

Comparative Models of Local Self-Government in the Republic of Kosovo, Former Yugoslav Republic Of Macedonia and the Republic of Serbia

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Abstract:

A general characteristic when talking about the local self-government system in the three countries subject of comparison of this thesis, is the fact that in all three countries the local self-government system is treated as a constitutional category, due to the fact that their constitutions have foreseen special chapters determining the basic principles on which the local self-government systems should be established.

Moreover, the Constitution of the Republic of Kosovo, as noted also earlier on, clearly determines the principles on which the local self-government system is established, where the municipalities are carriers of local governing and the sole territorial unit in local level which means that the administrative and territorial separation in Kosovo is regulated on the grounds of organization in a scale level, where the municipalities are considered the direct and sole entities for exercising of duties and responsibilities in a local level. i.e., by constitutional provisions, as given several times, there is determined the right of local self-government as a guaranteed right and regulated by law and this constitutional determination authorizes and simultaneously obliges, first the respective state authorities to guarantee the establishment and functioning of a local autonomy system in Kosovo through the approval of corresponding laws, without having the need to initiate constitutional changes, and secondly, this constitutional norm was drafted in accordance with the European

Charter of Local Self-Government, which clearly requests that the principles of local self-government be guaranteed by law.

Key words: local self-government, Mayor of Municipality, Election system, Municipality, Institutions

Introduction

Given the fact that the three current states Republic of Kosovo, Republic of Macedonia and of Republic Serbia, although with different statuses at the time, have been for a long period of about 50 years involved within the same state community called the Socialist Federal Republic of Yugoslavia. This fact indirectly suggests that the three constitutive unit of the Yugoslav Federation were oriented in an almost identical pattern of self government. However, after the dissolution of the federation, after nearly three decades now, when it comes to local government systems of these countries even though there are observed similarities, there are still important differences which makes these systems distinct from one another.

During various research conducted to date, it is confirmed several times that public services may be realized easier and more qualitatively if they are performed by government authorities closer to the citizens. In principle these are authorities of local government, which does not mean that all these authorities manage to equally provide all public services in each local self-government unit. Therefore, in order to realize in the best possible way several types of public services, it is requested for them to be spread in a territory greater than the territory included in one municipality, or should rely on more persons for such services to be successful. For this purpose, it is very normal that in different countries the government be organized in several levels, most commonly in three-levels, where the municipalities are always the basic units and the closest governing authority where citizens realize

their rights and obligations directly or through their elected representatives, then there comes the middle level which is related to the regional authority or in form of districts as well as the third level, the central level of state authority. Each of these government levels is responsible to provide services for various public needs, respectively is competent to offer to the citizens and other legal entities various services, or even establish conditions as needed, that somebody else on their behalf realizes these services, in other words, each authority in its level has certain legal competencies and authorities to fulfill such responsibilities for a normal functioning of the state and society in general.

However, the distribution of government in various levels in several cases has not always functioned as it should have and has not always been efficient and rational from the economical aspect of their functioning, and has not always been the best option for the citizens to timely and efficiently provide the services requested by them. This happens for the fact that such distribution of government in various levels occurred as a result of the distribution of proper scientific analyses and based on the interests of those the services of these authorities are dedicated to, but, as a result of various interests of individuals and entities comprising the government.

1. Local self-government system as a constitutional category

The general characteristic, when talking about the local self-government system for all three states that are subject matter of comparison of this thesis, is the fact that in all three states the local self-government system is treated as a constitutional category, for the fact that their constitutions have foreseen special chapters determining the basic principles on which the systems of local self-government are to be established.

Furthermore, the Constitution of the Republic of Kosovo, as noted also before clearly determines the principles on which there should be established the local government system, where the municipalities are carriers of local government and the sole territorial unit in local level which means that the administrative and territorial separation in Kosovo is regulated based on the organization in a single level, where the municipalities are considered the direct and sole carriers for the exercising of duties and responsibilities in a local level. Therefore, by means of constitutional provisions, as it is noted several times, there is determined the right of local self-government as a right guaranteed and regulated by law and this constitutional determination authorized and simultaneously obliged first the relevant state authorities to guarantee, through the approval of relevant laws, establishment and functioning of a local autonomy system in Kosovo, without the needs to initiate constitutional changes, and secondly this constitutional norm was modeled in accordance with the principles of the European Charter of Local Self-government, which clearly requests that the principles of local self-government should be guaranteed by law.

Also, when talking about the local self-government system as a constitutional category in the Republic of Macedonia, we say that the foundations of the local self-government system in this state are included in the Constitution in force, a special chapter is dedicated to this system confirming the basic principles, on which that local self-government system is based and functions thus guaranteeing the citizens the right of self-government in local level, directly or through their representatives.

Whereas, also in the Republic of Serbia, local self-government is considered a constitutional category for the facts that in the first part of its Constitution, with regard to basic principles, there is included also the provision, in which the state authority is defined as a right of citizens to provincial

autonomy and local self-government.¹ There are two most important characteristics of this Constitution related to the local self-government system, and that distinguish one form from the systems of the other two states. First, by the Constitution it is foreseen that the municipal assemblies decide on the selection of executive authorities of the municipalities, whereas the election of executive authorities for cities and for Belgrade be determined by a special law. Such a solution, is clearly part of the games of the strongest political parties, where there prevails the assessment that at mayors of municipalities that are elected by municipal assemblies, political entities have much more impact than they have towards those elected directly by citizens through elections. Secondly, it is noticed that in the Constitution of the Republic of Serbia the issue of local self-government property, which until the issuance of the current Constitution has not been included in the constitutional system of Serbia. In fact, the local self-government property still does not exist in practice, but hoping that the laws which first of all should clearly define what the term local self-government property means, shall be approved in the meantime.

2. Territorial organization system – mono level system

With regard to the territorial organization in these three states, it is noticed that Serbia continues to maintain for a long period, we can say decades, a type of territorial organization with municipalities that is characteristic from the territorial and demographic aspect as among the biggest municipalities in Europe. Whereas, the trends in the Republic of Macedonia lean towards the direction of tendencies for the narrowing of territories and decreasing the territories of municipalities,

¹ Republic of Serbia, Official Gazette No. 98/2006, Constitution of the Republic of Serbia, article 12

which is characteristic also when we talk about the local self-government system in the Republic of Kosovo.

Regardless of the fact that in these three compared states the local self-government system is mono instance, still they vary from one another with regard to their territorial organization.

In this direction, in the Republic of Kosovo, according to the Constitution and the other legislation in power, the municipalities are carriers of the local government and the sole territorial unit in local level, which means that the administrative and territorial separation in Kosovo is regulated based on the organization in mono instance level, where municipalities are considered the direct and sole carriers for the exercising of duties and responsibilities in local level. So, according to this, it results that the municipalities taking into consideration the model of local autonomy in Kosovo, serve as the sole authorities that have the mandate to exercise functions of public authorities including the establishment and implementation of public policies in local government level.

When we talk about the territorial organization in the Republic of Macedonia, we may point out that the Constitution of the Republic of Macedonia, too, foresees the mono instance local self-government system, where the carrying units of local government are only the municipalities. However, other than the Constitution of the Republic of Kosovo, the Constitution of Macedonia foresees another specific which is presented in the case of Skopje, where this city is treated as a special unit of local self-government, where the issue of organization of this specific unit is in discretion to be regulated by a special law. In this direction, the territory of the municipality includes one or more residences with cadastral municipalities determined in accordance with the law on local self-government territorial organization in the Republic of Macedonia, whereas the region of Skopje, as a special unit of local self-government consists of the territories of the municipalities of Skopje itself.

Whereas, when talking about the territorial organization in the Republic of Serbia, one of the most important characteristics of local self-government in Serbia, that distinguishes it from other countries is the size of the cities and municipalities as carriers of such self-government. 145 units of local self-government in approx. 7.5 million inhabitants, respectively with an average exceeding 50.000 inhabitants per municipality, these units of local self-government in Serbia represent one of the greatest units in Europe. According to the applicable legislation in Serbia, related to the field of local self-government, it is clearly defined that the municipalities, cities and Belgrade are the carriers of local government in this country. Other than the previous laws and compared to the systems in two other states, Kosovo and Macedonia, as it can be seen, regardless of the fact that we are talking about a one-instance system, along with the municipalities, the local self-government transfer units are also the cities and Belgrade, as the sole local self-government unit in Serbia, which has the right, within its territory to create municipalities of the city or also known as urban municipalities, but that will not be considered units of local self-government, which means that they are not related with the rights and obligations determined by the Law on Local Self-Government. So, cities may by means of a statute establish and dissolve urban municipalities, may give or take the jurisdiction to determine the structure of their authorities according to its discretion etc. However, as by means of the constitution there is not determined the special jurisdiction for cities and for Belgrade, it can be concluded that the local self-government system in Serbia is monotype, on its foundations there stand the municipalities and that the notion of local self-government that is included in the Constitution, mainly means the governing of municipalities. Therefore the cities and Belgrade should not understand the other forms noted above as special forms of local self-government in Serbia, but as sub-types of basic units of local self-government composed of municipalities.

The essential distinction that is noticed here is the fact that in the Republic of Kosovo, compared to the systems of the two other countries, where there are approved special laws for the capital city, there still is no special law for Prishtina as the capital city which would regulate the position, status, rights and responsibilities, the carrying authorities of power, the organizational structure as the capital city, etc.

3. The importance paid to the self-government system by constitutional norms

A very important characteristic which distinguishes the local self-government system in Kosovo from the local self-government system in the Republic of Macedonia and that of Serbia is the importance paid by constitutional norms to the organization and functioning of the local autonomy system in Kosovo. It is sufficient to point out the fact that the laws regulating the field of local self-government in Kosovo cannot be subject to referendum. The placement of such a constitutional norm disables the transformation of the will of the majority expressed through the organization of a referendum as a means to decrease the rights and freedoms of a part of the society and the decrease of the role of local autonomy.

Moreover, by means of the constitutional provisions in the Republic of Kosovo there was determined the right of local self-government as a right guaranteed and regulated by law, and this constitutional determination authorizes and at the same time obliges the respective state authorities to guarantee, through the approval of respective laws, the establishment and functioning of a system of local autonomy in Kosovo, without the need to initiate constitutional amendments and secondly, this constitutional norm is modeled in accordance with the principles of the European Charter of Local Self-Government,

which clearly requests that the principles of local self-government be guaranteed by law.

4. Local Government Election Systems

When we talk about election systems, respectively, on the method of election of authorities of local government in these three republics, we notice essential distinctions especially regarding the election of mayors of municipalities that make these systems distinct from one another. In Kosovo, according to the current election system, each municipality is one single election zone. The candidate for mayor of municipality as it was pointed out is elected to this position if he receives 50% plus one vote of the total number of valid votes counted in that municipality. If none of the candidate wins more than 50% plus one vote, then, after four weeks from the first round of elections, there shall be organized a new round of elections, between the two candidates who according to the counted votes have won the majority of votes and that the one who receives the majority of votes in this round shall be elected mayor of the municipality.

In the Republic of Macedonia, the elections for municipality mayors are held according to the majority model, whereas for the members of municipal councils the elections are made according to the proportional election model. Taking into consideration that the mayors of municipalities are elected according to the majority model, then, for mayor of municipality there shall be elected the one who has the majority of votes in the first round, provided that, at least 1/3 of the registered voters voted. If none of the candidates for mayor has received the majority, the elections shall be repeated once again, but in this case only the two candidates who have received most of the votes in the first round of elections. The same repeats also if in the first round there is only for candidate for mayor of the

municipality and did not manage to win the majority of votes of registered voters in the respective local self-government unit.

Whereas, the election system in Serbia, with regard to the election of the mayors of municipalities has one essential distinction to the Republic of Kosovo and Macedonia because here, the mayor of municipality is elected by the municipal assembly from the municipal counselors with a four-year mandate, by secret vote, by the majority of votes of the overall number of municipal counselors. The candidate for a mayor of municipality proposes then the deputy mayor of municipality, also from the list of municipal counselors, elected by the municipal assembly in the same manner as the mayor of municipality. Such a form of election of the mayor of municipality acts in disadvantage of the local autonomy in this republic, due to the fact that the election of the mayor of municipality once again depends on the agreed coalitions between the political entities, which often are directed by the center in this manner, do not reflect the free will of the citizens, for the election of their authorities in local level as they may have done through the direct election process. Thus, the local government remains the selection of the will of political parties which mainly transfer their party militants from the central level to the local level, such a practice does not serve the realization of full rights of citizens in local self-government nor is in accordance with the basic principles of the European Charter on Local Self-Government.

5. Regulation of the issues related to regional development through legal provisions

Another important issue when dealing with the local self-government system in these three levels that distinguishes them between each other deals with the fact that the Republic of Kosovo still has not approved any special law on regional development contrary to Macedonia and Serbia. Same as the

Republic of Macedonia which has approved the Law on Equal Regional Development, whereby there are regulated the purposes, principles, carriers of politics for the incitement of equal regional development and planning, separation of means and other issues on regional development,² also the Republic of Serbia has approved the Law on Regional Development which regulates the methods for the stimulation of regional development, indicators of the development regions, support of regions according to the level of their development, development documents, entities that may be the carriers of the regional development, measures and financial sources for the implementation of the measures for regional development.³

Also, based on the comparisons made, it results that while the Republic of Macedonia and recently also the Republic of Serbia, along with the existence of respective ministries on local self-government, have approved special laws on the State Inspectorate for the supervision of the works of local self-government authorities, the legal system in the Republic of Kosovo lacks such a legal act which would regulate the organization of a state inspectorate on local self-government which would monitor the lawfulness of acts issued by the municipalities as well as the lawfulness of implementation of procedures by respective authorities of the municipalities during their work. While in the Republic of Macedonia such a law was approved several years ago and its purpose is to ensure a more effective system, more efficient and a system legally regulated for the monitoring of lawfulness and rules of the municipalities, Skopje and municipalities in Skopje and for the advancing of their lawfulness,⁴ in the Republic of Serbia a similar law was approved now in 2015, and through it there is

² Republic of Macedonia, Official Gazette, Law on Equal Regional Development, article 1

³ Republic of Serbia, Official Gazette No. 51/2009, and 30/2010, Law on Regional Development

⁴ Republic of Macedonia, Official Gazette – Law on State Inspectorate of the Local self-administration in Macedonia, article 2

regulated the content, types and forms of procedures of the monitoring inspectorate, the authorizations and duties of the officers of this inspectorate and other important issues related to the this monitoring inspectorate,⁵ which in comparison to the one in Macedonia does not include the monitoring and lawfulness of only the work of local government authorities but also the work performed by the central level state administration, authorities of autonomous provinces as well as authorities of local self-government, so that by means of preventive measures there is ensured the lawfulness during the implementation of their works and responsibilities.

Conclusions

All the above explanations lead to the conclusion that regardless of the similarities that follow the local self-government systems in the three compared countries, in essence there exist differences that, as such, these systems make one another special. A common characteristic for all three systems, as it was noticed, is the facts that in all three countries, the local self-government system enjoys attributes of a constitutional category, because, in the constitutions of all three countries there are foreseen special chapters that treat the issue of local self-government. However, when we talk about the territorial organization, even though all three have embraced the mono-level local self-government system, there exist sharp differences. While in the Republic of Kosovo, the municipalities are the sole carriers of local government, which means that the territorial administrative organization is based on a mono-level system, in the Republic of Macedonia, regardless of the mono-level organization system, there is foreseen also another specific which distinguishes the same. We are talking about Skopje, which is also treated as a special local

⁵ Republic of Serbia, Official Gazette No. 36/2015, Law on the Monitoring Inspectorate, article 1

self-government unit, which is also regulated by a special law. Whereas, when we talk about the territorial organization in the Republic of Serbia, in comparison to the two other countries, we see that based on the legislation applicable for this country, it is defined that the municipalities, cities and Belgrade are providers of local government, so that such a treatment distinguishes this system from the systems of local self-government in the Republic of Kosovo and Macedonia, in spite of the fact that they belong to the same mono-level of local self-government functioning.

Another distinctive characteristic is the fact that in comparison to the other two countries, Kosovo still has not approved a special law for the capital city, which would regulate the status of Pristina, as the capital city of the Republic of Kosovo.

Beside the distinctions noted to some degree in this thesis, the issue that makes the local self-government system of Kosovo distinctive from the other two systems is the importance paid through constitutional norms of organization and functioning of the local autonomy system in Kosovo. In order to confirm how important this system is, it is sufficient to say that the laws regulating the field of local self-government in Kosovo, according to the constitutional provisions may not undergo referendums, so that this approach, disables the transformation of the will of the majority (in the concrete case the Albanian majority) expressed through the organization of any referendum, in order to narrow the rights and freedoms of non-majority communities living and working in Kosovo.

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