evropskom poveljom o lokalnoj samoupravi.

Ključne reči: *Lokalna samouprava, građani, Evropska povelja o lokalnoj samoupravi, opština.*