

LOCAL SELF-GOVERNMENT IN MONTENEGRO

Electoral system at the local level

The Constitution of the Republic of Montenegro defines that the citizens in the local self-government vote directly and through the representatives they have elected of their own free will. This issue is elaborated thoroughly in the Local self-government Act which states that local population has the right to participate in decision making concerning their own needs and interests through their representatives in municipal assemblies, by a referendum, at political gatherings or by other methods of expressing personal political attitude, in a way regulated by the statute in compliance with the Constitution and the law.

The electoral laws of the Republic of Montenegro define that the citizens elect the members by ballot on the basis of free, equal, and direct suffrage. In the representative system as a form of democracy, the members mandate shows the relation between the citizens and the elected members who perform certain functions within the parliament while its original holders are citizens. We have to look into the reasons that justify the current electoral system for the parliament in its normative function and the mayor in their executive function as well as into the drafting of the system that will enable democratic elections of officials and a greater participation of citizens in the direct administration of the local self-government affairs. In this sense, it is necessary to estimate whether the uniform system for the election of representatives in the Parliament of the Republic and the members in the municipal assemblies is valid or there is a need for defining the electoral system and outlining a new model for the elections at the local level. It is necessary to take into consideration the fact that there is a great difference between the competence of the Parliament and the municipal assemblies. Besides the electoral bases, it is also important to define the number of the assembly members i.e. criteria for their election in order to make for a more efficient operation of this representative body.

The most important task is to find the most adequate model of the electoral system for local self-government which will provide free and direct elections and

election by ballot as well as the valid criteria for the election of municipal assemblies members that will have both political and interest bases. This implies that the structure of the municipal assembly should correspond not only to the political but also to the interest criteria.

The Electoral law for delegates and deputies establishes the beginning and end of the mandate in the Local Parliament in the Administrative Capital and Cultural Capital. Local Parliaments of the Cultural and Administrative Capital delegate 30 deputies and one more per every five thousand electors, but the number of deputies must be announced by Local Parliaments not later than the elections are called . The deputy is elected on the basis of the electoral lists of political parties, coalitions of political parties, or groups of citizens, and the four-year mandates are divided proportionally to the number of the votes obtained.

Electoral campaigns in the public media and public meetings stop 48 hours before the election day. Bodies for the realization of local elections are electoral committees and electoral commissions which, together with the Constitutional Court of the Republic of Montenegro and the Competition Court, have the function of protecting the right to vote. Resources needed for the realization of elections are provided from community budgets. The right to choose and be chosen belongs to every citizen of Montenegro who is at least 18 years old, who is capable of work, and has resided on the territory of the republic at least 24 months before elections and has been resident of a municipality, as an electoral district, at least 12 month prior to elections.

A person can be a candidate only in one electoral list and only in one electoral unit; on the other hand, a voter can with his signature support only one electoral list for the election of deputies. Since Montenegro is territorially divided into 21 municipalities, it has 21 electoral units. Voting is carried out in polling places which are limited to the maximum of 1,000 votes. Members of the police and other uniformed persons are not allowed access to the polling places during the vote. The mandates are divided only between the electoral list that got at least 3% of the votes, if not otherwise stated in the Electoral Law. After the elections, the municipality bodies are formed (Local Parliaments of the Administrative or Cultural Capital, executive bodies, secretary of the Parliament and the bodies of local government). The Parliament elects the president and vice-president and appoints the secretary. The President of the Municipality as the inocosmonocratic model appoints and relieves heads of the bodies of local Government. Particular interest should be given to the election of Governors

who are generally representatives of certain political parties, and not real representatives of the citizens in the Municipality, who are familiar with their problems.

The mandate of a delegate can be terminated prematurely under the following conditions: if he resigns, if he has been tried and sentenced to an effective prison sentence of at least 6 months or for a crime which makes him unfit for the continuation of the execution of his function, if he is legally declared unfit for his job, if he has abused his authority, if his Montenegrin or Yugoslav citizenship has expired, if he dies, or stops being a member of the political party or has been prohibited to carry out his duties by the same political party.

Territorial organization

The organization of local communities is determined both by the Constitution of the Republic of Montenegro and by certain laws. Article 8 of the Constitutions of the Republic of Montenegro states that the territory of Montenegro is integral and inalienable, and that Montenegro is territorially organized into municipalities.

In accordance with this statement, the territorial organization of the Republic of Montenegro is regulated by a special Law on the Division of the Socialist Republic of Montenegro, while the conditions and procedure of the foundation, abolition, integration or changes of the municipalities residence are defined by the Local self-government Act.

Article 2 of the Law on the Division of the Socialist Republic of Montenegro into Municipalities states that SR of Montenegro is divided into municipalities. Article 3 of the same Law states that the municipalities' borders are determined by the borders of places and urban settlements, and Article 4 states that municipalities' territories may be changed only by law. This Law has established a unit of local self-government: 19 units have the status of municipalities, one has the status of a Residence (Cetinje), and one of them has the status of the Capital (Podgorica).

Concerning the territorial organization of the municipality, the regulations of the Law on Local self-government are also important since they state the conditions and the procedure of the foundation, abolition or integration of municipalities. It is necessary to mention here that a municipality may be

founded, ended or integrated with other municipalities only by the Law, and that it can be founded in the areas where there are conditions for the realization of rights and duties of local inhabitants and their immediate and mutual interests and their material and social development. In establishing a municipality, the starting-point is historical development and tradition, whether a municipality represents a geographically and economically integrated entity for the local people, which is reflected in the integration of urban areas, the number of inhabitants (population size), the organization of the services of immediate interests for local people, gravitation towards the center, the developmental and ecological conditions of the area and other questions important for the citizens of a certain area and for the realization of their mutual interests and needs.

The foundation of new municipalities, the abolition or the integration of the existing ones and the change of municipality residence can be done after a local community has declared its willingness to do so. A certain urban settlement of a municipality may be separated and joined to some other municipality by the Law, and through a previous initiative and a declaration of local community's will at a referendum, and with the agreement of the Assemblies of both municipalities.

When examining the system of local self-government, the question of territorial organization deserves serious attention. Thus, we may conclude that local self-government is based on the previously established territorial organization which certainly may slow down the level of development of local communities. Comparatively, most of the municipalities in Montenegro are proportionally large compared to the local communities in West-European countries; thus certain municipalities and especially the capitals of European countries may also be the second-level units. Territorially, the area of local communities ranges from 46 square kms in Tivat to 2,065 square kms in Niksia. Demographically, the differences in the number of inhabitants of local communities are also indicative, from 3,280 in Savnik to 166,9535 in Podgorica. In addition to this, it is also necessary to have in mind that some urban settlements in certain municipalities, especially at the seaside, have developed significantly in urban, economic and demographic terms (Sutomore, Bijela, Petrovac, Perast); certain urban settlements are even territorially separated from the capital (center) of municipality (Bijela, Perast, Petrovac), which emphasizes a need for a more detailed inspection of the status of these settlements and for establishing new municipalities. The third factor which influences territorial organization is the level of development of a local community. Depending on this cording to the parameter of public product per capital of the municipality, the situation varies.

For example: the public product per capital ranges from 2,900 thousand dinars in Savnik to 14,800 in Budva.

Since there is no ideal political/territorial division of a certain country, even concerning the administrative tasks, the legislator has offered the possibility to local communities to co-operate in the domain of local self-government, to design and realize mutual plans and programs aimed at resolving certain questions of interest for the local community, especially in the areas of environmental protection, urban planning, communal services, water usage etc. Besides, in order to provide for a more immediate and efficient local self-government, the right of local inhabitants living in a municipality to establish immediate forms of local self-government to which the municipality entrusts certain activities has been established.

Competence of local self government

With the changes and the supplements of the Law on local self-government and with a number of material laws concerning certain spheres of social life, significant decentralization of activities has been accomplished, that is, the sphere of competence and jurisdiction of local communities has been expanded.

There are two types of authorities of local self-government: their own affairs and those of the delegated jurisdiction, that is the devolved activities with different levels of autonomy in their performance. However, it is not clear which of the activities were part of the original jurisdiction and which have been delegated. The activities of local self-government are established by the law, but these activities may be their own and delegated. An analysis of the system laws and material laws has shown that they serve only for regulating local self-government affairs, but not for distinguishing between the delegated and the original ones, despite the fact that this distinction is very important from the aspect of legal authority and financing. This vagueness is further deepened by a lack of constitutional regulations on the competences of local self-government, which their original authorities are while other activities envisaged by law would be delegated affairs. The original jurisdiction is established by the Law on Local Self-government, while the Law on Delegating Activities of State Administration to Local Self-government establishes the bodies and the activities that are delegated to local self-government. The Regulation on Devolution of Activities of State Administration to Local Self-government lists the activities that are delegated to local self-government.

Article 16 of the Local Self-government Act, and with the combination of the system of the positive enumeration and the general clause, states that a municipality, through its bodies and in accordance with law, designs: developmental programs of activities, regulation which is the condition for their development; urban plan of the municipality, general urban plan, urban plan for smaller urban settlements, detailed urban plans etc.; budget and the annual financial report; it also arranges and provides performance of communal activities, overlooks electoral lists, birth registry; it also gives approval for opening stores, recording and rental of films, it also closes them down; it collects public revenues established by municipalities; it gives licences to private shops and firms, except those of interest to the Republic; it determines space for establishing temporary and movable objects; it determines the relations in the residential areas; it provides material and other conditions for arrangement, rational usage, and assignment of the city construction area; it arranges the usage of business space; it maintains local roads, streets and other public objects of significance to the municipality, as well as local and non-categorized roads; it regulates and provides public transport, taxi cabs, public parking; it funds institutions and organizations in the fields of tourism, education, culture, technical culture, social and children's protection, public informing etc.; it funds reserves of goods, it establishes its size and structure in cooperation with the responsible ministry and it performs number of other activities in its jurisdiction. Municipalities are also responsible for the following activities: creation of the bodies, organizations and services, establishing their structure, personnel policy in the bodies of local self-government and public firms and institutions of local significance, etc.

Taking into account the fact that the changes and supplements of the Law on Local Self-government have expanded the scope of local self-government activity, and consequently that a significant part of the delegated and entrusted activities has been delegated to local self-government, these categories of activities have been reduced to a minimum. In accordance with the categories of activities performed by local self-government, the legislator has determined different supervisory authorities for their performance, with stronger supervision over the delegated and entrusted activities compared to the activities under municipalities original jurisdiction.

When talking about the competence of local self-government it is necessary to stress that it is not limited to system regulations on local self-government. A great number of material laws also establishes competence of local communities.

An analysis of material regulations from certain areas of social life shows that in 53 material laws from the area of agriculture, forestry, waterpower engineering, economy, system of public revenues and expenses, ecology, general administration, citizens' decision-making, social protection and material security, health, education and schooling, culture and sport, health, urban, communal, residential areas, informing, publishing, etc., 176 activities are performed by local self-government. An analysis of material laws also shows differences in legal techniques in determining the competence of local self-government. Hence, in a number of material regulations municipal competence in a certain activity has been established by other groups of laws, and the municipal bodies that perform these activities have been determined.

Besides, the competences of local self-government are significantly limited by the activities connected to certain revenues, for example the activities concerning natural resorts in a local community's area, as well as the activities connected to privatization, in which municipalities, apart from the investment in the corporate infrastructure, have not participated in the capital of the firms.

Reviewing the manner and scope of local communities' competence, we may conclude that even with the decentralization brought about by the changes and supplements of the Law on Local Self-government of 1995, there is still a significant degree of centralization of the activities at the state level which stresses the need for a more detailed re-examination of all competences of state administrative bodies by the competent Ministries and their delegating to local self-government either through the original or the delegated, entrusted, activities. By delegating state activities to local self-government, the principle of the European Charter on Local Self-government - that local self-government performs activities that are closest to the citizen - would also be respected.

In the practical application of the Law, we often come across the situations when local self-government has a need to resolve certain relations that are not regulated by the Law or any other regulation, and that are of interest to local self-government; in such situations it heavily interferes with the resolution of these and similar problems. All of the given circumstances point out a need to contemplate on the method of establishing the local self-government competence. Hence, parallel-legal practice shows that the powers of local self-government are established by the method of negative definition, according to which local self-government is authorized for all the activities that are not in the competence of the state and other bodies. Conceptually, it is more efficient and

rational to move from the existing system of centralization and concentration of the activities at the state level, and from the governmental performance of activities to the concept of decentralization and de-concentration; the state would not directly perform activities, but would provide for their efficient performance through a system of supervisory functions over local self-government.

Local public services

Citizens' administrative relations are established mainly at the local level. This means that the status of citizens is manifested best through the organization and execution of "local administrative relations". Therefore, a strict application of the legality principle in the activities of administration at the local level has special importance. Besides the principle of legality, the efficient realization of the law and the citizens' responsibilities has been gaining value. Local administration is organized and uses modern means to enable citizens to satisfy their needs easily and simply, and to fulfil their public duties. Studying local administration from a non-legal aspect is also gaining importance. The danger lies in the misunderstood legality. In essence, as some theorists say, legality and efficiency are not on the opposite sides, because real legality means efficiency.

Historically, a local community is the origin of most public services, born in order to satisfy the needs of the existing settlements. Slowly, the state has taken over some of the services, usually when they are more general, outside the limits of local units, and when the state can perform them more economically. In this way the state is not exclusively or predominantly the apparatus for carrying out authoritative activities. Its bodies, especially administration, show certain dualism in their functions and organisation. Carrying out public services becomes a unique or an accompanying activity of some agencies or organizations that are controlled by or are part of the state apparatus.

When these activities are concerned, citizens are not a subordinate party. Instead, in most cases they try to make use of the offered services as much as possible. Therefore, the respect for the legality principle is manifested somewhat differently, as a duty of public services to provide equal accessibility to all citizens in order to satisfy public needs, at approximately the same time and at the same cost. The role of local administration in performing public services is on the increase, especially in highly urbanized areas. Because of the cost-benefit principle and the need for unique planning, carrying out these activities is

becoming more and more centralized, with the dislocation of some units (points) in order to cover the whole area and enable citizens to use these privileges in a simple way.

The position of the local self-government in the system of its further development depends on an adequate regulation of the relations between the bodies and the citizens, the public institutions and the enterprises, founded by municipalities as well as public institutions and enterprises founded by the state. They run affairs within local communities (Post Office, forest management, electric power supply, child- and social-care institutions etc.)

According to the current normative prescriptions, a municipal assembly has the right to regulate independently the relations which are relevant to its citizens in various aspects of social life such as public service, culture, education, etc. Due to its autonomy in normative sphere, relative financial autonomy as well as some powers concerning elections and appointments are possible.

It is relevant to consider the ways and forms of the relations and cooperation between the local self-government bodies and the public institutions founded by local communities. A particular attention should be paid to the analysis of the extent of the founding powers mutual rights and responsibilities as well as the supervisory power of the local self-government bodies. All this would provide organizational, personnel, financial and other conditions for their unimpeded operation and satisfy the citizens' needs within the areas they were established in.

It is necessary to consider the following issues: defining of the relations between the local self-government bodies and public service, keeping the citizens informed through the media and the other issues related to unimpeded operating and satisfying of the citizens needs. It is also important to determine the legal status of the public service, their rights and responsibilities towards the local self-government bodies and the citizens as well as to define the supervisory power of the local self-government bodies over the public services.

The objective would also be to define the public affairs that should be administered and paid by the local self-government and the affairs executed by the public services provided that the local self-government should not subsidize. Taking into account the normative advantages of the new local self-government system, it is necessary to put them into practice. It is the main task of local self-government units. As far as social relations in local communities are concerned, there are certain implementation problems, particularly in the areas such as public services, zoning, ecology, tourism etc.

Financing local units

In the former communal system, the financing of government expenditures in the Republic of Montenegro was significantly decentralized, so that there were almost 3 independent subsystems:

- a) the subsystem through which general needs were financed (the budget of the Republic and the budgets of the municipalities):
- b) the subsystem through which mutual needs were financed (social activities, child and health care, social protection)
- c) the subsystem for financing the needs of general interest in the areas such as material production, water resources, forests, roads, geological research, etc.

This system of financing needed a number of centres of fiscal decision-making. There were about 140 holders of fiscal decision-making in Montenegro: the Republic, 20 municipalities, 119 republican funds as well as municipality funds and 432 fiscal instruments (different kinds of taxes, etc.)

These are the characteristics of the former fiscal system:

- it was overdecentralized
- it was not united
- it was inefficient
- it was not sufficiently distinct from the monetary system.

All of this required that a new system be defined, appropriate for the market as well as the transitional economy. Also, the abolition of the communal system and the definition of the model of local self-government made for a clear distinction between the competences of the government and the competences of local self-government. All of this required the changes in the way of financing local units, appropriate to the needs and to the volume of activities performed by them. The financing of local self-government is defined by the Local Self-Government Act and by specific material laws which define the area of governmental revenues. Also, the System of Governmental Revenues Act of 1996 carries out the codification of local governmental revenues. Also, this Act defines the types and the amounts of revenues belonging to local units.

The sources of financing local units are provided from:

- a) own revenues (local communal tax, local administrative tax, compensations for the use of communal property of general interest, compensations for the use of land, revenues collected by the administrative bodies, the fees, etc.):

b) renounced revenues within the municipality, collected out of different kinds of taxes, such as:

- part of the property tax
- part of the sales tax concerning the real estate and the rights
- part of the residence tax
- legacy duties and gift tax
- part of the income tax (citizens' income)
- revenues from the fees and other benefits, collected out of criminal procedures conducted by local administrative bodies
- revenues collected out of compensations for construction, maintenance and use of local roads and streets and other public objects of general social importance
- revenues collected out of the interest on bank deposits and other revenues according to a specific law.

c) additional resources (municipalities which cannot provide the resources necessary for their activities receive extra resources from the republican budget, the so-called "Governmental Support").

The structure of total revenues of the municipalities' budgets for the first 10 months of 1998, shows the following:

a) their own revenues take part in their total revenues and budgets with 43,2% (in 1992 that percentage was 18,5%). This share of local revenues is different for each municipality and directly depends on the material resources as well as on the level of economic development of each municipality. For example, in Savnik local revenues participate with only 10%, in Podgorica with 30.5% and in Budva with 72%.

b) renounced revenues take part in total revenues of all municipalities with 49%. The income tax takes part with 78%, the property tax with 17,35% and the residence tax with 4,7%. These revenues are also different for each municipality, and they are determined by the number of employees in companies and by the regularity of their income payments. For example, in the budget of Kolasin municipality these revenues participate with only 12%, in Podgorica with 70%.

c) "Governmental Supports" participate in total revenues of municipalities with only 7,73%. According to this, these additional revenues are provided for 11 undeveloped municipalities.

An analysis of the financial system of local units indicates the numerousness and variety of financial sources. However, taking into account the needs of local units and particularly the current economic situation, this system does not provide for

a proper financing of local needs. This is the universal opinion of local units. Therefore, an insufficient amount of most revenues, particularly those based on personal incomes, exerts an influence on the financial security of local units. In that sense, it is necessary to search for more secure financial sources and also to determine real expenditures in the municipality budgets that correspond to the actual possibilities and circumstances of a municipality and the Republic. It is also necessary to raise the rate of payment of their own revenues introduced by local communities and to enable local units to introduce certain revenues on their own. Apart from that, it is also important to provide the conditions for local bodies to determine, supervise and pay local revenues on their own, which has been enabled by the changes of the System of Public Revenues Act.

Situation concerning minorities at local level

In the field of the protection of the rights of the members of national and ethnic groups, Montenegro has continued with the good tradition of the ex-SFRY and can boast of a high level of their realization and guarantees. It would be a great pleasure to organize a seminar in Montenegro on this subject.

In the Constitution of the Republic of Montenegro, Montenegro is sovereign in matters that have not been passed on to the SRY. Sovereignty belongs to the citizens; Montenegro is a citizens state. The official language is the Serbian language with the "ijekavian" pronunciation. The Cyrillic and Latin alphabets are equally in use. In the municipalities in which the majority or a considerable number of inhabitants belong to a certain national and ethnic group, its language and alphabet are in official use. Religions are equal and free in observing their religious rituals and affairs.

The members of national and ethnic groups are guaranteed the protection of national, ethnic, cultural, religious identity as well as their language, and the protection of their rights in according with the international protection of human and civil rights. Members of the national and ethnic groups have the right to a free use of their language and alphabet, the right to education and the right of information in their language, as well as to the use of their national symbols. They have the constitutional right of forming educational, cultural and religious societies with the material support of the state. Educational programs in educational institutions include the chapters on history and culture of the members of national and ethnic groups.

To the members of national and ethnic groups are guaranteed the use of their language in procedures in front of state bodies, and the right to proportional participation in public services, the bodies of state and local self-government. They have the right to make and keep contacts with the citizens outside Montenegro with whom they share the same national and ethnic origin, cultural and historical heritage, and religious beliefs without any damage for Montenegro; they also have the right to participate in regional and international NGOs, the right to seek from international institutions the protection of their rights and liberties guaranteed in the Constitution. These special rights of the members of national and ethnic groups cannot be exercised against the constitution, the principles of international law and the principle of the territorial integrity of Montenegro.

In the matter of preserving the national, ethnic, cultural, religious and linguistic identity of the members of national and ethnic groups and the realization of their rights as guaranteed by the Constitution, a Republican council for the protection of the rights of the members of national and ethnic groups has been established, which is run by the president of the Republic; the structure and competence of the Republican council is defined by the Parliament. The Ministry for the protection of the rights of national minorities is formed for a more dynamic and full protection of these rights by the government.

Apart from this great number of constitutional regulation, it is interesting to mention Article 43. of the Law on the election of the delegates and deputies which offer some privileges to the Albanian minority in the sense that only 200 voters need to support their electoral list, while in other parts of the country 1% of the number of the voters in an electoral unit are needed.

References

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